

## Request for Proposals

### **Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs) – Healthcare and Dependent Care**

PROJECT NO. F10B9200027



### DEPARTMENT OF BUDGET & MANAGEMENT

**Issue Date: 06/30/2009**

#### **NOTICE**

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

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

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

To help us improve the quality of State solicitations, and make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this Contract, please fax this completed form to: 410-974-3274 to the attention of the Procurement Officer. Thank you for your assistance.

**Title:** TPA Services for FSAs – Healthcare and Dependent Care  
**Project No:** F10B9200027

1. If you have responded with a "no bid", please indicate the reason(s) below:

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

2. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

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

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

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

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

**KEY INFORMATION SUMMARY SHEET**

**STATE OF MARYLAND**

**Request for Proposals**

**TPA Services for FSA – Healthcare and Dependent Care**

**PROJECT NUMBER F10B9200027**

**RFP Issue Date:** June 30, 2009

**RFP Issuing Office:** Maryland Department of Budget and Management  
Division of Procurement Policy & Administration

**Procurement Officer:** Joy Epstein  
Office Phone: (410) 260-7570  
Fax: (410) 974-3274  
e-mail: jepstein@dbm.state.md.us

**Proposals are to be sent to:** Maryland Department of Budget and Management  
45 Calvert Street, Room 143  
Annapolis, MD 21401  
Attention: Joy Epstein

**Pre-Proposal Conference:** July 15, 2009 1:00 PM Local Time  
300 W. Preston Street – 1<sup>st</sup> Floor Auditorium  
Baltimore, Maryland 21201

**Closing Date and Time:** August 18, 2009 – 2:00 PM Local Time

**NOTE**

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

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## SECTION 1 - GENERAL INFORMATION

### 1.1 Summary Statement

**1.1.1** The Department of Budget and Management is issuing this Request for Proposals (RFP) to provide Third Party Administrative (TPA) Services for the State of Maryland's Flexible Spending Account (FSA) plans – Healthcare and Dependent Care - for eligible and enrolled participants of the State's Flexible Spending Accounts. The State's contract with the current TPA for FSAs expires on June 30, 2010. The vendor who is awarded the contract pursuant to this RFP will be required to perform TPA services anticipated to begin with the Plan Year July 1, 2010 and implementation services in the Spring immediately prior to the Plan Year.

The State intends to have the third party administrator perform non-discrimination testing for the FSAs, the State's cafeteria plan and other self-funded plans subject to non-discrimination testing; the State offers health, dental and prescription benefits using the cafeteria plan for the payment of employee contributions. The State's goals are to obtain a third party administrator for its flexible spending account plans and in the interest of economy and efficiency, to use the selected offeror's existing system and procedures to the maximum extent possible in the administration of the cafeteria plan.

**1.1.2** It is the State's intention to obtain services, as specified in this Request for Proposals, from a Contract between the successful Offeror and the State.

**1.1.3** DBM intends to award one contract to the Offeror whose proposal is deemed to be the most advantageous to the State, considering price and technical factors. See Section 5 for a discussion of the evaluation factors.

**1.1.4** Offerors, including their sub-contractors, must be able to provide the services and fully meet the requirements requested in this solicitation for the full duration of the contract.

### 1.2 Abbreviations and Definitions

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

- a. BAS** – means Benefits Administration System - the State's automated benefits tracking system.
- b. Business Associate** - has the meaning provided in 45 CFR §160.103.
- c. COBRA** – means Consolidated Omnibus Budget Reconciliation Act.
- d. COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us)
- e. Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract shall be in the form of Attachment A.
- f. Contract Manager (CM)** – The State representative for this project who is primarily responsible for Contract administration functions, including issuing written direction, compliance with terms and conditions, and achieving on budget/on time/on target (e.g., within scope) completion of the project.
- g. Contractor** – The selected Offeror that is awarded a Contract by the State.
- h. Covered Entity** – means a covered entity as defined by 45 CFR § 160.103.
- i. DBM** – Maryland Department of Budget and Management.

- j. Dependent** – means, in connection with the Healthcare Flexible Spending Account and the Dependent Care Flexible Spending Account, a spouse or tax dependent of the enrollee, whose incurred expenses are properly reimbursed under the terms of the Flexible Spending Account. Pursuant to the Internal Revenue Code provisions governing the particular Flexible Spending Account, healthcare or dependent care expenses incurred for only certain individuals may be properly reimbursed; such individuals are “dependents” in connection with that plan.
- k. Dependent Care Flexible Spending Account (DCFSA)** – an individual account into which eligible State employees deposit pre-tax contributions to pay for qualified dependent care expenses.
- l. Disclosure** – means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.
- m. DOIT** – means Maryland Department of Information Technology.
- n. EBD** – means Employee Benefits Division.
- o. EOB** – means Explanation of Benefits.
- p. Fixed Fee** - means a fully-loaded fee; that is not subject to adjustment because of variations in the Contractor’s cost.
- q. FMLA** – means Family Medical Leave Act.
- r. Fully Loaded** - means a fee where all direct and indirect costs, general and administrative overhead, purchasing burden and profit; all costs to provide the performance, supplies, or deliverables are built into the fee.
- r. Healthcare Spending Account (HCFSA)** – an individual account into which eligible State employees deposit pre-tax contributions to pay for qualified covered healthcare expenses.
- s. Health Plan** – means a self-funded or fully insured group health plan administered for eligible State employees, retirees and their dependents. Note: the HCFSA is a health plan.
- t. HI TECH Act** - means the Health Information Technology for Economic and Clinical Health Act, as enacted as Title XIII and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, P.L. 111-5, enacted February 17, 2009.
- u. HIPAA** – means Health Insurance Portability & Accountability Act, and its corresponding regulations.
- v. Leave of Absence** – means an unpaid leave of absence elected by a permanent employee, who is not eligible for State subsidy of benefits but is eligible to participate in certain benefits provided by the State of Maryland while on the unpaid leave of absence.
- w. Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.
- x. MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- y. Medical Records Act** – means the Maryland Confidentiality of Medical Records Act, Annotated Code of Maryland, Health-General Article, Title 4, Subtitle 3.
- z. Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 6:00 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.
- aa. Offeror** – An entity that submits a proposal in response to this RFP.
- bb. Participant** – means an employee who is eligible to participate and who is enrolled in the State of Maryland Benefits Program but does not include dependents.

- cc. PEPM** – means Per Enrollee Per Month; the cost for each Participant in the FSA plans on a monthly basis.
- dd. Personal information** - means identifying data of a member or dependent, including name, address, social security number, telephone number, date of birth, and information concerning FSA plan utilization and coverage.
- ee. PHI** – means Protected Health Information, as the phrase is defined in 45 CFR § 164.501.
- ff. Procurement Officer** – The State representative for the resulting Contract. DBM may change the Procurement Officer at any time by written notice to the Contractor.
- gg. Request for Proposals (RFP)** – This Request for Proposals for Third Party Administrative services, Project Number F10B9200027 dated June 30, 2009, including any attachments and amendments.
- hh. Satellite Account Employee** – means an employee of a political subdivision, agency, commission, or organization that is permitted by Maryland law to participate in the State of Maryland Benefits Program.
- ii. State** – “State” means the State of Maryland.
- jj. Subcontractor** – means an organization or entity that the offeror plans to utilize for the purposes of providing services covered under this contract.
- kk. TPA** – means Third Party Administrator.
- ll. TTY/TDD** – means a telephone device used by hearing impaired individuals whereby they communicate via telephone connected to a keyboard and screen.
- mm. Unsecured protected health information or unsecured PHI** - has the meaning provided in Section 13402(h) of the HI TECH Act.
- nn. Use** - means, with respect to individually identifiable health information, the sharing, employment application, utilization, examination, or analysis of such information within an entity that maintains such information.
- oo. VPN** - Virtual Private Network. Secure network for transmitting data which requires approval from the Department of Information Technology (DOIT).

**1.3 Contract Type**

The Contract that results from this RFP shall be a fixed unit price contract for indefinite quantities as provided in accordance with COMAR 21.06.03.02A(2) and 21.06.03.06A (2) in connection with the administrative fee paid to the Contractor, plus reimbursement of the specific amounts paid to Participants as part of the correct administration of the FSAs. *See* COMAR 21.06.03.03 (2). In addition, this Contract shall be a firm fixed price contract as provided in COMAR 21.06.03.02 A (1) in connection with the annual fixed fee for certain non-discrimination testing. No other costs, fees or charges of any type are payable or reimbursable by the State to the Contractor for services required under the Contract.

**1.4 Contract Duration**

The Contract resulting from this RFP shall be for a period covering implementation, five (5) Plan Years, and an eight (8) month run-out administration period. It is expected that the first Plan Year covered under the Contract will be the Plan Year beginning on or about July 1, 2010 and that the last Plan Year covered under the Contract will end June 30, 2015, with the run-out administration period (during which reports will also be provided) ending on or before March 30, 2016.



### **1.5 Procurement Officer**

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

Joy Epstein  
Maryland Department of Budget and Management  
45 Calvert Street, Room 143  
Annapolis, Maryland 21401  
Phone Number: 410-260-7570  
Fax Number: 410-974-3274  
E-mail: jepstein@dbm.state.md.us

DBM may change the Procurement Officer at any time by written notice. The Procurement Officer is responsible for the Contract, issuing notices to proceed, determining scope issues, and is the only State representative that can authorize changes to the Contract.

### **1.6 Contract Manager**

The Contract Manager is:

Anne Timmons  
Maryland Department of Budget and Management  
Employee Benefits Division  
301 W. Preston Street, Room 509  
Baltimore, Maryland 21201  
Phone Number: 410-767-4710  
Fax Number: 410-333-7122  
Email: atimmons@dbm.state.md.us

DBM may change the Contract Manager at any time by written notice. The Contract Manager has the authority to oversee day-to-day administration of the Contract and the Contractor's performance. The Contract Manager may delegate authority to a designee.

### **1.7 Pre-Proposal Conference**

A Pre-proposal Conference will be held on July 15, 2009, beginning at 1:00 PM, Local Time at 300 W. Preston Street, Auditorium, MD 21201.

The Pre-Proposal Conference will be summarized. As promptly as is feasible subsequent to the Pre-Proposal Conference, a summary of the Pre-Proposal Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations at the Pre-Proposal Conference, please e-mail or mail the Pre-Proposal Conference Response Form to the attention of the Procurement Officer with such notice no later than 4:00 PM on July 13, 2009. The Pre-Proposal Conference Response Form is included as **Attachment E** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call or e-mail no later than July 8, 2009. DBM will make a reasonable effort to provide such special accommodations.

## 1.8 eMarylandMarketplace

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM website ([dbm.maryland.gov](http://dbm.maryland.gov)) and other means for transmitting the RFP and associated materials, the solicitation and summary of the pre-proposal conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via e-Maryland Marketplace.

In order to receive a contract award, a vendor must be registered on eMarylandMarketplace.

**Registration is free.** Go here to register: <https://ebidmarketplace.com>. Click on "Registration" to begin the process and follow the prompts.

## 1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the pre-proposal conference. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Officer. Questions, both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference.

Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted in a timely manner prior to the proposal due date to the Procurement Officer. 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 offerors who are known to have received a copy of the RFP.

## 1.10 Proposals Due (Closing) Date

An unbound original and four (4) bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.6, no later than 2:00 PM (local time) on August 18, 2009 in order to be considered. An electronic version (diskette or CD) of the Technical Proposal in MS Word and/or MS Excel format must be enclosed with the original technical proposal. An electronic version (diskette or CD) of the Financial Proposal in MS Word and/or MS Excel format must be enclosed with the original financial proposal. Ensure that the diskettes or CDs are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial).

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02F, proposals received by the Procurement Officer after the due date of August 18, 2009 at 2:00 PM (local time) will not be considered.

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

### **1.11 Duration of Offer**

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

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

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the DBM Procurement web page and through eMarylandMarketplace. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

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

### **1.13 Cancellations; Discussions**

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

### **1.14 Oral Presentation**

Offerors may be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation shall be submitted in writing. All such representations will become part of the Offeror's proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the exact time and place of any oral presentations, if any. Typically, oral presentations occur approximately two to four weeks after the proposal due date.

### **1.15 Incurred Expenses**

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

### **1.16 Economy of Preparation**

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

### **1.17 Protests/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).

### 1.18 Multiple or Alternate Proposals

Neither multiple nor alternate proposals will be accepted.

### 1.19 Access to Public Information Act Notice

Each Offeror should give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Title 10, Subtitle 6, of the State Government Article of the Annotated Code of Maryland. (See Section 4.4.4)

Offerors are advised that upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information can be disclosed. Information which is claimed to be confidential is to be identified (by page, attachment or section number) after the Title Page and before the Table of Contents in the Technical proposal and, if applicable, in the Financial proposal.

### 1.20 Selected Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All known subcontractors must be identified and a complete description of their role relative to the proposals must be included in the Offeror's proposals. Additional information regarding MBE subcontractors is provided under paragraph 1.24 below. If an Offeror that seeks to perform or provide the services required by this RFP is a subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

### 1.21 Mandatory Contractual Terms

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the *Contract*, attached as **Attachment A**. **Any exceptions to this RFP or the Contract must be clearly identified in the Executive Summary of the technical proposal; exceptions to the required format, terms and conditions of Financial Proposal must also be clearly identified in the Executive Summary, without disclosing any pricing information.** A proposal that takes exception to these terms may be rejected.

### 1.22 Bid/Proposal Affidavit

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

### 1.23 Contract Affidavit

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

### 1.24 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of fifteen (15%) of the administrative fee (s) paid to the Contractor has been established for the services resulting from this contract. See also **Attachment D – Minority Business Enterprise Participation, Instructions and Forms. Read the Instructions carefully.**

Each Offeror shall complete, sign and submit **Attachment D-1** (*Certified Minority Business Enterprise (MBE) Utilization and Fair Solicitation Affidavit*) and **D-2** (*MBE Participation Schedule*) at the time it submits its technical response to the RFP. Failure of an Offeror to complete and sign **Attachment D-1** and **D-2** at the time it submits its technical response to the RFP, will result in the State's rejection of the Offeror's Proposal to the RFP. **This failure is not curable.**

The selected Offeror once notified of award will be responsible for submitting the following Attachments to provide the State with ongoing monitoring of MBE Participation:

- D-3 (*Outreach Efforts Compliance Statement*)
- D-4 (*Subcontractor Project Participation Statement*)

Once awarded, the Contractor will be responsible for submitting the following forms to provide the State with ongoing monitoring of MBE participation:

- D-5 (*MBE Participation - Prime Contractor Paid/Unpaid MBE Invoice Report*)
- D-6 (*MBE Participation – Subcontractor Paid/Unpaid MBE Invoice Report*)

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this RFP's Section 1.24 must submit a good faith request for waiver by completing the appropriate paragraph on the Attachment D-1, signing and submitting the affidavit. See COMAR 21.11.03.11.

A current directory of certified Minority Business Enterprises is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone number is 410-865-1269. The directory is also available at <http://www.mdot.state.md.us>. The most current and up-to-date information on Minority Business Enterprises is available via this website.

### 1.25 Arrearages

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

### 1.26 Procurement Method

This Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

### 1.27 Verification of Registration and Tax Payment

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Offeror complete registration prior to the

due date for receipt of proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation (SDAT) may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award. To verify if a corporation is registered visit the SDAT website at: [http://sdatcert3.resiusa.org/UCC-Charter/CharterSearch\\_f.aspx](http://sdatcert3.resiusa.org/UCC-Charter/CharterSearch_f.aspx)

### **1.28 False Statements**

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

- (a) In connection with a procurement contract a person may not willfully:
  - 1. Falsify, conceal, or suppress a material fact by any scheme or device;
  - 2. Make a false or fraudulent statement or representation of a material fact; or
  - 3. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.

### **1.29 Payments by Electronic Funds Transfer for Administration Fee**

By submitting a response to this solicitation, the Offeror agrees to accept payments for the administrative fee(s) by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAC X-10 form can be downloaded from:

[http://compnet.comp.state.md.us/General\\_Accounting\\_Division/Static\\_Files/gadx-10.pdf](http://compnet.comp.state.md.us/General_Accounting_Division/Static_Files/gadx-10.pdf)

### **1.30 Electronic File Transfer**

All electronic file transfers between the Department of Budget and Management and the Contractor shall be exchanged using a point-to-point Virtual Private Network (VPN) connection approved by the State of Maryland, Department of Budget and Management and the Department of Information Technology (DOIT). Policies and procedures concerning use of this network are located at [www.doit.maryland.gov](http://www.doit.maryland.gov).

### **1.31 Living Wage Requirements**

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

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. If the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The contract resulting from this solicitation will be deemed to be a Tier 1 contract or a Tier 2 contract depending on the location(s) from which the Contractor provides 50% or more of the services. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the contract will be a Tier 1 contract. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the contract will be a Tier 2 contract. **If the Contractor provides more than 50% of the services from an out-of-State location, then the contract will be deemed to be a Tier 1 contract.** The Offeror must identify in their Offer the location(s) from which services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

### **1.32 Prompt Payment Policy**

This procurement and the contracts to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror/Contractor must comply with the prompt payment requirements outlined in the Contract, § 31.-Prompt Payment. Additional information is available on the GOMA website at:  
[http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs\\_000.pdf](http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf)

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## **SECTION 2 – OFFEROR MINIMUM QUALIFICATIONS**

Offerors must provide proof that they satisfy the minimum qualification below. If the offeror is unable to comply with this requirement, its offer will be found not susceptible of receiving an award and will be rejected, with the financial proposal returned unopened.

- The Offeror must show proof that they provide FSA services to accounts whose participation includes at a minimum 5,000 participants for both DCFSA and HCFSA services for at least five (5) years. Accounts with at least 5,000 participants shall have both DCFSA and HCFSA services, in any combination.

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## SECTION 3 – SCOPE OF WORK

### 3.1 Purpose and Background

- 3.1.1** The State is issuing this solicitation for the purposes outlined in Section 1.1 of this RFP.
- 3.1.2** The State of Maryland currently offers both types of flexible spending accounts – healthcare and dependent care FSA to its eligible members. Estimated deposits into healthcare and dependent care spending accounts for Fiscal Year 2008 total \$12,733,662.60. The table below shows current flexible spending account summary participation information as of May 15, 2009 by plan category.

Enrollees FY09 as of 5/15/09	Healthcare FSA Only	Dependent Care FSA Only	Both Accounts
Active	7842	1,713	956
Satellite	127	28	0
<b>TOTAL</b>	7969	1,741	956
<b>TOTAL REIMBURSEMENTS</b>	\$4,580,385.80	\$3,083,378.16	

Enrollees for June 2008	Healthcare FSA Only	Dependent Care FSA Only	Both Accounts
Active	7,043	1,528	831
Satellite	111	26	0
<b>TOTAL</b>	7,154	1,554	831
<b>Deposits – FY 2008</b>	\$7,538,336.26	\$5,195,326.34	
<b>Reimbursements – FY 2008</b>	\$7,174,247.57	\$5,092,224.71	
<b>Claims Processed – FY 2008</b>	27,400	17,622	

Participant salary reductions for the flexible spending accounts are taken from employee’s paychecks for 24 of the 26 pays for bi-weekly employees, 12 of the 12 pays for monthly employees, and 19 of the 21 pays for ten-month employees.

The FSAs are currently operated on a fiscal year basis, from July 1 through June 30. Participants have until October 15 following the end of each Plan Year to submit reimbursement requests with all necessary substantiating documentation. No requests for reimbursement are accepted after October 15. However, if a request for reimbursement is received prior to the deadline, but additional information to approve that request is required from the Participant, such additional information may be submitted after October 15.

## 3.2 Scope of Work

### 3.2.1 General Services and Performance

A. The Contractor shall provide TPA services for the FSA plans beginning with the first Plan Year covered by the Contract, expected to be the Plan Year beginning on July 1, 2010. The Contractor will also be required to provide TPA services for each FSA for every Plan Year that commences during the term of the contract including run-out administration of reimbursement requests for expenses incurred during the Plan Year and filed by October 15. This includes the non-discrimination testing for the FSA plans but excludes the services and reports related to non-discrimination testing for the State's cafeteria plans and other self-funded group health plans.

B. In addition, as a separate service, for each Plan Year that commences during the term of the contract, the Contractor must provide non-discrimination testing services for the State's Cafeteria Plan and other self-funded health benefits plan(s). The State has the following self-funded group health plan benefit options: 2 PPO plans, 3 POS plans, 3 EPO plans, and a prescription benefits plan. This includes all services and reporting related to the non-discrimination testing for the State's cafeteria plans and other self-funded group health plans. See RFP § 3.2.10. A fully loaded fixed fee, on an annual basis, for the non-discrimination testing for the State's cafeteria plan applies.

C. Below are general descriptions of the administrative and other services that are required of the Contractor in connection with this procurement. In addition, Attachments G-1 through G-10 provide additional detail and several specific services that must be provided by the Contractor under this Contract.

### 3.2.2 Technical Proposal

The sections of the MS Excel-based portions of this RFP (**Attachment G**) describe and contain the majority of the Scope of Work for this contract. These MS Excel spreadsheets detail specific performance requirements for the Contractor to which the Offeror must commit. All required signatures, explanations and attachments must be included in the Offerors proposal.

The RFP contains MS Excel files (**Attachment G**), labeled FSA Tech.xls containing response pages and supporting data to complete a response, summarized as follows:

<u>Section</u>		<u>Tab Name</u>	<u>File Name</u>
<b>Response Pages</b>			
Attachment G-1:	Introduction	Introduction	FSA Technical Response.xls
Attachment G-2:	Offeror/Contractor Information	Offeror/Contractor Information	FSA Technical Response.xls
Attachment G-3:	Explanation	Explanation	FSA Technical Response.xls
Attachment G-4:	Plan Design	Plan Design	FSA Technical Response.xls
Attachment G-5:	Compliance Checklist	Comp Chklist	FSA Technical Response.xls
Attachment G-6:	Questionnaire	Questionnaire	FSA Technical Response.xls
Attachment G-7:	Subcontractors Questions	Subcontractor	FSA Technical

	<b>Section</b>	<b>Tab Name</b>	<b>File Name</b>
Attachment G-8	Implementation Plan	Implementation	FSA Technical Response.xls
Attachment G-9	Account Management Plan	Acct Manage	FSA Technical Response.xls
Attachment G-10	Performance Guarantees	Performance Guarantees	FSA Technical Response.xls
Attachment G-11	Plan Experience Reporting Package	Plan Reporting Pkg	FSA Technical Response.xls
Attachment G-12	Management Reporting Package	Management Reporting Pkg	FSA Technical Response.xls
Attachment G-13	Plan Forms	Plan Forms	FSA Technical Response.xls
Attachment G-14	Communication Package	Communication Pkg	FSA Technical Response.xls
Attachment G-15	Draft Plan Description	Draft Plan Description	FSA Technical Response.xls
Attachment G-16	Quality Assurance	Quality Assurance	FSA Technical Response.xls
Attachment G-17	Internal Audit Results	Internal Audit Results	FSA Technical Response.xls
Attachment G-18	External Audit Results	External Audit Results	FSA Technical Response.xls

The files are in Microsoft Excel (.xls) format.

Please note that the majority of the questions have been structured to elicit “Yes” or “No” responses, except where otherwise noted.

The Attachments provide additional and more detailed performance requirements to be met by the Contractor during the term of the Contract. The requirements of this RFP, whether provided in this Section 3 or in an Attachment, will become Contract terms applicable to the Contractor during the term of the Contract.

### **3.2.3 Project Activity and Due Dates**

Following are the high level activities and the State’s desired due dates, where applicable:

<b>DATE</b>	<b>ACTIVITY</b>
Upon contract award	<ul style="list-style-type: none"> <li>a) Begin implementation meetings with the State of Maryland</li> <li>b) Provide Participant Communications Material for State review and approval.</li> <li>c) Contractor must establish the necessary account with the Comptroller’s Office to enable electronic funds transfer. See Section 1.29.</li> </ul>
Within 21 calendar days after contract award	Completion of information transfer activities

Within 30 calendar days after contract award	Completion of vendor implementation plan transition protocols, including information transfers.
Mid -March preceding every Plan Year	<ol style="list-style-type: none"> <li>1. Attend Benefit Coordinator Training Sessions</li> <li>2. Provide marketing materials for distribution.</li> </ol>
April and May preceding every Plan Year	<ol style="list-style-type: none"> <li>1. Attend Open Enrollment Benefit Fairs</li> <li>2. Provide marketing materials and information.</li> </ol>
Prior to May 15 <sup>th</sup> preceding every Plan Year	Receive, load and audit test enrollment file
Early June for every Plan Year	Receive load and audit positive enrollment file for enrollment and coverage beginning July 1 <sup>st</sup> of every Plan Year.
July 1 <sup>st</sup> of every Plan Year	Commence Benefit Coverage and administration of plan/benefits.

### 3.2.4 Account Management Services

The Contractor shall provide account management services to the State in connection with the FSA plans, such as:

- Comprehensive implementation services and support during the initial transition;
- Provide ongoing account management services;
- Participate in Open Enrollment, including training and marketing;
- Accept enrollment and deduction information from the State in the format transmitted, which uses the social security number to identify participants. Generally enrollment information is sent weekly in an electronic format and Payroll Deduction information is sent bi-weekly or monthly in electronic and/or manual formats.
- Follow Central Payroll Transmission Policy located on Attachment J.
- Pay a portion of the cost of mailing and printing of the Open Enrollment Materials:  
Costs are assessed for the third party administrators for each of the various State benefits plans and have ranged from a high of \$21,000 per administrator for the Fiscal Year 2010 Plan Year to a low of \$11,000 per plan administrator for the FY 2007 Plan Year;
- Pay a portion of the cost of the annual customer satisfaction survey  
Costs were assessed at approximately \$4,100 for the fiscal year 2007 survey, and \$3,600 for the fiscal year 2008;
- Perform non-discrimination testing for the FSA plans, in accordance with the requirements applicable to HCFSA plans and DCFSA plans, at least three times per Plan Year; the first day of the Plan Year the mid-point of the Plan Year, and the last day of the Plan Year;
- Attend meetings and training sessions:
  - 1) Approximately 140-160 Open Enrollment fairs.
  - 2) Approximately 10-15 Open Enrollment training sessions.
  - 3) Approximately 5-10 planning sessions. (either in person or by conference call).

### **3.2.5 HIPAA Privacy and Security Provisions**

A. The Contractor will be a business associate of the State in connection with the Flexible Spending Account plans and, potentially, in connection with the non-discrimination testing for the Cafeteria Plan and other self-funded group health plans. The Healthcare Flexible Spending Account plan is subject to HIPAA and full compliance with the HIPAA privacy and security provisions is required of the Contractor. Although the Dependent Care Flexible Spending Account plan is not a health plan subject to HIPAA, the Contractor shall take equivalent steps to make sure that all personal information is protected.

Pursuant to the HI TECH Act, business associates are subject to additional compliance requirements and are liable for civil and criminal penalties for violations of certain HIPAA security and privacy provisions. In addition to those obligations imposed by federal law, the Contract (in this section of the RFP and Attachment G-5) requires certain actions and performance by the Contractor in order for the HCFSA plan and the Department as sponsor of the HCFSA to be fully compliant with HIPAA.

B. The Contractor shall:

- be cognizant of and familiar with the obligations of HIPAA, as amended through the HI TECH Act and any amendments during the Contract term;
- acknowledge that, as a business associate in connection with the HCFSA, the Contractor is liable and responsible for compliance with the HIPAA security provisions under the HI TECH Act;
- take a proactive role in identifying, evaluating and eliminating potential privacy and security threats to electronic and non-electronic PHI and personal data in both the HCFSA and the DCFSA;
- take steps to eliminate the use, retention, maintenance, transmission, and creation of unsecured PHI wherever and whenever possible;
- provide similar security and privacy protection to personal data held, maintained, created, received, or transmitted in connection with the DCFSA as is provided to PHI held, maintained, created, received, or transmitted in connection with the HCFSA; and
- use and disclose the minimum necessary amount of personal information and PHI, or de-identified data, wherever and whenever possible to do so and meet the needs of satisfactory performance of the Contract.

C. In connection with PHI held, created, maintained, or transmitted in connection with the HCFSA and personal data held, created, maintained, or transmitted in connection with the DCFSA, the Contractor shall:

- retain, maintain, create, transmit and destroy such PHI and personal data in a manner that renders such data and information unusable, unreadable, and indecipherable to unauthorized individuals;
- retain, maintain, create, transmit and destroy such PHI and personal data in a manner fully consistent and compliant with guidance, policies and regulations issued by the Department of Health and Human Services that applies to PHI, also applying such standards to personal data;
- notify the Department of any breach, as that term is defined in the HI TECH Act, §13400 (1), as soon as practicable, but in any event within 10 business days;
- provide, or pay to provide, notice to affected individuals in the form, content, manner, method, and timing to meet the requirements of the HI TECH Act, §§13400 -13402, in the event of a breach of unsecured PHI; and

- provide, or pay to provide, notice to affected individuals in the form, content, manner, method, and timing to meet the provisions of the HI TECH Act, §§13400 -13402, in the event of a breach of personal information.

### **3.2.6 Participant Communications**

- A. The Contractor shall provide adequate Participant communication, including but not limited to:
- clear instructions for the submission of reimbursement requests;
  - clear explanations of reimbursements and denials of reimbursements;
  - explanation of benefits communications;
  - forms to request reimbursements, customized for State of Maryland HCFSA and DCFSA Participants;
  - clear explanations of the reimbursement process, including time frames for submission and target time frames for the issuance of reimbursements.
  - customized quarterly statements of Participant account activity and balances.

B. All information and instructions provided by the Contractor to Participants shall be accurate, free of typographical and mathematical errors, and provided in a timely manner. The Contractor shall bear the costs of providing correct information in the event of miscommunications or mistaken communications.

### **3.2.7 Website and Online Access for Participants**

The Contractor shall provide and administer a dedicated website and online administration functionality for the exclusive use of the State of Maryland Participants. The website and online administration functionality for Participants shall include, at a minimum:

- Encryption to guarantee protection of Participant privacy and confidential data (PHI, personal data and banking information as applicable);
- 24/7 access to account balance and claim status;
- 24/7 access to plan benefits and eligibility information; and
- Ability to submit reimbursement requests on-line.

### **3.2.8 Customer Service**

A. The Contractor shall provide and maintain a customer service center for Participant inquiries, which meets the following requirements:

- Toll-free telephone access, meeting the applicable performance guarantees for abandonment rate and speed to answer (see Attachment G-10) for State of Maryland Participant callers;
- Offeror agrees to establish and provide a state-of-the-art customer service operation (including a toll-free line) that is available to plan Participants (both in-state and out-of-state) from at least 8:00 a.m. to 8:00 p.m. Local Time, Monday through Friday; and
- Customer service representatives shall have access to account balance and reimbursement request status.

B. The Contractor shall have a process for resolving any billing or claim errors with a Participant's claims and the process for Participants to resolve questions or concerns about a reimbursement request.

C. Contractors shall be able to provide reimbursements using direct deposit to a participant's account.

### 3.2.9 Plan Design

#### A. Reimbursement Requests:

(1) The Contractor shall process reimbursement requests in accordance with the plan design of the HCFSA and DCFSA, all applicable provisions of the Internal Revenue Code governing such arrangements, including without limitation, regulations, rules and guidance issued by the IRS, and the State cafeteria plan (i.e. plan design for the FSAs). The Department will provide a copy of the State's cafeteria plan, as amended from time to time, to the Contractor for use in properly reimbursing qualified incurred claims. At all times, the Contractor shall administer the FSA plans and reimburse claims in a manner designed to keep the FSAs compliant with applicable law and the cafeteria plan.

(2) Elements of the plan design of the Flexible Spending Accounts are provided on Attachment G-4.

(3) The Contractor shall be knowledgeable about all applicable Internal Revenue Code requirements including without limitation regulations, rules and guidance issued by the IRS, that relate to the administration and design of flexible spending arrangements. When and if new requirements, regulations, rules or guidance are issued, the Contractor is expected to provide information concerning how such changes may impact the plan and include an implementation plan.

(4) Deadlines for the submission of reimbursement requests must be adequately communicated and applied consistently, in compliance with applicable IRC regulations, unless there is a failure on the part of the Contractor or the State to excuse the deadline.

(5) In connection with the HCFSA, the Contractor shall direct the reimbursement to each eligible covered employee for all medical expenses authorized for reimbursement pursuant to Code Section 105(b), including over-the-counter drugs as defined in IRS Revenue Ruling 2003-102.

(6) Participants whose coverage is ended during the Plan Year will be allowed a 90 day run-out period from date of termination to submit reimbursement requests for eligible expenses incurred prior to the termination date in the applicable FSA.

(7) Unused employee contributions may not be cashed-out or converted to any other taxable or nontaxable benefit.

#### B. Grace Period

Under the pre-tax HCFSA only, there is a two and a half month (2 ½) "Grace Period" to obtain reimbursement for eligible out-of-pocket healthcare expenses, pursuant to IRS Notice 2005-42 and Proposed Treasury Regulation §1.125-1. The "grace period" is not the run-out period during which Participants may submit reimbursement requests for incurred claims; the grace period provides an additional 2 and ½ months during which a Participant may incur claims in order to

exhaust FSA balances that remain at the end of the Plan Year, after all eligible expenses incurred during the Plan Year have been reimbursed.

The employees have an extra 2 ½ months at the end of the Plan Year to incur and submit eligible healthcare expenses, so long as they are enrolled on the last day of the Plan Year. This grace period applies to HCFSA only. A Participant can submit claims for eligible out-of-pocket Healthcare expenses that they incur through September 15, provided the Participant is enrolled in the Healthcare Flexible Spending Account on June 30, the last day of the Plan Year.

In the event that a Participant (i) has a balance remaining from an HCFSA for an immediately preceding Plan Year, (ii) has elected an HCFSA for the next Plan Year, which includes the grace period for the immediately preceding Plan Year and (iii) submits a claim for reimbursement for a qualified expense incurred during the grace period, then the Participant will be reimbursed first from the HCFSA for the immediately preceding Plan Year up to the point where the balance in the HCFSA for the immediately previous Plan Year is exhausted, and then from the HCFSA for the Plan Year during which the qualified expenses were incurred.

This grace period does not apply to Dependent Day Care Spending Accounts. Therefore, for a Dependent Day Care Spending Account, Participants can submit claims for day care services incurred through June 30 only.

All Flexible Spending Account reimbursement requests (claims for reimbursement) must be submitted by October 15.

#### C. Debit Cards

(1) The FSA plans shall offer the use of debit cards, as authorized under applicable law, for the processing of reimbursement requests for eligible expenses through the HCFSA and DCFSA. This is a new benefit and has not been offered to Participants in the State HCFSA and DCFSA in the past.

(2) Use of debit cards in connection with the FSA plans must comply with all applicable IRS regulations, rules, and guidance, including Proposed Treasury Regulation § 125-6 (72 FR 42938 et seq. (August 6, 2007), IRS Notice 2007-2 and IRS Notice 2006-69. As additional requirements, regulations, rules and guidance is issued by the IRS and/or Treasury Department, the Contractor shall comply with these guidelines and regulations.

(3) Use of debit cards in connection with the FSA plans must also comply with Regulation E of the Federal Reserve System, as amended, including but not limited to the preparation and issuance of initial disclosure notices, notices regarding procedure for error resolution, notices on provisions for authorizing one-time transfers, and periodic account statements.

#### D. Heroes Earnings Assistance and Relief Tax Act of 2008

(1) The Heroes Earnings Assistance and Relief Tax Act of 2008 (Heart Act) allows plans to offer “qualified reservist distributions” of unused amounts in healthcare flexible spending accounts (FSAs) to reservists ordered or called to active duty for at least 180 days or on an indefinite basis. See Section 114 of the Heroes Earnings Assistance and Relief Tax Act, codified at 26 USC §125(g) and (h). The State Cafeteria Plan incorporates this benefit to a certain extent by directing that the reimbursement is authorized to each eligible covered Participant for: (i) all medical expenses authorized for reimbursement pursuant to Code Section 105(b), including over-the-counter drugs as defined in IRS Revenue Ruling 2003-102, and (ii) qualified reservist distributions authorized by Section 114 of the Heroes Earnings Assistance and Relief Tax Act, codified at 26 USC §125(g) and (h).

(2) Requests for a qualified reservist distribution must be made in accordance with the same procedures for requests for reimbursements of qualified medical expenses, accompanied by



documentation of the call or order to active duty during the Plan Year for a period in excess of 179 days. Offerors are requested to specifically address how they plan to administer these arrangements in their proposals.

### **3.2.10 Cafeteria Plan Non-discrimination Testing**

The Contractor shall provide non-discrimination testing for the State's cafeteria plan and self-funded group health plans that are subject to non-discrimination testing and are offered to State employees and retirees through the State Employee and Retiree Health and Welfare Benefit Program. (Group health plan(s), and other cafeteria plans, that are offered to certain State employees in union/collective bargaining positions with the Maryland Department of Transportation are not included.) The results of such testing shall be summarized and provided to the Contract Manager in reports as further outlined in Section 3.3.3.

#### **3.2.10.1 Cafeteria Plan**

Pursuant to Internal Revenue Code 26 USC §125 and Proposed Treasury Regulation §1.125-7, the State's cafeteria plan is subject to non-discrimination testing. The Contractor shall:

- identify information required from the State in order to successfully conduct and complete such testing;
- conduct such testing in accordance with all applicable requirements, including any amendments or additional guidance issued during the contract term;
- recommend options and steps to modify the cafeteria plan design, participant elections, or other variables to keep the State's cafeteria plans in compliance with all applicable discrimination requirements.

#### **3.2.10.2 Self-Funded Group Health Plans**

Pursuant to the Internal Revenue Code 26 USC §105, Treasury regulations promulgated thereto, 26 USC §125 and Proposed Treasury Regulation §1.125-7, the State's self-funded group health plans that are offered through the State Employee and Retiree Health and Welfare Benefits Program are subject to non-discrimination testing. The Contractor shall:

- identify information required from the State in order to successfully conduct and complete such testing;
- conduct such testing in accordance with all applicable requirements, including any amendments or additional guidance issued during the contract term;
- recommend options to modify the plan design(s), participant elections, or other variables to keep the State's group health plans in compliance with all applicable discrimination requirements.

NOTE: All of the State's self-funded group health plans options are provided as part of one group health plan; pursuant to the State's cafeteria plan, an enrolled employee elects the group health plan option during Open Enrollment. Changes from one group health plan option to another (all different premiums/employee contribution amounts) are permitted in accordance with Treasury Regulation §1.125-4. COBRA enrollees may change among group health plan options on the same terms and conditions as active employees.

### 3.2.10.3 Timing of Testing

A. The Contractor shall administer and test, on the applicable bases and standards, the State's cafeteria plan and self-funded group health plans, based on participation and coverage at the following time periods of the Plan Years:

- the first day of the Plan Year (July 1);
- the mid-point of the Plan Year (December 31); and
- the last day of the Plan Year (June 30).

B. The Contractor shall perform such testing in full compliance with Internal Revenue Code.

## 3.3 Reports

**3.3.1** The Contractor shall provide reports as indicated in Attachment G-5 Compliance Checklist, G12 Management Report, and Attachment G-10 Performance Guarantees.

**3.3.2** The Contractor and each of its MBE subcontractors shall provide as designated the following MBE Reports:

1. Contractor shall provide the original MBE Report **Attachment D-5**, the Contractor's Monthly report by the 10<sup>th</sup> of the following month to the MBE Liaison, with a copy to the Contract Manager.
2. Each MBE subcontractor shall provide the original MBE Report **Attachment D-6**, the MBE Subcontractor's monthly report by the 10<sup>th</sup> of the following month to the MBE Liaison Officer with a copy to the Contract Manager.

### **3.3.3 Non-Discrimination Testing**

A. The Contractor shall provide reports detailing the results of non-discrimination testing for the FSA plans (for each plan), the Cafeteria Plan as a whole, and the self-funded group health plans subject to non-discrimination testing within 60 days of receipt of all data necessary to complete the reports noted below:

- Testing to be performed as of the first day of each Plan Year;
- Testing to be performed as of the mid-point of each Plan Year; and
- Testing to be performed as of the last day of each Plan Year, taking into account all non-excludable employees or former employees who were employees on any day during each Plan Year.

B. Such reports shall include recommendations or steps that the Department should take, in terms of limiting participation or coverage, to correct or avoid results that indicate that the plans will or could fail non-discrimination testing.

C. Such reports must be delivered to the Contract Manager by the date indicated above in both hard copy and electronic format. Electronic format must be in MS Word, MS Excel or a combination of the two.

### **3.3.4 Dependent Care FSA Utilization Tracking**

A. The Contractor shall provide an electronic report by December 1 of each Plan Year that tracks deductions and reimbursements, by calendar year, for each Participant in the Dependent Care FSA. This report shall include, at a minimum:

- Participant name and the full SSN;
- A total of all deductions taken for the Plan Year for the Participant, through November 15;
- A total of all deductions taken for the calendar year for the Participant, through November 15;
- Projected deductions taken for the Plan Year for the Participant, through December 31, if no changes to the Participant's deductions are made;
- Projected deductions taken for the calendar year for the Participant, through December 31, if no changes to the Participant's deductions are made;
- A total of all reimbursements distributed in the Plan Year to the Participant, through November 15;
- A total of all reimbursements distributed in the calendar year to the Participant, through November 15;
- Projected reimbursements distributed in the Plan Year for the Participant, through December 31;
- Projected reimbursements distributed in the calendar year for the Participant, through December 31; and
- Recommendation as to any changes in the Participant's deduction for the remaining deductions and/or reimbursements for the month of December that may be necessary to keep the Participant within the applicable limits for DCFSA as provided in the Internal Revenue Code, 26 USC §129.

B. Transition. For the first Plan Year, if the Contractor is not provided, or does not otherwise have available, information from the preceding Plan Year that is sufficient to generate the report for the entire calendar year, the Contractor shall provide the DCFSA utilization tracking report with all information available for the calendar year to date. For the last Plan Year covered by the Contract, the Contractor shall provide, by June 30, a DCFSA utilization tracking report with all information available for the calendar year to date.

C. A copy of the DCFSA utilization tracking report shall be provided electronically through the VPN secure connection to the Enrollment Manager of the Employee Benefits Division with an email notification that the report has been sent.

### **3.3.5 Report Delivery and Distribution**

A. The Contractor shall provide copies of all reports to the Contract Manager,

B. In the case of reports that are provided to the State or the Department through the VPN or other encrypted, secure mechanisms, the Contractor shall provide notice of the delivery and availability through that mechanism to the Contract Manager at the time of delivery/availability. All reports to the State containing PHI and confidential personal data shall be provided through the VPN or other secure, encrypted means.

C. No report may be considered received by the State unless the Contract Manager has received a copy of the report pursuant to section A or notice pursuant to section B above.

D. Copies of reports and notices of availability of reports to the Contract Manager, or her designee, shall be in addition to the party to whom the original of the report is required to be delivered.

### **3.3.6 Report Requirements**

When presented for acceptance, a written deliverable defined as a final document must satisfy the scope and requirements of the RFP for that deliverable. Final written reports shall not contain structural errors such as poor grammar, misspellings, incorrect punctuation, incorrect mathematic functions or accounting elements, and must:

- Be submitted on or before the due date;
- Be presented in a format appropriate for the subject matter and depth of discussion;
- Be organized in a manner that presents a logical flow of the deliverable/report's content;
- Represent factual information reasonably expected to have been known at the time of submittal;
- Present information that is relevant to the report;
- Meet the content requirements of the RFP Section related to that report/deliverable as determined by the Contract Manager; and
- Be reviewed and accepted by the Contract Manager.

## **3.4 Invoicing**

### **3.4.1 Payment Specifications**

The Contractor shall accept the payment procedures and parameters outlined in this RFP Section and Attachment G-5 for payments by the State for the State Plan.

The Contractor shall accept the parameters for administrative fees charged to the State, in accordance with RFP Section 4.5 and Attachment F.

### **3.4.2 Claims Reimbursements**

The Contractor shall:

- Invoice the State for processed reimbursements to Participants on a weekly basis;
- Invoice through secured, encrypted transmission to the State by 4:00 p.m. Local Time each Monday (or next State business day if Monday is a holiday) for claims/Participant reimbursements processed the prior week and include the following information:
  - Department of Budget and Management;
  - Contractor name;
  - Bank account remittance address;
  - Contractor's federal taxpayer identification or, if owned by an individual, his/her social security number;
  - invoice period;
  - invoice date;
  - invoice number, and
  - and total amount due.

- The invoice for reimbursement of amounts paid to Participants must be broken into Subgroups for Active and Satellite Account Participants;
- Accept payment via wire transfer within 24 hours or next business day following receipt of invoice into a bank account maintained by Contractor;
- Submit to the State for each reimbursement invoiced, a record with reimbursement detail. The file containing these records must equal the amount invoiced and be submitted within 48 hours of invoice submission; and
- Accept adjustments based on the reconciliation of the State's invoice amount and the claims remittance file. Applicable adjustments will be made to a subsequent invoice.

### **3.4.3 Non-Claims (Administrative Fees)**

#### **A. Administrative Fees:**

The Contractor shall:

- Accept monthly payments from the State for administration fees based on the State's deduction report data for active employee Participants and Satellite Account Participants (calculated by the State). Example: estimated payment for July 2010 are based on preliminary enrollment numbers during Open Enrollment. The August payments will reconcile the July actual deductions to July's estimated payments and estimate August payments based on July's actuals.
- Accept payment from the State as processed through the normal State transmittal process as noted in section 1.29. Payment is usually made by the 27th of each month.
- Administrative fees will be payable only for enrolled Participants for a month of coverage. If a Participant's coverage in an FSA terminates during the Plan Year, the Contractor will be paid administrative fees only for those months for which the Participant was covered in the FSA. Run-out processing for terminated Participants shall be provided without additional fees, charges, or payments.

#### **B. Non-Discrimination Testing Fee:**

The Contractor shall:

- Submit an invoice to the State for the entire fee for the non-discrimination testing for the State's cafeteria plan and self-funded group health plan(s) at the conclusion of such testing and the acceptance by the State of all reports related to such testing for the Plan Year; and
- Include in the annual invoice the following information, at a minimum:
  - Department of Budget and Management;
  - Contractor name;
  - Bank account remittance address;
  - Contractor's federal taxpayer identification or, if owned by an individual, his/her social security number;
  - Invoice period, i.e. Plan Year for which the testing was performed;
  - Invoice date;
  - Invoice number; and
  - Total amount due.

### **3.4.4 Payment for Run-Out Processing/Retainage**

**3.4.4.1** During the term of the Contract, prior to the last Plan Year covered by the Contract, the Contractor will be paid FSA administrative fees for each Participant for each month of coverage; payment for the processing of claims/reimbursement requests is included in the fully-loaded administrative fee paid during the Plan Year for each Participant.

**3.4.4.2** For the last Plan Year covered by the Contract (expected to be FY2015, ending June 30, 2015), the Contractor will be paid administrative fees for each Participant for each month of coverage; payment for the processing of claims/reimbursement requests is included in the fully-loaded administrative fee paid during the Plan Year for each Participant. To ensure successful performance and the proper administration of the FSA plans during the run-out period for the last year of the Contract, the last administrative fee payment, expected to be for the month of June 2015, shall be retained by the State pending successful completion of the run-out period and acceptance of the settlement report for that final Plan Year. This retainage provision shall apply to the last Plan Year covered by the Contract and for which services are provided by the Contractor, even if the Contract is terminated early.

**3.4.4.3** The Contractor shall invoice the Department for the retained administrative fee upon acceptance by the State of the settlement report for the final Plan Year covered by the Contract. That invoice shall include:

- Department of Budget and Management;
- Contractor name;
- Contractor's federal taxpayer identification or, if owned by an individual, his/her social security number;
- invoice period;
- invoice date;
- invoice number;
- total amount due; and
- retainage fee description.

**3.4.4.4** The invoice for the retained administrative fee shall be provided to the Contract Manager with a copy to the Director of Fiscal Services, Employee Benefits Division, 301 West Preston Street, Room 510, Baltimore, MD 21201.

## **3.5 Insurance**

**3.5.1** The Contractor shall maintain general liability (see 3.5.3), property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, employees or subcontractors.

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

- Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.

\$2,000,000 - General Aggregate Limit (other than products/completed operations)  
\$2,000,000 - Products/completed operations aggregate limit  
\$1,000,000 - Each Occurrence Limit  
\$1,000,000 - Personal and Accidental Injury Limits  
\$ 50,000 - Fire Damage Limit  
\$ 5,000 - Medical Expense

**3.5.3** Upon execution of a Contract with the State, Contractor shall provide the State with current certificates of insurance, and shall maintain and report such insurance annually to the procurement officer.

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## SECTION 4 – PROPOSAL FORMAT

### 4.1 Two Part Submission

Offerors shall submit proposals in separate volumes:

1. Volume I - TECHNICAL PROPOSAL
2. Volume II - FINANCIAL PROPOSAL

### 4.2 Proposals

Volume I-Technical Proposal shall be sealed separately from Volume II-Financial Proposal but submitted simultaneously to the Procurement Officer (address listed on Key Information Summary). An unbound original, so identified, and five (4) copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word and MS Excel format and the Volume II- Financial Proposal in MS Word and MS Excel format shall also be submitted with the unbound originals technical or financial volumes, as appropriate. Required attachments to the Technical Proposal may be submitted in PDF or WORD. Electronic media is to be submitted on a CD and shall bear a label on the outside containing the RFP number and name, the name of the Offeror and the volume number.

### 4.3 Submission

Each Offeror is required to submit a separate file for each "Volume", which is to be labeled Volume I- Technical Proposal and Volume II-Financial Proposal. Each file shall bear the RFP title and number, name and address of the Offeror, the volume number (I or II), and closing date and time for receipt of the proposals.

All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

### 4.4 Volume I – Technical Proposal

#### 4.4.1 Transmittal Letter

A transmittal letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. See Offeror's responsibilities in Section 1.21. All signatures required by this RFP and attachments must be of an individual authorized to bind the Offeror to the proposal.

#### 4.4.2 Additional Required Technical Submissions

Immediately following the Transmittal and before the Table of Contents of the Technical Proposal, include signed copies of the following, with the submissions of the complete Technical Proposal:

- A) Completed Bid/Proposal Affidavit (Attachment B);
- B) Completed Minority Business Participation Forms (Attachments D-1 and D-2);
- C) Completed Living Wage Affidavit (Attachment I); and
- D) Documentation to support Minimum Qualifications (Section 2).
  - Name of account/client;
  - Number of Participants, broken out by HCFSA and DCFS;



- Number of years providing service to that client/account; and
- Name, address and telephone number of a contact person for the account/client to verify the information.

The other required submissions (e.g. signed and completed responses to Attachments G-1 through G-18, insurance certificate(s), etc) shall be included in the Technical Proposal as instructed below.

#### **4.4.3 Format of Technical Proposal**

Inside a sealed package, as described in Section 4.3, above, an unbound original, to be so labeled, five (4) copies and the electronic version shall be provided. Section 3 of this RFP provides requirements and Section 4 provides reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposals should be organized and numbered in the same order as this RFP. This proposal organization will allow State officials and the evaluation committee to "map" Offeror responses directly to RFP requirements by paragraph number.

In compiling its Technical Proposal and providing a response that meets the requirements of this Section 4.4, Offerors should not duplicate information. If a response is more fully addressed as part of the completed response to part of Attachment G, an Offeror should state that and cross-reference to the appropriate part of its Technical Proposal.

The Technical Proposal shall include the following sections in this order:

#### **4.4.4 Title and Table of Contents**

The Technical Proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents shall follow the title page for the Technical Proposal.

Note: Information which is claimed to be confidential is to be placed after the Title page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included.

#### **4.4.5 Executive Summary**

The Offeror shall condense and highlight the contents of the technical proposal in a separate section titled "Executive Summary".

Include in the "Executive Summary" the Offeror's Tax Identification Number and eMaryland Market Place Number.

The summary shall also identify any and all exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment A**), or any RFP attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If no exceptions to terms and conditions are made, the Offeror shall so state this in the "Executive Summary".

#### **4.4.6 Offeror Experience and Capabilities**

Offeror shall include information on past experience with similar number of participants for FSA services. General requirements of the Offeror and staffing expectations are outlined in Section 3 and Attachments G-3 through G-10. Attachment G-9, the Account Management Plan, shall be provided in the Technical Proposal as part of the response outlined in RFP Section 4.4.7(B).

In the “Offeror Experience and Capabilities” section of its Technical Proposal, Offerors shall describe how their organization can meet the qualifications of this RFP and shall include the following:

**4.4.6.1** An overview of the Offeror’s experience and capabilities providing services. This description shall include, at a minimum:

- The hardware and software used in providing the services, if any
- The annual budget and planned system improvements for the hardware and software used in providing the services, if any;
- The number of years the Offeror has provided these services;
- The number of clients and geographic locations that the Offeror currently serves; and
- A brief history of the Offeror’s organization, its growth on a national level, and its ownership structure.

**4.4.6.2** References who are capable of documenting the Offeror's ability to provide the specified services. Each client reference shall be from a client for whom the Offeror provided service and shall be included in completing Attachment G-2, section V. The completed copy of Attachment G-2, section V, identifying the Offeror’s references, shall be provided in the Technical Proposal as part of the response outlined in RFP Section 4.4.7(B).

**DBM reserves the right to request additional references.**

**4.4.6.3** In addition, as part of its proposal, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which have been completed within the last 5 years. For each identified contract, the Offeror is to provide:

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

Information obtained regarding the Offeror’s level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

#### **4.4.7 Offeror Technical Response to RFP Requirements**

In responding to the requirements outlined in Section 3 and Attachments G-1 through G-18 of this RFP, the Offeror shall address each section in the Technical Proposal and describe how its proposed services will meet the requirements as described in the RFP.

As stated above, any exception to a term or condition may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. Any paragraph that responds to a work requirement shall include an explanation of how the work will be done.

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

A. The Offeror shall respond to each requirement outlined in Section 3 of this RFP. Each section and requirement outlined in Section 3 must be addressed. The Offeror shall identify the location(s) it proposes to provide the service, any current facilities that it operates at that location, and any required construction to satisfy the State's requirements as outlined in this RFP. If the State is seeking Offeror agreement to a requirement, the Offeror shall state agreement or disagreement.

B. The Offeror shall provide signed and completed copies of its response(s) to Attachments G-1 through G-6 and Attachments G-8 through G-10. Each spreadsheet must be completed, signed, and submitted as part of the Technical Proposal.

C. The Offeror shall provide the attachments and exhibits required as submissions in response to Attachment G-2, labeled as instructed in Attachment G-2 (see for example, attachments G-8, G-9, G11 through G-18).

#### **4.4.8 Financial Capability and Statements**

The Offeror shall include Financial Statements, specifically, an abbreviated Profit and Loss (P&L) and an abbreviated Balance sheet for the last two years (independently audited preferred).

#### **4.4.9 Certificate of Insurance**

The Offeror shall provide a copy of the Offeror's current certificate(s) of insurance with the prescribed limits set forth in Section 3.5.

#### **4.4.10 Subcontractors**

Offeror shall identify all subcontractors, including MBE's, and the role these subcontractors will have in the performance of the Contract. For each subcontractor (including MBEs), the Offeror shall submit a copy of a completed and signed Attachment G-7 for that subcontractor.

#### **4.4.11 Economic Benefit Factors**

The Offeror shall describe the benefits that will accrue to the State economy as a direct or indirect result of the Offeror's performance of the Contract resulting from this RFP. The Offeror will take into consideration the following elements. (Do not include any detail of the Financial Proposals with this technical information):

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

- D. The estimated percentage of subcontract dollars committed to Maryland small businesses and MBEs.

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

## **4.5 Volume II - Financial Proposal**

**4.5.1** The Financial price sheets are used for evaluation purposes only. There is no guarantee of enrollment for either FSA plan and all fees must be guaranteed regardless of enrollment.

**4.5.2** Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 4.3, the Contractor shall submit an original unbound copy, four (4) copies, and an electronic version in MS Word and/or MS Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in Attachment F. Complete the price sheets only as provided in the Price Proposal Instructions.

### **4.5.3 Fees**

**4.5.3.1 Administrative Fees for administration of FSA Plans.** All per enrollee per month (PEPM) fees for the administration for the FSA plans must be quoted on a fully loaded basis, i.e., fees must include all direct and indirect costs, general and administrative overhead, purchasing burden and profit. No other fees or charges may be added to the contract after award, nor will the contractor be compensated on any basis other than the applicable fully loaded PEPM rate for the administration of the FSA plans. This includes the non-discrimination testing for the FSA plans but excludes the services and reports related to non-discrimination testing for the State's cafeteria plans and other self-funded group health plans. The administrative fee is paid for each month the Participant is enrolled during a Plan Year.

**4.5.3.2 Run-out Administration for FSA Plans** To ensure successful performance and the proper administration of the FSA plans during the run-out period of the last year of the Contract, the last administrative fee payment, expected to be for the month of June 2015, shall be retained by the State pending successful completion of the run-out period and acceptance of the settlement report for that final Plan Year. This retainage provision shall apply to the last Plan Year covered by the Contract and for which services are **provided by the Contractor, even if the contract is terminated early.**

**4.5.3.3 Non-Discrimination Testing for Cafeteria Plan and Self-Funded Group Health Plan Options** The annual fee for the non-discrimination testing for the cafeteria plans and self-funded group health plan options shall be quoted as a fully loaded fixed fee, i.e., fees must include all direct and indirect costs, general and administrative overhead, purchasing burden and profit for those services. This includes all services and reporting related to the non-discrimination testing for the State's cafeteria plans and other self-funded group health plans. See RFP § 3.2.10. No other fees for charges may be added to the contract after award, nor will the contractor be compensated on any basis other than the applicable fully loaded fee for the non-discrimination testing for the cafeteria plan and self-funded group health plan options.

**4.5.4** The RFP contains an MS Excel file for **Attachment F**, labeled FSA Financials.xls, containing instructions, response pages, and historical enrollment and claims information. Offeror's **Volume II – Financial Proposal** (hard copy) must be submitted in the format specified below.

<u>Financial Proposal</u>	<u>Section Name Corresponding to MS Excel-based Attachment F</u>
<u>Tab Name</u>	

Attach F-1	Financial Proposal and assumptions
Attach F-2	Financial Compliance Checklist
Attach F-3	Financial Compliance Checklist - Explanation
Attach F-4	Administrative Fees and Non-Discrimination Testing Fee

The files are in Microsoft Excel (.xls) format.

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## SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE

### 5.1 Evaluation & Selection

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

### 5.2 Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance:

- Offeror’s Technical Response to RFP Requirements. An Offeror’s response to the RFP shall illustrate a comprehensive understanding of the requirements and include an explanation of how the service will be provided. (Ref. Section 4.4.7);
- Offeror Experience and Capabilities (Ref. Sections 4.4.6);
- Account Management Plan (G-9);
- Subcontractors (4.4.10); and
- Economic Benefits (Ref. Section 4.4.11).

### 5.3 Financial Criteria

All qualified Offerors will be ranked from the lowest to the highest price based on their total price proposed within the stated guidelines (as submitted on **Attachment F—Price Proposal Form**). See row 4 of Attachment F-4B.

### 5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement Contract. The preference given shall be identical to the preference that the other state, through law, policy or practice gives to its residents.

## 5.5 Selection Procedures

### 5.5.1 General Selection Process

The Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03. The competitive sealed proposals method is based on discussions and revision of proposals during these discussions.

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

### 5.5.2 Selection Process Sequence

**5.5.2.1** The first step in the process will be an evaluation for technical merit. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform, and to facilitate arrival at a Contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two to four weeks of the delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.

**5.5.2.2** Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.

**5.5.2.3** The financial proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of qualified Offerors, the Procurement Officer may again conduct discussions to further evaluate the Offeror's entire proposal.

**5.5.2.4** When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs). However, the State reserves the right to make an award without issuing a BAFO if/when it's determined to be in the State's best interest.

### 5.5.3 Award Determination

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

## **ATTACHMENTS**

**ATTACHMENT A** is the State's Contract. It is provided with the RFP for informational purposes and is not required at proposal submission time. However, it must be completed, signed and returned by the successful Offeror to the Procurement Officer expeditiously upon notification of proposed Contract award.

**ATTACHMENT B** – Bid/Proposal Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

**ATTACHMENT C** – Contract Affidavit. It is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer within 5 working days of notification of proposed award.

**ATTACHMENT D** – MINORITY BUSINESS ENTERPRISE PARTICIPATION INSTRUCTIONS AND FORMS. Forms D-1 and D-2 must be completed and submitted with the Offeror's technical proposal.

**ATTACHMENT E** – Pre-Proposal Conference Response Form. It is requested that this form be completed and submitted as described in RFP section 1.7 by those potential Offerors who plan on attending the conference.

**ATTACHMENT F1-F4** – Price Proposal Instructions and Forms. Price Proposal forms must be completed and submitted as the Financial Proposal. (FSAPrice.xls)

**ATTACHMENT G 1- G18** Technical Information Spreadsheets, (FSATech.xls).

**ATTACHMENT H** – Living Wage Information. This form must be completed and submitted with the Offeror's technical proposal.

**ATTACHMENT I** – Living Wage Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

**ATTACHMENT J** - Central Payroll Bureau Electronic Data Transmission Policy



**ATTACHMENT A – CONTRACT**

**Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs) – Healthcare and Dependent Care**

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between \_\_\_\_\_ and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT, DIVISION OF PROCUREMENT POLICY AND ADMINISTRATION.

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 “Contract Manager” means the individual identified in § 1.6 of the RFP. The Department may change the Contract Manager at any time.
- 1.2 “Contractor” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.
- 1.3 “Department” means the Maryland Department of Budget and Management.
- 1.4 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_.
- 1.5 “Procurement Officer” means the individual identified in § 1.5 of the RFP. The Department may change the Procurement Officer at any time.
- 1.6 ”RFP” means the Request for Proposals for Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs)-Healthcare and Dependent Care Project F10B9200027, all attachments, and any amendments thereto issued in writing by the State.
- 1.7 “State” means the State of Maryland.
- 1.8 “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_\_.

**2. Scope of Work**

2.1 The Contractor shall provide administration, reimbursement request processing, records management, non-discrimination testing and other services in connection with administering the State’s health and Dependent care flexible spending arrangement plans as more fully described in the RFP and the Contractor’s Technical Proposal. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- Exhibit A – The RFP
- Exhibit B – The Technical Proposal
- Exhibit C – The Financial Proposal
- Exhibit D - State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_.

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

**3. Time for Performance.**

- 3.1 The Contract resulting from this RFP shall be for a period covering implementation, five (5) Plan Years, and an eight (8) month run-out administration period. It is expected that the first Plan Year covered under the Contract will be the Plan Year beginning on or about July 1, 2010 and that the last Plan Year covered under the Contract will end June 30, 2015, with the run-out administration period ending on or before March 30, 2016.
- 3.2 Provisions regarding run-out, audit rights, dispute resolution, and record retention shall survive the expiration of this Contract.

**4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Exhibit C, Contractor's Financial Proposal. The Contractor shall not receive any other payment for implementation, testing, administrative, and other services required by this Contract. Except with the express written consent of the Procurement Officer, payment to the Contractor pursuant to this Contract shall not exceed \$\_\_\_\_\_. Contractor shall notify the Contract Manager, in writing, at least 60 days before payments reach the 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: (i) 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.

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 Number which is\_\_\_\_\_. Contractor's eMaryland Marketplace vendor ID number is \_\_\_\_\_.

\_\_\_\_\_. Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

**4.3** Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, 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.

**4.4** 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.

## **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 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.

## **6. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, including without limitation HIPAA 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. This provision shall not be read to limit confidentiality provisions and obligations provided in the RFP.

## **7. 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.

## **8. Indemnification**

**8.1** 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.

**8.2** 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 obligations under this Contract.

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

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

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

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

## **10. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided

by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

#### **11. Maryland Law**

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

#### **12. Nondiscrimination in Employment**

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

#### **13. 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.

#### **14. 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.

#### **15. 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.

**16. Termination for Convenience**

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

**17. 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 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.

**18. 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.

**19. Pre-Existing Regulations**

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

**20. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every 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 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.

**21. Political Contribution Disclosure**

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

**22. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract closeout and final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances. This provision shall survive termination of the Contract.

**23. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

**24. 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 or offer.

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

**25. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 9 and 11 through 24 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

**26. Parent Company Guarantee (If Applicable)**

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

**27. Commercial Non-Discrimination**

- 27.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry 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.
- 27.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by DBM, in all subcontracts.
- 27.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken



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

## **28. Prompt Pay Requirements**

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

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

**29. Living Wage**

29.1 A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland and COMAR 21.11.10.

29.2 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. If Contractor is an out of state Contractor, this contract is deemed to be a Tier 1 Contract.

29.3 The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10, including the submission of payroll reports to the Commissioner for Labor and Industry and the posting 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.

**30. Administrative**

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

30.2 **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: Joy Epstein, Procurement Officer  
 Maryland Department of Budget and Management  
 Division of Procurement Policy and Administration  
 45 Calvert Street, Room 143  
 Annapolis, Maryland 21401

With a copy to:

Anne Timmons, Director of Employee Benefits  
Maryland Department of Budget and Management  
Division of Employee Benefits  
301 West Preston Street, Room 510  
Baltimore, Maryland 21201

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

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

CONTRACTOR

STATE OF MARYLAND  
BY: DEPARTMENT OF BUDGET AND  
MANAGEMENT

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

\_\_\_\_\_  
By: T. Eloise Foster, Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Approved for form and legal  
sufficiency this \_\_\_\_ day \_\_\_\_\_, 2009.

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

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

**ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

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

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

**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 or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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**G. SUB-CONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

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

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

#### I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### K. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business' policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
  - (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
  - (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
    - (i) Take appropriate personnel action against an employee, up to and including termination; or
    - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
  - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and



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

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

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

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

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

**ATTACHMENT C - CONTRACT AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

**C. 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 \_\_\_\_\_, 20\_\_\_\_, 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: \_\_\_\_\_

(Authorized Representative and Affiant)

## **ATTACHMENT D – MINORITY BUSINESS ENTERPRISE**

### **STATE OF MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT**

The Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the Minority Business Enterprise (MBE) participation goal stated in the Invitation for Bids (IFB) or Request for Proposals (RFP). MBE performance must be in accordance with this Attachment, as authorized by Minority Business Enterprise Policies as set forth by 21.11.03 of the Code of Maryland Regulations (COMAR). Accordingly, the Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

#### **DEFINITIONS**

As used in this Attachment, the following words have the meanings indicated.

- ◆ “Certification” means a determination made by the Maryland Department of Transportation that a legal entity is a minority business enterprise.
- ◆ “MBE Liaison” is the employee designated to administer this Department’s MBE program.
- ◆ “Minority Business Enterprise” or “MBE” means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is:
  - (1) at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and
  - (2) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

*Note:* A minority business enterprise also includes a not-for-profit entity organized to promote the interests of physically or mentally disabled individuals. An MBE **must** be certified by the Maryland Department of Transportation (MDOT) in order to have its contract participation counted under the Department’s MBE program.

#### **MINORITY BUSINESS ENTERPRISE INSTRUCTIONS AND FORMS**

##### **A. MBE Participation Goals and sub-goals**

The Contractor shall achieve the MBE subcontracting goal and any sub-goals established for this contract, by subcontracting to one or more MDOT-certified Minority Business Enterprises a sufficient portion of

the contract's scope of work that results in total MBE payments that meet or exceed the MBE participation goal.

If awarded the Contract:

- A prime contractor – including an MBE or certified Small Business Reserve (SBR) prime contractor – must accomplish an amount of work not less than the MBE participation goal with certified MBE subcontractors.
- A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE participation goal with certified MBE subcontractors.

## **B. Solicitation and contract formation**

### **1. Reporting Instructions for Submission of Bid or Offer:**

a. The bidder or Offeror must **include the following reports with its bid or offer:**

1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1) whereby the bidder or Offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.

2) A completed MBE Participation Schedule (Attachment D-2) whereby the bidder or Offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified Minority Business Enterprises at the time of submission. The bidder or Offeror shall specify the specific percentage (not range) or dollar amount of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule. **Attachment D-2 shall become part of the final contract, therefore, any changes (additions and/or deletions) must be submitted to the Procurement Officer in writing for approval.**

**NOTE: The failure of an Offeror to complete and submit the MBE Utilization Affidavit and the MBE Participation Schedule shall result in a determination that the proposal is not susceptible of being selected for award.**

**3) Within 10 working days from notification** that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.

a) Outreach Efforts Compliance Statement (**Attachment D-3**)

b) Subcontractor Project Participation Statement (**Attachment D-4**)

c) If the apparent awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any sub-goal as part of the previously submitted Attachment D-1, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.

d) Any other documentation required by the Procurement Officer to ascertain bidder or Offeror responsibility in connection with the certified MBE participation goal.

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

**C. CONTRACT ADMINISTRATION REQUIREMENTS:**

**Prime Contractor shall:**

1. **Attachment D-5:** Submit monthly to the Department/Agency a report listing all unpaid invoices over 30 days old received from a certified MBE subcontractor working under the PORFP Agreement, the amount of each invoice and the reason payment has not been made. For informational purposes only, a sample prime contractor unpaid invoice report is attached.

2. **Attachment D-6:** Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department/Agency a report that identifies the prime contract and lists all payments received from the Master Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. For informational purposes only, a sample MBE Subcontractor Paid/Unpaid Invoice report is attached.

3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed.

4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Master Contractor must retain all records concerning MBE

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

5. **COMAR 21.11.03.13F**: A procurement agency may, upon completion of a contract, and before final payment and/or release of retainage or both, require that a prime contractor on any contract having an MBE subcontract goal, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

**MINORITY BUSINESS ENTERPRISE PARTICIPATION FORMS**

**These attachments must be submitted with technical response to the RFP:**

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

**ATTACHMENT D-2** - *MBE Participation Schedule*

**These attachments must be submitted within 10 days after notification of apparent award of contract:**

**ATTACHMENT D3** - *Outreach Efforts Compliance Statement*

**ATTACHMENT D-4** - *Subcontractor Project Participation Statement*

**These attachments must be submitted on a monthly (by the 15<sup>th</sup>) basis after award of contract or as otherwise directed:**

**ATTACHMENT D-5** - *Prime Contractor Unpaid MBE Invoice Report*

**ATTACHMENT D-6** - *Subcontractor Paid/Unpaid MBE Invoice Report*

## Attachment D-1

### CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

This document shall be included with the submission of the bid or offer. If the bidder or Offeror fails to submit this form with the bid or offer, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

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

1. Commitment to MBE Participation Goal or Request for Waiver (check applicable box):

I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_ percent and, if specified in the solicitation, sub-goals of \_\_\_\_ percent for MBEs classified as African American-owned and \_\_\_\_ percent for MBEs classified as women-owned. I have made a good faith effort to achieve this goal.

OR

I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_\_percent, and specified sub goals, however, I intend to exceed the overall goal by achieving an MBE participation goal of \_\_\_\_\_percent and exceed the sub-goals of \_\_\_\_ percent for MBEs classified as African American-owned and \_\_\_\_ percent for MBEs classified as women-owned. I have made a good faith effort to achieve this goal.

OR

*After having made a good faith effort to achieve the MBE participation goal, I conclude I am unable to achieve it. Instead, I intend to achieve an MBE goal of \_\_\_\_\_% and request a waiver of the remainder of the goal. If I submit the apparent low bid or am selected as the apparent awardee (competitive sealed proposals), I will submit written waiver documentation that complies with COMAR 21.11.03.11 within 10 business days of receiving notification that our firm is the apparent low bidder or the apparent awardee.*

2. *I have identified the specific commitment (to include percentage of total contract) of each certified Minority Business Enterprise by completing and submitting the MBE Participation Schedule (Attachment D-2) with the bid or proposal.*

3. *I acknowledge that the MBE subcontractors/suppliers listed on the MBE Participation Schedule will be used to accomplish the percentage of MBE participation that is included in the contract.*

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

- (a) Outreach Efforts Compliance Statement (**Attachment D-3**)
- (b) Subcontractor Project Participation Statement (**Attachment D-4**)
- (c) MBE Waiver Request per COMAR 21.11.03.11 (if applicable)
- (d) Any other documentation required by the Procurement Officer to ascertain bidder or Offeror responsibility in connection with the certified MBE participation goal. To include copies of subcontract agreement or agreements if requested

**If I am the apparent awardee I acknowledge 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.**

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

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

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

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

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**



## Attachment D-2

### MBE Participation Schedule

*(must be submitted with the technical response to the bid or proposal)*

**This document shall be included with the submittal of the bid or offer. If the bidder or Offeror fails to submit this form with the bid or offer, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.**

Prime Contractor (Firm Name, Address, Phone)	Project Description
Project Number	
<b>List Specific Information For Each Certified MBE Subcontractor On This Project</b>	
Minority Firm Name	MBE Certification Number
<i>A. Specific Work To Be Performed/NAICS</i>	
<i>B. Specific Percentage of Total Contract</i>	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	

**USE ATTACHMENT D-2 CONTINUATION PAGE AS NEEDED**

### SUMMARY

**TOTAL MBE PARTICIPATION:** \_\_\_\_\_%

**TOTAL WOMAN-OWNED MBE PARTICIPATION:** \_\_\_\_\_%

**TOTAL AFRICAN AMERICAN-OWNED MBE PARTICIPATION:** \_\_\_\_\_%

Document Prepared By: (please print or type)

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

**Attachment D-2**  
**MBE Participation Schedule (continued)**

List Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Specific Work To Be Performed/NAICS	
Specific Percentage of Total Contract	

**Attachment D-3**  
**Outreach Efforts Compliance Statement**  
*(for submission within 10 days after notification of apparent award)*

In conjunction with the bid or offer submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

- 1 Bidder/ Offeror took the following efforts to identify subcontracting opportunities in these specific work categories:
  
2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these subcontract opportunities.
  
3. Bidder/Offeror made the following attempts to contact personally the solicited MBEs:
  
4.  Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements. (DESCRIBE EFFORTS)
  
- This project does not involve bonding requirements.
  
5.  Bidder/Offeror did/did not attend the pre-bid/proposal conference  
 No pre-bid/proposal conference was held.

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Attachment D-4**  
**Subcontractor Project Participation Statement**  
(for submission within 10 days after notification of apparent contract award)

SUBMIT ONE FORM FOR EACH MBE  
LISTED ON THE MBE PARTICIPATION SCHEDULE

Provided that \_\_\_\_\_ is awarded the State contract in  
conjunction with \_\_\_\_\_.  
(Prime Contractor Name)

Solicitation No. \_\_\_\_\_, it and \_\_\_\_\_,  
(Subcontractor Name)

MDOT Certification No. \_\_\_\_\_, **intend to enter into a contract by which subcontractor shall:**  
(This is not a subcontract agreement. A written copy of subcontractor agreement(s) shall be made available to  
Procurement Officer upon request)

(Describe specific Work)

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- No bonds are required of Subcontractor
- The following amount and type of bonds are required of Subcontractor:

By:

By:

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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

**Attachment D-5**  
**Maryland Department of Budget and Management**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Report is due to the MBE Officer 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: _____
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Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	FAX:	Email:																																					
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:40%; text-align: center;"><u>Invoice#</u></th> <th style="width:55%; 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:40%; text-align: center;"><u>Invoice #</u></th> <th style="width:55%; 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>		_____
	<u>Invoice#</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
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<b>Total Dollars Paid: \$</b>		_____																																					
	<u>Invoice #</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
4.																																							
<b>Total Dollars Unpaid: \$</b>		_____																																					

\*\*If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.

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

MBE Liaison Officer  
 Department of Budget and Management  
 Procurement Unit  
 45 Calvert Street, 1<sup>st</sup> Floor  
 Annapolis, MD 21401  
[MBEOfficer@dbm.state.md.us](mailto:MBEOfficer@dbm.state.md.us)

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

This form must be completed by  
MBE subcontractor

## ATTACHMENT D-6

### Minority Business Enterprise Participation Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____  Reporting Period (Month/Year): _____  <b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	Contract # _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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MBE Subcontractor Name: _____																																
MDOT Certification #: _____																																
Contact Person: _____		Email: _____																														
Address: _____																																
City: Baltimore	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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1.																																
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2.																																
3.																																
<b>Total Dollars Unpaid: \$</b> _____																																
Prime Contractor: _____		Contact Person: _____																														

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

MBE Officer Department of Budget and Management Procurement Unit 45 Calvert Street, 1 <sup>st</sup> Floor Annapolis, MD 21401 <a href="mailto:MBEOfficer@dbm.state.md.us">MBEOfficer@dbm.state.md.us</a>
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Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

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

**Project No. F10B9200027**  
**Third Party Administrative (TPA) Services for Flexible Spending Accounts (FSAs)-Healthcare and Dependent Care Project**

A Pre-proposal Conference (Conference) will be held on July 15, 2009, beginning at 1:00 PM, Local Time at 300 W. Preston Street, Auditorium, MD 21201.

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

Joy Epstein  
Department of Budget and Management  
Division of Procurement Policy and Administration  
45 Calvert Street, Room 143  
Annapolis, MD 21401  
Email: jepstein@dbm.state.md.us  
Fax # (410) 974-3274

The following representatives will be in attendance:

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**ATTACHMENT F1 – FSA FINANCIAL RESPONSE FORM**

See Attached MS Excel Spreadsheet, (F1-F4) for complete instructions and financial forms.



**ATTACHMENT G – FSA TECHNICAL RESPONSE FORM**

See attached MS Excel spreadsheets for technical response forms (G1-G18) for complete technical submission.

## ATTACHMENT H-LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

### Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- 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 Title 18, State Finance and Procurement, Annotated Code of Maryland.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

**ATTACHMENT I- LIVING WAGE AFFIDAVIT OF AGREEMENT**

**Maryland Living Wage Requirements-Service Contracts**

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

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

Address \_\_\_\_\_

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

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

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

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

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

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

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

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

**ATTACHMENT I- LIVING WAGE AFFIDAVIT OF AGREEMENT (CONTINUED)**

**Maryland Living Wage Requirements-Service Contracts**

- 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 J-CENTRAL PAYROLL BUREAU ELECTRONIC DATA TRANSMISSION  
POLICY**



**Peter Franchot**  
*Comptroller*

**Robert J. Murphy**  
*Director*  
*Central Payroll Bureau*

June 15, 2009

**Central Payroll Bureau  
Electronic Data Transmission Policy**

The Comptroller of Maryland's Central Payroll Bureau (CPB) is responsible for issuing paychecks to all State employees, except those in the Mass Transit Administration and Injured Worker's Insurance Fund. The Bureau handles deductions, payroll taxes, federal withholding (W-2) forms, and other payroll reports for State government. To that end, the Central Payroll Bureau exchanges data with many state agencies and state business partners. Because of the sensitive nature of the payroll data, CPB has strict requirements to ensure the secure electronic transmission of the data. Below is the policy concerning the transmission of CPB data and information regarding the information technology environment and technical requirements.

1. The CPB data resides on an IBM z890 mainframe running the IBM z/OS operating system, and is operated by the Comptroller of Maryland's Annapolis Data Center (ADC). All payroll data files must be transmitted to or from this mainframe system.
2. All payroll data files transmitted electronically must be encrypted using one of the following methods:
  - PartnerLink
  - Connect:Direct: with the secure plus feature
3. The supported transport options are:
  - **Internet.** Connect:Direct or FTP may be used. Due to security reasons, FTP requests may be initiated only by the ADC mainframe. The firewall blocks all inbound FTP requests.
  - **[Net.Work.Maryland](#):** This network provides "high-speed telecommunications access to the public sector entities (State, County and Municipal Government Agencies and Departments, Libraries, Hospitals, K-12 Education, and Higher Education) throughout the

State of Maryland.” All new connections to net.work.Maryland must be approved by the Department of Budget and Management, in compliance with Joint Chairman’s Report, Section 49, Wide Area Network.

- **Private data circuit:** State agencies or business partners may elect to install a dedicated circuit, frame relay circuit, or ISDN circuit into the Annapolis Data Center (also requires a router). All new circuits installations must be approved by the Department of Budget and Management, in compliance with Joint Chairman’s Report, Section 49, Wide Area Network.

**Disaster Recovery:** In the event of a disaster impacting the operations of the Annapolis Data Center, the mainframe system will be restored at a SunGard hot site facility within 48 hours. The network recovery plans include the restoration of connections to the AGNS, the Internet, and net.work.Maryland. Private data circuits cannot be restored. Links

### **COMPTROLLER OF MARYLAND**

<http://www.marylandtaxes.com/>

### **CENTRAL PAYROLL BUREAU**

<http://compnet.comp.state.md.us/cpb/default.asp>

### **Connect:Direct:**

[http://www.sterlingcommerce.com/PDF/Solutions/Connect/SC0027\\_CDirecOvrview\\_07-02.pdf](http://www.sterlingcommerce.com/PDF/Solutions/Connect/SC0027_CDirecOvrview_07-02.pdf)

### **ISDN**

<http://www.techweb.com/encyclopedia/defineterm?term=isdn>

Process for compliance with FY2002 Joint Chairman’s Report, Section 49, Wide Area Network: JCR § 49 created a requirement that expenditures for enhancements of wide area networks, or development of new wide area networks, be reviewed and approved in advance by the State Chief Information Officer. This requirement was created by the Joint Chairman to ensure that wide area network development and enhancements are consistent and non-duplicative of the proposed statewide network. For questions, contact the Assistant Director of IT Investment Management, Joann Butler, at [jbutler@dbm.state.md.us](mailto:jbutler@dbm.state.md.us) or by phone at (410) 260-7571.

### **NET.WORK.MARYLAND**

<http://www.techmd.state.md.us/technology/networkmdpage.asp>

### **PARTNERLINK**

<http://www.adc.state.md.us/filetransfer/partnerlink.asp>

### **SNA**

<http://www.techweb.com/encyclopedia/defineterm?term=sna>

### **z/OS Operating System**

<http://www-1.ibm.com/servers/eserver/zseries/zos/>