



DEPARTMENT OF BUDGET AND MANAGEMENT

REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. F10B6400003

Issue Date: January 28, 2016

**Audit Services for State Employee and Retiree Health and Welfare
Benefits Program with Amendment #1 and #2**

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

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

**Title: Audit Services for State Employee and Retiree Health and Welfare Benefits Program
Solicitation No: F10B6400003**

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

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

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

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

Request for Proposals: **Audit Services for State Employee and Retiree Health and Welfare Benefits Program**

Solicitation Number: **F10B6400003**

RFP Issue Date: **January 28, 2016**

RFP Issuing Office: **Department of Budget and Management**

Procurement Officer: **Joy Epstein
Department of Budget and Management
45 Calvert Street Room 143
Annapolis, MD 21401
Phone: 410-260-7570 Fax: 410-974-3274
e-mail: joy.epstein@maryland.gov**

Contract Manager: **Anne Timmons
Department of Budget and Management
Employee Benefits Division
301 West Preston Street, Room 510
Baltimore, MD 21201
Phone Number: 410-767-4787 Fax Number: 410-333-7122
e-mail: anne.timmons@maryland.gov**

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

Pre-Proposal Conference: **February 10, 2016 1:00PM Local Time
300 West Preston Street Ground Floor Auditorium
Baltimore, MD 21201**

Proposal Due (Closing) Date and Time: **March 31, 2016 2:00 PM Local Time**

MBE Subcontracting Goal: **See RFP Section 1.33**

VSBE Subcontracting Goal: **1 % for each Service Category**

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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 obtain one or more qualified health plan auditing firms to complete annual audits of the claims adjudication and payment functions, clinical functions, and administrative performance of the following plans in the State Employee and Retiree Health and Welfare Benefits Program. These plans are subject to change as Contracts expire which may require modifications to this Contract.

The Department intends to award contracts for audit in the following four Service Categories:
Service Category 1 –Medical Plans;

- Preferred Provider Organization Plans (PPO) (SI);
- Integrated Health Model Plan (IHM) (FI);
- Exclusive Provider Organization Plans (EPO) (SI); and
- Point of Service (POS) (SI) for SLEOLA only.

Service Category 2 – Dental Plans;

- Dental Preferred Provider Organization Plan (DPPO) (SI); and
- Dental Health Maintenance Organization Plan (DHMO) (FI).

Service Category 3 - Prescription Drug Benefits Plan (SI); and

Service Category 4 - Flexible Spending Accounts.

The initial audit under the Contract(s) will be of the calendar year January 1, 2016 through December 31, 2016. This is the initial audit period.

Offerors may submit proposals to provide auditing services for one or more of the four Service Categories.

Hereafter, in this solicitation any time the word “Contract” appears in the singular, it shall mean each of the four Contracts to be awarded. The term of any Contracts awarded will cover five (5) audit cycles and will terminate upon successful completion of the last audit cycle. Each audit is expected to begin shortly after the conclusion of the calendar year.

- 1.1.2 It is the State’s intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror(s) and the State. The anticipated duration of services to be provided under this Contract is five (5) years. See Section 1.4 for more information.
- 1.1.3 The Department intends to make up to four awards (one for each Service Category) as a result of this RFP. See RFP Section 1.15 for more information.
- 1.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation for the applicable Service Category and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

1.2 Abbreviations and Definitions

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

1. **Account Manager** - Means the individual identified by the Contractor as the primary contact for the State in the management of the contract issued pursuant to this RFP.
2. **Audit Cycle** - Means the duration for the successful completion of the audits in the Service Category and covers the beginning of the audit through performance of the audit, preparation and reviewing draft reports, and acceptance by the State of the final audit report. It is anticipated that each audit cycle will last only 12 months. See **RFP Section 3.3.2** for a description of the scheduling and minimum tasks necessary for an audit cycle.
3. **Audit Period** - Means the calendar plan year of benefits coverage to be audited.
4. **Audit Services (AS)** - Means the systematic and independent examination of data, statements, records, operations and/or performances (financial or otherwise) of the Program for a stated purpose.
5. **Awardee** - Means one of the selected Offerors for the services required in this RFP.
6. **Average Wholesale Price (AWP)** - Means the average wholesale price of a drug.
7. **Breach** - Means as defined in §13400 of the HI-TECH Act and 45 CFR §164.402 and shall include the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information.
8. **Business Associate** - Means as defined in §13400 of the HI-TECH Act and 45 CFR § 160.103.
9. **Business Day(s)** - Means the official working day(s) of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
10. **Calendar Plan Year** - Means the twelve-month period of benefit coverage beginning January 1 and ending December 31 of the same calendar year.
11. **COMAR** - Means the Code of Maryland Regulations available on-line at www.dsd.state.md.us.
12. **Contract** - Means the Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment A**.
13. **Contract Commencement** - Means the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
14. **Contract Manager** - Means the State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, managing this Contract to ensure compliance with the terms and conditions of the Contract, managing MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Manager may authorize in writing one or more State representatives to act on behalf of the Contract Manager in the performance of the Contract Manager’s responsibilities.
15. **Contractor** - Means the selected Offeror that is awarded a Contract by the State under this specific solicitation.
16. **DBM or DEPARTMENT**- Means the Maryland Department of Budget and Management.

- 17. Dental Health Maintenance Organization (DHMO)** - Means a dental plan with in-network services only in a regional network of participating providers.
- 18. Dental Preferred Provider Organization (DPPO)** - Means a dental plan having both in-network and out of network services in a national network of participating providers.
- 19. Dependent**— An eligible Spouse and Dependent Child, as those terms are defined in COMAR 17.04.13.01 in connection with establishing eligibility for coverage in the State Employee and Retiree Health and Welfare Program and the Plan. See <http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=17.04.13>
- 20. Dependent Daycare Flexible Spending Accounts (DCFSA)** - Means an individual account vehicle into which eligible State employees deposit pre-tax contributions to pay for qualified dependent daycare expenses.
- 21. eMM** - Means eMaryland Marketplace (see RFP Section 1.8).
- 22. Employee Benefits Division (EBD)** - Means the Employee Benefits Division within DBM.
- 23. Electronic Health Record** - Means as defined in §13400 of the HI-TECH Act, and includes an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized healthcare clinicians and staff.
- 24. Employer Group Waiver Plans (EGWP)** - Means a prescription drug plan that provides the standard Medicare Part D prescription drug coverage around which a commercial prescription drug plan is wrapped. This plan is only available to Medicare-eligible retirees and Medicare-eligible dependents. This plan is managed by a Pharmacy Benefit manager (PBM) who contracts directly with Medicare to be a Part D provider. **The EGWP plan is scheduled to end 12/31/2019.**
- 25. Fixed Rate Audit Milestone** - Means the fixed rate for each of the five (5) milestones provided on Attachment F, Financial Proposal form for each Service Category.
- 26. Flexible Spending Account (FSA)** - Means a tax-favored program offered by employers that allows their employees to pay for eligible out-of-pocket health- care and dependent daycare expenses with pre-tax dollars.
- 27. Fully-Insured Plan** - Means a medical health plan in which the Vendor Contractor assumes financial responsibility for providing health benefits to the employees. For this plan type, the State pays a fixed premium for the combined services of claims processing and plan administration.
- 28. Fully- Loaded Labor Rates** - Means the billing rate of a labor category used only for Optional Services that includes all profit, direct and indirect costs. The indirect costs shall include all costs that would normally be considered general administrative and clerical costs and/or travel costs, or that are in any way allocated by the Contractor against direct labor hours as a means of calculating profit or recouping costs which cannot be directly attributable to a work order. General administrative, clerical, and travel costs cannot be billed to the State under this Contract.
- 29. Generally Accepted Auditing Standards - means the general, field work, and reporting standards (the 10 standards) approved and adopted by the membership of the American Institute of Certified Public Accountants (AICPA), as amended by the AICPA Auditing Standards Board (ASB). The RFP will be amended with this definition. See Amendment #1.**

29. Go-Live Date - Means the date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. See Section 1.4.

30. Health Plan - Means a self-insured or fully-insured group health plan administered for eligible State employees, retirees, and their dependents.

31. Healthcare Flexible Spending Account (HCFSA) - Means an individual account vehicle into which eligible State employees deposit pre-tax contributions to pay for qualified healthcare expenses.

32. Health Insurance Portability and Accountability Act (HIPAA) - Means the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as amended, and the regulations promulgated pursuant thereto, including the administration simplification provisions relating to the privacy and security of protected health information, the electronic exchange of health information, standard data transaction codes and code sets, and national unique identifiers.

33. Health Information Technology for Economic and Clinical Health Act (HI-TECH Act) - Means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, as amended.

34. Integrated Health Model (IHM) - Means a system of healthcare delivery to enhance care coordination using real-time linkage between PCP, specialists, and healthcare providers.

35. Key Personnel - Means all personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Sections 1.23 and 4.4.2.7.

36. Local Time - Means time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time.

37. Maximum Allowable Cost (MAC) - Means the maximum allowable cost as defined in the Contract between the State and the Pharmacy Benefits Manager.

38. Medical Records Act - Means the Maryland Confidentiality of Medical Records Act, Annotated code of Maryland, Health General Article, Title 4, subtitle 3.

39. Member - Means an employee, former employee or retiree (including Satellite and Direct Pay enrollees) who is eligible to participate in the State of Maryland Employee and Retiree Health and Welfare Benefits Program pursuant to COMAR 17.04.13.03A, as amended from time to time, but does not include the member's dependents.

40. Minority Business Enterprise (MBE) - Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.

41. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.

42. Notice to Proceed (NTP) - A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.

43. Offeror - An entity that submits a Proposal in response to this RFP.

- 44. Optional Services** - Include but are not limited to audits of large claims or disputed claims, litigation support in connection with an audit, or targeted in-depth audits of specialized processes.
- 45. Participant** - Means each individual covered by a plan (Members and Dependents).
- 46. Pharmacy Benefits Manager (PBM)** - Means the Organization or Entity that administers the State's self-insured prescription benefits plan and the Maryland Rx Program.
- 47. Point of Service (POS)** - Means a medical plan having a regional network of participating providers.
- 48. Protected Health Information (PHI)** - Means protected health information, as that phrase is defined and used in the HIPAA statute and regulations (see also 45 CFR §164.501).
- 49. Privacy Rule** - Means the Standards for Privacy and Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and E of Part 164, as amended by operation of the HI-TECH Act and from time to time.
- 50. Procurement Officer** - Means prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- 51. Program** - Means the State Employee and Retiree Health and Welfare Benefits Program, administered by the Department. The Program is the collection of benefits plans sponsored by the State for its employees, retirees, and their dependents. See Maryland Annotated Code, State Personnel and Pensions Article, §§2-501 et. seq.
- 52. Proposal** - Means as appropriate, either or both of an Offeror's Technical or Financial Proposal.
- 53. Rebate Audit** - Means the audit of manufacturer agreements and contracts of the PBM with the pharmaceutical vendors/manufacturers or other third parties. The purpose of this audit is to ensure that 100% of the manufacturer payments, formulary rebates (including those via the inflation protection plan), administrative fees, educational grants, detailing payments, bonuses, and payments of any kind associated with the State pharmacy benefit program are passed through to the State, as required by the State's contract with the PBM. See RFP Section 3.3.7.
- 54. Request for Proposals (RFP)** - Means this Request for Proposals issued by the Department of Budget and Management Solicitation Number F10B6400003 dated January 28,2016 including any addenda.
- 55. Security Rule** - Means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Subparts A and C of Part 164.
- 56. Self-Insured Plan** - Means a health plan where the employer assumes financial responsibility for providing health benefits to its employees. For this plan type, the State reimburses the Contractor for claims incurred and pays a monthly administrative fee for claims processing and plan administration.
- 57. State** - Means the State of Maryland.
- 58. SLEOLA - means State Law Enforcement Officers Labor Alliance and is the union that represents certain State of Maryland law enforcement personnel.**
- 58. Subcontractor** - Means an organization or entity that the Offeror plans to utilize for the purpose of fulfilling the required services covered under this contract.

59. Unsecured Protected Health Information or Unsecured PHI - Means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons or is not secured through the use of a technology or methodology specified by the Secretary of DHHS in guidance or as otherwise defined in the §13402(h) of the HI-TECH Act and 45 CFR §164.402.

60. Total Proposal Price - Means the Offeror's total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment F – Price Form, and used in the financial evaluation of Proposals (see RFP Section 5.3).

61. Vendor Contractor - Means an organization that is contracted with the State to provide services in connection with a benefits plan option administered through the Program. For purposes of this RFP, this term includes the third party administrators of the State's self-insured Medical plan options (PPO, POS and EPO), the fully-insured plan option (IHM), the self-insured prescription drug plan vendor (PBM), the self-insured Dental Benefit plan option (DPPO), the fully- insured Dental Benefit plan option (DHMO) and the third party administrator of the healthcare and dependent daycare FSAs.

62. Veteran-owned Small Business Enterprise (VSBE) - Means a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

Terms, phrases, and words in this Agreement which are defined in HIPAA, the Privacy Rule, or the Security Rule shall have the meaning provided in HIPAA, the HI-TECH Act, the Privacy Rule, or the Security Rule.

1.3 Contract Type

The Contract resulting from this solicitation shall be a combination of an indefinite quantity contract with firm fixed unit prices as defined in COMAR 21.06.03.06A(2) (indefinite quantity) and 21.06.03.02A(1)&(2) (fixed price and firm fixed price) and a Labor Hour contract for Optional Services as defined in COMAR 21.06.03.05A(1).

1.4 Contract Duration

1.4.1 The Contract resulting from this RFP shall be for a period of five audit cycles beginning on or about January 1, 2017. The Contract shall cover the performance of work necessary to successfully complete five audit cycles, including audits, preparation and revision of the audit report, and final acceptance of the audit report by the State (See Attachment L).

Each contract year shall coincide with the work period to complete an audit cycle.

1.4.2 As of the Go-Live Date contained in a Notice to Proceed (see Section 1.2 definition), anticipated to be on or about January 1, 2017 the Contractor shall perform all activities required by the Contract for calendar years 2016-2020, including the requirements of this solicitation, and the offerings in its Technical Proposal, for the compensation described in its Financial Proposal.

1.4.3 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

1.5 Procurement Officer

The Procurement Officer is the sole point of contact in the State for purposes of this solicitation prior to the award of any Contract (see definition of “Procurement Officer” in Section 1.2).

The name and contact information of the Procurement Officer are indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title page and Notice to Vendors).

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

1.6 Contract Manager

The Contract Manager is the State representative for this Contract who is primarily responsible for Contract administration functions after Contract award (see definition of “Contract Manager” in Section 1.2).

The name and contact information of the Contract Manager are indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

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

1.7 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will be held on February 10, 2016 beginning at 1:00 PM Local Time, at 300 West Preston Street, Ground Floor Auditorium. All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail the Procurement Officer, or fax to 410-974-3274 the Pre-Proposal Conference Response Form to the attention of the Procurement Officer no later than 4:00 p.m. Local Time on February 8, 2016. 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 notify the Procurement Officer no later than February 4, 2016. The Department will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM website <http://dbm.maryland.gov/pages/default.aspx> and possibly 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 eMM.

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

1.9 Questions

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

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

1.10 Procurement Method

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

1.11 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in Section 4.2 “Proposals” must be received by the Procurement Officer at the address indicated and no later than the Proposal Due date and time indicated in the Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

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

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

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

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

1.12 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

1.13 Economy of Preparation

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

1.14 Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 4.4.3.2 "Claim of Confidentiality"). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

1.15 Award Basis

The Contract shall be awarded to the responsible Offeror(s) submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 5 for further award information. One Contract award will be made per each Service Category.

1.16 Oral Presentation

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

1.17 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers (see section 5.5.2.5) if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.18 Revisions to the RFP

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

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal (see RFP Section 4.4.2.3). Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

1.19 Cancellations

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

1.20 Incurred Expenses

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

1.21 Protest/Disputes

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

1.22 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals").

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

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

1.23 Substitution of Personnel

A. Continuous Performance of Key Personnel

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

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

B. Definitions

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

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

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

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

C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph D of this section.

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

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

D. Replacement Circumstances

1. Voluntary Key Personnel Replacement

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

2. Key Personnel Replacement Due to Vacancy

The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section D.1 of this section.)

Under any of the circumstances set forth in this paragraph D.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3. Key Personnel Replacement Due to an Indeterminate Absence

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

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

4. Directed Personnel Replacement

- a. The Contract Manager may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Manager determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Manager deems it necessary and in the State's best interests to remove the

personnel with less than fifteen (15) days' notice, the Contract Manager can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

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

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

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

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

1.24 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 4.4.2.4).**

1.25 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.

1.26 Contract Affidavit

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

1.27 Compliance with Laws/Arrearages

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

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

1.28 Verification of Registration and Tax Payment

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://sdatcert3.resiusa.org/ucc-charter/>.

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

1.29 False Statements

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

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

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

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

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

1.30 Payments by Electronic Funds Transfer

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

http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf

1.31 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment

requirements outlined in the Contract, Section ~~31~~³²“Prompt Payment” (see **Attachment A**). Additional information is available on GOMA’s website at:

<http://goma.maryland.gov/Documents/Legislation/PromptVendorymentFAQs.pdf>

1.32 Electronic Procurements Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., Section 1.30 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
 - (a) the solicitation (e.g., the IFB/RFP);
 - (b) any amendments;
 - (c) pre-Bid/Proposal conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer’s decision on any Bid protest or Contract claim.
 2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
 - (a) ask questions regarding the solicitation;
 - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) submit a "No Bid/Proposal Response" to the solicitation.
 3. The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Manager.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial Bids or Proposals;
 2. filing of Bid Protests;

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

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

1.33 Minority Business Enterprise Goals

1.33.1 Establishment of Goals

An overall MBE subcontractor participation goal of the total contract dollar value for each Service Category has been established under this procurement as follows:

- Service Category 1- Medical Benefit Plans: 20%
- Service Category 2- Dental Benefit Plans: 15%
- Service Category 3- Prescription Drug Benefits Plan: 13%
- Service Category 4- Flexible Spending Accounts: 15%

There are no MBE subcontractor participation subgoals for this procurement.

1.33.2 **Attachments D-1 to D-5** – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors for each Service Category to be submitted separately:

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

1.33.3 A Offeror shall include with its Bid/Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) for each Service Category whereby:

- (a) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- (b) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

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

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

1.33.4 Offerors are responsible for verifying that each MBE (including any MBE Prime and/or MBE Prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

1.33.5 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.

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

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

1.33.6 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

1.33.7 The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:

- (a) **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report).
- (b) **Attachment D- 4B** (MBE Prime Contractor Report, *if applicable*)
- (c) **Attachment D-5** (MBE Subcontractor/Contractor Unpaid MBE Invoice Report).

1.33.8 A Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in **COMAR 21.11.03.11**.

1.33.9 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly

incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see Contract – **Attachment A**, Section 2.1).

1.33.10 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment A**, Section ~~3233~~).

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

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

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

1.33.12 With respect to Contract administration, the Contractor shall:

- (a) Submit to the Department’s designated representative by the 10th of the month following the reporting period:
 - i. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
 - ii. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.
- (b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department’s designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- (c) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State’s representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (e) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

1.34 Living Wage Requirements

Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. *See* COMAR 21.11.10.05.

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

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

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

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

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, this Contract will be determined to be a Tier 1 Contract.

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

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

1.35 Federal Funding Acknowledgement

This Contract does not contain Federal funds.

1.36 Conflict of Interest Affidavit and Disclosure

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

1.37 Non-Disclosure Agreement

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

1.38 HIPAA - Business Associate Agreement

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment K**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

1.39 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

1.40 Mercury and Products That Contain Mercury

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

1.41 Veteran-Owned Small Business Enterprise Goal

1.41.1 NOTICE TO BIDDERS/OFFERORS

Questions or concerns regarding the Veteran-Owned Small Business Enterprise (VSBE) participation goal of this solicitation must be raised before the due date for submission of Bids/Proposals.

1.41.2 PURPOSE

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this

section and **Attachment M**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment M**.

Veteran-Owned Small Business Enterprises, or VSBES, must be verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs. The listing of verified VSBES may be found at <http://www.vetbiz.gov>.

1.41.3 VSBE GOAL

A VSBE participation goal expressed as a percent of the total contract dollar amount as set forth in the Offeror's Price Proposal (Attachment F) for audits for each Service Category has been established under this procurement as follows:

- Service Category 1 - Medical Benefit plans: 1%
- Service Category 2 - Dental Benefit Plans: 1%
- Service Category 3 - Prescription Drug Benefits Plan: 1%
- Service Category 4 - Flexible Spending Accounts: 1%

By submitting a response to this solicitation, the Bidder or Offeror agrees that this percentage of the total contract dollar amount for each Service Category will be performed by verified veteran-owned small business enterprises.

1.41.4 SOLICITATION AND CONTRACT FORMATION

A Bidder/Offeror must include with its Bid/Proposal a completed Veteran-Owned Small Business Enterprise Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment M-1**) for each Service Category whereby:

- (1) the Bidder/Offeror acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Bidder/Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal.
- (2) the Bidder/Offeror responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBES at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.

As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.

In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment M-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.

Within 10 Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer.

- (1) VSBE Project Participation Statement (**Attachment M-2**);
- (2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
- (3) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the VSBE participation goal.

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.

1.41.5 CONTRACT ADMINISTRATION REQUIREMENTS

The Contractor, once awarded the Contract shall:

- (1) Submit monthly to the Department a report listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice, and the reason payment has not been made. **(Attachment M-3)**
- (2) Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. **(Attachment M-4)**
- (3) Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) At the option of the procurement agency, upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

1.42 Location of the Performance of Services Disclosure

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

1.43 Department of Human Resources (DHR) Hiring Agreement

This solicitation does not require a DHR Hiring Agreement.

1.44 Small Business Reserve (SBR) Procurement

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

SECTION 2 – MINIMUM QUALIFICATIONS

2.1 Offeror Minimum Qualifications

Each Offeror must clearly state and demonstrate that it satisfies the stated experience qualification and provide evidence thereof. The primary evidence shall be in the form of a self-certification stated in the Executive Summary of the Technical Proposal. The references submitted in response to RFP Section 4.4.2.9 shall be used to validate the self-certification.

Experience of an individual employee or principal/officer of the Offeror may not be used to satisfy the experience requirements. The Offeror itself – as an organization or corporate entity – must meet the experience requirements.

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

The minimum experience requirements for this procurement are:

- **Service Categories 1 and 3** (Medical Benefits, and Prescription Drug Benefits Plans): The Offeror shall have at least three (3) years of experience providing auditing (including processing accuracy and contract compliance) for third party administrators of medical benefit plans and/or PBMs for contractual compliance within the past five (5) years.
- **Service Category 2** (Dental Benefits Plans): The Offeror shall have at least one (1) year of experience providing auditing (including processing accuracy and contract compliance) for fully-insured and self- insured dental benefits plans for contractual compliance within the past three (3) years.
- **Service Category 4** (Flexible Spending Accounts): The Offeror shall have at least one (1) year of experience providing auditing (including processing accuracy and contract compliance) of Flexible Spending Accounts for Healthcare Spending Account and Dependent Daycare Spending Accounts for contractual compliance within the past three (3) years.

SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

3.1.1 The State of Maryland Department of Budget and Management administers a comprehensive benefits program for State employees, retirees, and eligible dependents. The Program includes a mix of self-insured and fully-insured medical, dental and prescription plans and healthcare and dependent daycare flexible spending account benefits. The State subsidizes the premiums for certain plans but the Member pays the entire premium for other plans. The State’s total benefit expenditures for CY2015 were approximately \$1.4 billion.

3.1.2 The plan year runs on a calendar year basis, from January 1 to December 31. An annual Open Enrollment period is held prior to the beginning of each Calendar Year, typically in October. Benefits elections for most plans are evergreen elections, but elections for FSAs must be made annually during each Open Enrollment.

3.1.3 Enrollment Data by Plan

Enrollment data by plan are found in ATTACHMENT H as of January 1, 2016.

3.1.4 Program Benefits Plans

3.1.4.1 Detailed descriptions of employee and retiree benefit plans are provided in the 2016 Guide to Your Health Benefits. The Guide is issued annually to all eligible Members during the annual Open Enrollment period. The Guide may be accessed through the Department’s website at www.dbm.maryland.gov/benefits.

3.1.4.2 Each Vendor Contractor is subject to at least one annual audit. The scope of the audits varies with the type of plan option/benefit administered, whether the plan option is self-insured or fully-insured, and other factors.

3.1.4.3 The various benefits plans of the Program are described in limited summary fashion below. These plans are part of the comprehensive benefits program that the State of Maryland provides for its active and retired employees.

3.1.5 Medical Health Benefits Plans

3.1.5.1 The Contracts and RFP for each of the administrators of these various benefits plan options are available on the Department’s website (www.dbm.maryland.gov), using the “Procurement & Contracts” and “Contract Library” links. Contracts incorporate the Vendor Contractors’ proposals and will be made available to the Awardee(s) for use in properly performing under this Contract. The Contracts for these medical plans include a six year base contract beginning August 14, 2014 and expire on December 31, 2020 unless either or both of the two two-year options is exercised. The RFP, and its attachments, contain the plan design and the performance requirements for the Vendor Contracts. All of the Vendor Contracts include performance guarantees, reporting requirements, specific plan design and claims processing requirements, member communications requirements, and overall administrative duties in connection with the respective PPO, POS, EPO, or IHM plan option.

3.1.5.1 Medical benefit plans offered include three PPO plans, three EPO plans, one POS plan, and one IHM plan.

3.1.5.2 Three PPO plans are offered to State employees and retirees and each plan is self-insured. The PPO plans are administered by two separate Vendor Contractors and two of the plans operate under value-based

benefit design; one does not. All three PPO plans offer nationwide coverage and in-network and out-of-network benefits. The State pays the Vendor Contractor an administrative fee for claims processing and other plan administration duties.

- 3.1.5.3 Three EPO plans are offered to State employees and retirees and each plan is self-insured. The EPO plans are administered by two separate Vendor Contractors and operate under value-based benefit design; one does not. The EPO networks are nationwide and there is no coverage for out-of-network care. The State pays the Vendor Contractor an administrative fee for claims processing and other plan administration duties.
- 3.1.5.6 One POS plan is offered to a limited group of employees and is self-insured. The POS plan is administered by one of the two Vendor Contractors noted in 3.1.5.2. The POS plan offers nationwide coverage and network access. The State pays the Vendor Contractor an administrative fee for claims processing and other plan administration duties.
- 3.1.5.7 One IHM plan is offered to State employees and retirees and is fully-insured. The IHM plan is administered by one separate Vendor Contractor. The IHM plan offers a regional network. Accordingly, the Vendor Contractor assumes claims liability for this plan.

3.1.6 Prescription Drug Benefits Plan

- 3.1.6.1 The prescription drug plan is self-insured and is administered by a PBM. Two commercial plans and an Employer Group Waiver Program (EGWP) are administered by the PBM. The State pays separate administration fees plus claims for the two plan types. The two commercial plans are (1) all active and non-Medicare eligible retirees, and (2) all active employees who are members of the SLEOLA bargaining unit. The EGWP plan is a Medicare Part D wrap plan offered to Medicare-eligible retirees and dependents. **The EGWP plan is scheduled to end 12/31/2019.** All plans include an extensive national retail network as well as access to a voluntary mail order program and specialty pharmacies.

The current State plans also include a number of managed access components, including: prior authorization, quantity limits; step therapy requirements, and a specialty drug management program.

The Contract for PBM services requires, among other things, that the PBM submit to a rebate audit of its manufacturer agreements and a transparent 100% pass-through pricing model that provides the following components:

- (a) **Complete Pass-Through Pricing at Retail Pharmacies** - For the retail component, the PBM shall pass-through the actual price the PBM has negotiated with the dispensing retail pharmacy; spread pricing with participating retail pharmacies is not permitted. The amount billed to the State will be the exact amount remitted to the pharmacy, less applicable participant share.
- (b) **Complete Pass-Through Pricing at Mail Order and Specialty Pharmacies (For a PBM that does not own or is not part of a common ownership structure with the mail order and specialty pharmacies)** - For the mail order and specialty components, the PBM passes through the actual price the PBM has negotiated with the dispensing mail order and specialty pharmacies respectively; spread pricing with mail order and specialty pharmacies is not permitted. The amount billed to the State will be the exact amount remitted to the pharmacy, less applicable participant share.
- (c) **Pass-Through Pricing on Mail Order and Specialty Pharmacies (For a PBM that owns or is part of a common ownership structure with the mail order and specialty pharmacies)** - For the mail order and specialty pharmacy components, the PBM applies a traditional fixed discount

rate for brand and generic medications, including MAC pricing. The MAC pricing applied at mail order pricing shall be at least equivalent to the MAC pricing applied at retail but in no case is it to produce a higher cost to the plan than the Retail MAC. The actual acquisition price of medications and pharmaceutical supplies purchased by the mail order and specialty pharmacy is not required to be pass-through to the State.

- (d) **Revenue Transparency and Pass-Through - For the retail, mail and specialty components,** the PBM shall disclose any and all of the following when such items are directly or indirectly attributable to the State's Plan or the provision of PBM Services to the State:
- i. Manufacturer payments; and
 - ii. Other revenue, payments, compensation, or remuneration from any source other than the administrative fees paid to it by the State (except as specified in (c) above, to accommodate a traditional mail order pricing model for those PBM's who own their own mail order and specialty pharmacies).

When such revenue, payments, compensation, or remuneration are directly or indirectly attributable to the State Plan or PBM services provided to the State, the PBM shall pass through the funds, revenue, remuneration, payment, compensation or manufacturer payments to the State and must provide reporting that discloses the value of this revenue from each source and also demonstrates where and how the revenue is passed to the State.

- (e) **Pricing Guarantees** - For the retail, mail and specialty components, the PBM shall guarantee a maximum amount for dispensing fees, minimum percentage discounts off AWP (as published on or after 1/1/2016) by drug-type (brand and generic) and place of service (retail, mail and specialty pharmacies) and minimum guarantees per claim for pharmaceutical manufacturer payments.
- (f) **Transparency**- For the retail components, the PBM shall provide full transparency reporting as further described in Reporting Requirements section of Attachment P-4: Administrative Requirements of the PBM RFP. The PBM must provide complete and auditable verification that the PBM is not engaging in any administrative activity that increases the revenue of the PBM at the expense of the State/State Plan.
- (g) **Specialty Pharmacy Clinical and Utilization Tracking Programs** – For the Specialty Pharmacy only, the PBM may accept and not pass through certain limited fees. These fees that are exempt from the pass-through requirements are:

- i. Fees that are only to offset the costs associated with providing utilization data under manufacturer contracts and/or FDA rules/FDA required programs to track data related to utilization of certain Specialty Pharmacy medications; and
- ii. Fees that are only to offset and pay for the cost of clinical programs provided to utilizers of certain Specialty Pharmacy medications in cases where the manufacturer contract for funding such clinical programs specifically prohibits passing the fee to the plan sponsor or plan.

The PBM must document and disclose such exempt fees and be prepared to identify how the fees/payments are used solely in connection with the identified exemption and do not constitute revenue or other payments similar to rebates or Manufacturer Payments that are subject to pass-through. These disclosures and /or fees apply to specialty medications as identified in the PBM RFP. In connection with disclosures of data in connection with these fees, the PBM shall comply with the following:

i. Disclosures shall be of the minimum necessary data, meaning de-identified data (see HIPAA Privacy Standards) in any case where de-identified data is sufficient;

ii. All disclosures and receipt of all fees are permitted by HIPAA and the HI-TECH Act as an action by the Plan (i.e. by a covered entity);

iii. Clinical programs that are the basis of the fee and/or disclosure are validated as clinically appropriate, do not influence product selection, and do not constitute marketing, as that term is defined by the HIPAA Privacy Standards and the HI-TECH Act; and

iv. The manufacturer or FDA limits distribution of the specialty medication to only those pharmacies that provide the utilization data.

(h) Interest on Rebates / Payments – In connection with rebate/Manufacturer Payments that are to be passed through and payments to pharmacies for claims, the following applies:

i. So long as the timing requirements of the PBM RFP and Attachments are met as to the payments being remitted to the State or Purchasing Pool Participant (i.e. plan sponsor of a PPP), the PBM may retain any interest or earnings on such funds during the limited period that such funds are held by the PBM (see Attachment P PG-23 for required rebate payment timing); and

ii. Interest may be retained so long as the funds being held by the PBM and on which it has earnings are commingled funds in the PBM's own accounts that are not client-specific holdings (e.g. the PBM receives a quarterly rebate payment that is based on utilization of all members in all client plans administered by the PBM and the PBM has yet to analyze each plan's/client's utilization to properly attribute such rebates to each plan/client so that the funds may be properly treated consistent with the client contract).

3.1.6.2 The Maryland Rx Program is a purchasing pool for pharmacy benefits for the State Employee and Retiree Health and Welfare Benefits Program, local governments and certain not-for-profit organizations. These other entities will be entitled to participate in the purchasing pool and to secure pharmacy benefit management services from the PBM on the same terms and conditions as the State through contracts with the PBM, in accordance with COMAR 17.04.15 Maryland RX Program. When participation in the Maryland Rx Program grows, the pricing terms for the State (AWP discounts, administrative fees, dispensing fees, etc.) may be affected by aggregate enrollment in the Maryland Rx Program. There are currently no participating entities in this program.

3.1.7 Dental Benefits Plans

Preventive and diagnostic dental benefits are available to employees and retirees through one fully-insured Dental HMO plan, and one self-insured Dental PPO with in-network and out-of-network benefits. Premiums for the DHMO and DPPO dental plans are paid 50% by the employee and 50% by the State.

The Dental PPO plan is administered by one separate Vendor Contractor and offers nationwide coverage and network access. The State pays the Vendor Contractor an administrative fee to process and perform other plan administration duties.

The DHMO plan is administered by one separate Vendor Contractor and offers regional coverage with no coverage for out-of-network access. The State pays the Vendor Contractor a fixed premium for claims processing and plan administration.

3.1.8 Flexible Spending Accounts

The State offers active employees the opportunity to participate in a pre-tax Healthcare Spending Account and/or Dependent Daycare Spending Account. A Vendor Contractor administers the two FSA plans. Flexible Spending Accounts are entirely funded by the active employee. The current contract was awarded for the plan years covering July 1, 2010 through June 30, 2015 and was extended through December 31, 2016.

The FSA Plan permits a grace period for the filing of healthcare reimbursements in the HCFSA plan only in accordance with Internal Revenue Service Notice 2005-42. The grace period extends for a period of 2 ½ months following the contract expiration date.

3.1.9 Purpose

The State requires independent audit and review of the contract performance of the Vendor Contractors that provide services in connection with the Program. The audit(s) must be performed in a manner that provides the State with a high level of confidence in the findings.

The purpose of audit services includes:

- Ensuring that the State receives the benefit of the contractual pricing arrangements with all Vendor Contractors (e.g. AWP discounts for the prescription drug benefits plan, receipt of rebates, etc.);
- Ensuring Vendor Contractor accountability for compliance with contractual requirements, including performance guarantees and payment of liquidated damages;
- Verifying appropriate administrative procedures and control measures are in place;
- Confirming the accuracy of benefit payments to providers;
- Improving quality of service through the review of clinical processes; and
- Ensuring that State funds in connection with the Program are used correctly.

Audits conducted in accordance with the specifications of this RFP of each Vendor Contractor's performance are essential for the successful operation of the Program.

3.1.10 Quality Assurance

The audit services deliverables may be utilized for reference or may be reviewed by other State personnel and committees besides the requesting agency. Accordingly, the Contractor must maintain high ethical and quality assurance levels in its submissions, and during the performance of services under the Contract including but not limited to personnel, the services performed, and resulting reports.

Deliverables shall be provided to the State under this Contract free of typographical errors and other product quality issues. Non-compliant deliverables may be returned to the Contractor for compliance, which may delay acceptance of the deliverable and subsequent payment.

3.2 Scope of Work - Requirements

3.2.1 Overview of Audit Requirements

A. The Audit Contractor shall perform, at a minimum, the following audits as required for the applicable Service Category in accordance with this RFP:

- (1) Audits of **administrative/operational procedures**;
- (2) Audits of **claims** (accuracy, timing, consistent with the plan design, etc.);
- (3) Audits of **compliance with performance guarantees**;
- (4) Compliance with **all contract terms** (including pricing, full pass-through of provider pricing and discounts to the State as required by the vendor contracts, negotiated rates, fees, financial and pricing issues, services standards, reporting requirements, etc.);
- (5) Audits of **Manufacturer Agreements including Payments and Rebates** for the prescription plan;
- (6) Audits of **PBM's inflation protection plan and savings achievement**;
- (7) Audits of **clinical processes**;
- (8) Review of **internal audits** conducted by or at the direction of the Vendor Contractors (including at a minimum hospital billing or pharmacy audits) for adequacy of the internal program and verification that any recoveries, rebates or payments were appropriately paid to the State (including prior external Program audit findings); and
- (9) Review of ineligible claims of FSA plans.

B. The Contractor shall provide to the Contract Manager, or designee, for approval its Audit plan document(s) showing the applicable aforementioned Scope of Work, within fifteen (15) calendar days after the effective date of the Contract and not less than thirty (30) calendar days prior to the beginning of an Audit Cycle.

C. The Contractor shall be familiar with and review the applicable Vendor Contracts to determine and apply the correct contract terms during the audit. This requirement applies to all phases and the entire scope of the audit. A written contract is in place for all Vendor Contractors in each of the four Service Categories. Additional contractual agreements or modifications applicable to the Vendor Contractors may be instituted during the contract period. In addition, due to the nature of State procurement processes, the Vendor Contractor for a particular benefit plan option may change during the Audit Contract term. The State will make the written contract documents available to the Audit Contractor, in electronic format when possible and reasonable. Copying of any such documents will be performed by Contractor staff in the offices of the Employee Benefits Division.

D. The audit(s) may be performed using different methodologies, so long as (1) the methodology is supported by generally accepted auditing standards for these types of audits and (2) the State has approved any different methodologies which when used result in adequate confidence in the audit findings. Each type of audit may include additional parameters and requirements related to the methodology used in connection with the audit.

3.2.2 Timing and Schedules. The Contractor shall complete the required audits promptly and in accordance with the established timeframe(s). Milestones indicated on the Gantt chart submission shall detail level of effort. The necessary Milestones for each Service Category are identified in RFP Section 3.2.2 (A).

A. The Contractor shall provide a Gantt chart showing monthly schedules for the audit work for each audit cycle. Include detailed information regarding projected man-hours of effort by job title for each Milestone. The Gantt chart(s) shall be filled in and submitted by each Offeror as part of its technical proposal in response to RFP Section 4.4.2.6. The Contractor shall submit copies of the final Gantt charts for all audit cycles to the Contract Manager, or designee, within fifteen (15) calendar days after the effective date of the contract and not less than thirty (30) calendar days prior to the beginning of an audit of a Vendor Contractor. The schedule shall include, at a minimum:

- Preparatory work prior to on-site reviews and meetings: review of the Vendor Contractor contract terms, data exchange testing, data exchanges, etc.;
- On site reviews with Vendor Contractors. These reviews would constitute preparatory work and conducting the on-site aspects of the audit;
- Draft audit reports (including the audited Vendor Contractor's response to draft audit findings);
- Meetings with the State, Vendor Contractors and Audit Contractor to discuss and coordinate audit findings as described in the draft audit report;
- Final audit reports (after discussions among the Department, the Audit Contractor and the audited Vendor Contractor); and
- Monthly reports to the Contract Manager per RFP§3.3.3.

B. The Contractor shall complete and provide to the Department, the final audit report for all audit(s) in the Service Category no later than December 31st of the year after the end of the audit period. Included, as ATTACHMENT L (Audit Period/Audit Cycle) to this RFP, is a table showing the audits required for each benefit plan audit period and audit cycle.

3.2.3 Audit of Administrative Procedures/Operational Audits

A. The Contractor shall conduct audits of administrative procedures and operational audits that address at least the following issues in conjunction with the Vendor Contractor's performance:

- Staff assignments and division of responsibilities;
- Transfer of loading and verification of eligibility data;
- Third party recovery procedures;
- Identification and recovery of erroneous payments, discovered by the Audit Contractor or otherwise. Ensure that any claims errors identified in the audit samples of previous audit reports have been paid or debited to the State's account. Ensure any systematic errors identified by previous audit reports have been corrected and retroactive adjustments made and paid to the State;
- Identification of payments received by the Vendor Contractor in connection with the administered plan (such as fraud recoveries, audit recoveries, claim reversals, rebates [inpatient claims in the PPO, POS,EPO, and IHM in connection with the PBM contract], coordination of benefits to participants, subrogation, other miscellaneous recoveries, etc.) and ensuring remittance is paid to the State;
- Automated and manual claims processing functions;
- Internal controls for accuracy of processing and payment;
- Management of claims costs to ensure procedures supported maximized savings;
- The adequacy and functionality of the Vendor Contractor's fraud and abuse detection program, including whether it conforms to industry standards; and
- Additional specific issues identified by the Contract Manager as within the scope of the audit.

B. The audit report shall address whether the Vendor Contractor's administrative policies and procedures are appropriate for the State's plan(s) and offer recommendations to improve the overall efficiency of administrative and operational procedures in connection with the State plan and meet the requirements stated in RFP Section 3.4.2.

C. The administrative procedures/operational audit must be performed for all service categories:

- Service Category 1 - Medical Benefits Plans: all plans;
- Service Category 2 - Dental Benefits Plans: all plans;
- Service Category 3 - Prescription Drug Benefits Plan; and
- Service Category 4 - Flexible Spending Accounts.

3.2.4 Audit of Claims Processing

A. The Contractor shall audit claims processing in at least the following areas:

- Confirm claims are processed in accordance with the Vendor Contractor's established administrative procedures and contract terms;
- Review and assess financial, procedural, and payment accuracy (e.g. identifying over and under payments to providers);
- Review system edits and controls for claims processing, including data integrity and sufficiency to support claims payments;
- Review of patient eligibility;
- Ensure that third party recovery procedures, including coordination of benefits, are followed in accordance with standard insurance industry protocols and the contract;
- Verify allowances and provider discounts are within appropriate fee schedules;
- Verify that coverage is provided in accordance with State plan design (e.g. that services are not denied when they should be covered or covered when they should be denied, that Medicare-eligible retirees' benefits properly coordinate with Medicare A and B, and that FSA reimbursements are permitted by the applicable federal tax code provision, etc.);
- Identify error patterns or trends and identify causes, assess effects, and provide recommendations for corrections;
- Confirm accuracy of benefit accumulators (*i.e.*, deductibles, out-of-pocket, maximums, etc.);
- Confirm that the FSA Contractor has completed the three step process for DCFSA and HCFSA ineligible claims as indicated in the FSA RFP F10B6400004 dated October 19, 2015, Technical Attachment G-4 CC-20; and
- Confirm that overpayments identified in prior audits have been paid to the State.

B. The audit must include an electronic screening for 100% of all claims data. Such analysis shall determine and address whether claims are properly processed. The State expects that this in-depth analysis will provide greater confidence in the results and identify outlying claims processes, systemic processing errors, etc. Where appropriate to provide 95% confidence with 3% precision in the claims analysis, a sampling methodology may be used in addition to the 100% electronic claims analysis.

C. The claims processing audit must be performed for all service categories:

- Service Category 1 - Medical Benefits Plans: self-insured plans only;
- Service Category 2 - Dental Plans; self-insured plan only;
- Service Category 3 - Prescription Drug Benefits Plan; and
- Service Category 4 - Flexible Spending Accounts.

3.2.5 Audit of Performance Guarantees

A. The Contractor shall review and be familiar with the performance guarantees provided in each Vendor Contractor's contract with the State. The Contractor shall obtain from the State and from the Vendor Contractor the necessary documentation to confirm compliance with the performance guarantees.

B. The Contractor shall audit the Vendor Contractors' compliance with the performance guarantees applicable to each Vendor contract. The audit of performance guarantees may involve data or findings developed in connection with other audits to be performed of the respective Vendor Contractor. For example, the financial accuracy of claims payments is a performance guarantee in the PPO Vendor Contract. The Audit Contractor shall recommend whether the liquidated damages associated with each performance guarantee should be assessed and in what amount.

C. The performance guarantees audit must be performed for all plans in all service categories:

3.2.6 Audit of Contract Terms

A. The Contractor shall review the Vendor Contract terms and conditions to ensure that Vendor Contractor complies with all terms of the Contract with the State. These audits shall include but not be limited to:

- Review contracts, technical proposals and financial proposals (including Best and Final Offers) to ensure all pricing terms and negotiated fees are compliant with terms in the Contracts;
- Review and reconcile any third party recoveries or payments due the State under the Vendor Contract;
- Verify contracted administrative fees;
- Verify and ensure that the Vendor Contractor is performing in accordance with the Vendor Contract (member services requirements, member communications requirements, adequate staffing levels, HIPAA compliance, etc.); and
- For the PBM, audit pharmacy and pharmaceutical manufacturer agreements to verify that pricing in the prescription plan properly flows through to the State. See RFP Section 3.1.6.1 for a more detailed discussion of the rebate and pricing audit requirements.

B. The contractual compliance audit must be performed for all plans in all service categories:

3.2.7 Audit of Manufacturers' Agreements, Payments and Rebates

A. The Contractor shall conduct a complete and reliable audit of all manufacturers' agreements, payments and rebates to verify and ensure that the State receives all payments due to the State and that such payments are timely and accurate as defined in the forthcoming PBM RFP F10B6400005R. **Contractor shall audit the number of manufacturer agreements necessary to reach a threshold of not less than 80% of total rebate dollars paid to the State.**

B. The Contractor shall review all categories of payments from manufacturers and other third parties as they relate to the State's plans, regardless of the nature or type of payment.

C. The Contractor shall complete an analysis of all rebatable prescription claims by quarter, or payment period, and if necessary, additional quarters to validate payment for all earned rebates. This audit shall include, at a minimum, the following tasks in connection with such payments:

- Identification of the quarters/payment periods covered by the audit and plan to address the entire plan year;
- Identification of all rebatable prescription claims and identification of drug classifications properly excluded from rebate contention;
- Review and test of claim adjudication for all rebatable claims including paid, denied, coordination of benefits, etc.;
- All non-rebatable claims will be filtered to remove them from rebate contention;
- Calculate earned rebate quantities by National Drug Code (NDC) by quarter, or payment period;
- Compare Contractor's earned rebate file to file submitted by PBMs pharmacy manufacturer;
 - Review master screen setup for rebates;
 - Review detail report for all screens for claim processing logic applied;
 - Review all accruals per month or quarter for estimated rebate calculations; and
 - Review monthly or quarterly reconciliation, by manufacturer, of actual received versus the estimated rebates;
- Review applicable manufacturer contracts for values to attribute to each NDC quantity or claim;
- Compare PBM receipts from manufacturer/payor(s) to earned rebate file;
 - Review detail report that supports total rebate receipts;
 - Review detail report for unpaid or denied payments;
 - Review pursuit detail report for unpaid rebates;

- Compare PBM rebate payments to the State with PBM receipts from manufacturers/payors;
 - Determine the methodology used by the PBM which is the basis for rebates paid to the State;
 - Review all calculations of the PBM's payment methodology by quarter, particularly to verify that the correct payments are made by the PBM to the State; and
 - Provide a listing of all first and second payments, and/or settlement payments to the State, for the timeframe under audit.
- D. The Contractor shall complete an analysis of the PBM's inflation protection plan achievement by quarter or plan year.
- E. The Manufacturer Payment and Rebate Audit shall be performed for the following Service Category:
- Service Category 3- Prescription Drug Benefits Plan.

3.2.8 Audits of Clinical Processes

A. The Contractor shall perform clinical evaluations of programs conducted by Vendor Contractors. The evaluation shall compare the programs implemented and administered by the Vendor Contractor to relevant industry standards, norms and benchmarks as well as contract requirements. The programs to be evaluated include but are not limited to:

- Utilization management programs (e.g. prior authorization, pre-certification, continued stay review and discharge planning functions);
- Case management and disease management programs, specifically addressing for each: case identification methodology and systems, member communications and proactive outreach mechanisms, diagnosis-focused programs, and return-on-investment/results managing capability, based on a review of policies and of a sample of cases utilizing the management program(s);
- Claims appeals processes, including timing and adequate clinical review systems are in place; and
- For the prescription benefits plan, perform a review of managed access components of the plan design (following program parameters, whether parameters are clinically supported or appropriate, etc.).

B. The Clinical Audit must be performed ~~for all in all service categories:-~~ **in accordance with the plan type. Not all bullets apply to every Service Category. Pre-certification and claims appeal processes only apply to Dental; claims appeal processes also apply to flexible spending accounts. All bullets above apply for medical and prescription Service Categories.**

3.2.9 Review of Internal Audits

- A. The Contractor shall review internal audits conducted by Vendor Contractors, including but not be limited to:
1. Review the Vendor Contractor's internal audit controls to ensure proper controls are in place for claims processing and to detect improper billing, fraud, etc.;
 2. Verify that significant findings or payment due to the State under the previous year's audit have been corrected or paid;
 3. Review of Vendor Contractor SOC 2 Type II Reports;
 4. Verify appropriateness of the internal audit program(s), i.e. that it meets industry standards;
 5. Verify that any recoveries identified through the Vendor Contractor's internal audits have been paid back to the State;
 6. Verifying that hospital bill audits have been conducted in accordance with the contractual requirements and industry standards; and
 7. Verify that pharmacy audits (desk audits and on-site audits) are conducted in accordance with contractual requirements and industry standards.

- B. The review of internal audits must be performed for the following categories:
- Service Category 1- Medical Benefits Plans: all plans;
 - Service Category 2- Dental Plans: all self-insured plans for internal audit reviews per RFP Section 3.2.9A (1-5) only;
all fully-insured plans for internal audit reviews per RFP Section 3.2.9A (1-4) only;
 - Service Category 3- Prescription Drug Benefits Plan; and
 - Service Category 4- Flexible Spending Accounts.

3.3 Audit Reporting

3.3.1 Reports for Individual Contracts Audited – Content Requirements

- A. The Contractor shall provide a separate detailed audit report for each Vendor Contractor and contract plan audited, i.e. five reports for CareFirst, two for UHC, one for Kaiser. Every audit report shall include an Executive Summary and be tabbed accordingly for easy readability.
- B. The Contractor shall submit the draft audit report, including findings to DBM no later than 45 days prior to Milestone 4 as indicated in Attachment F-Financial Proposal Form for each Service Category.
- C. Each report (draft and final) shall include a discussion of at least the following elements:
- General statement of audit objectives and identify the scope of the audit performed (e.g. administrative and operational, performance guarantees, etc.);
 - List of the claim adjudication and administration procedures evaluated;
 - Summary of audit steps and sampling methodology, including identification of the applicable general auditing standard that endorses the methodology;
 - Total number and dollar value of claims processed during the audit period by the Vendor Contractor;

Summary of audit findings including:

- Total number and dollar value of claims examined;
- Total number and percentage of claims with financial errors (dollar value broken down into over - and under-payments and combined for percentage of total claims paid);
- Total number and percentage of claims with administrative error;
- Listing of claims audited to measure processing time;
- Identification and listing of all claims with errors, including a brief description of nature and amount of error;
- Results to applicable Vendor Contractor performance guarantees;
- Comments and recommendations for improving claims administration;
- Verification of recovery, adjustment of errors identified in prior audit reports;
- List of pharmacy and pharmaceutical manufacturer agreements audited and representation of the size of the sample compared to the number of pharmacies in the network and manufacturers with which the PBM contractor has agreements;
- Identification of the period(s) for which rebates have been audited from claim payment through payment to the State;
- Findings related to all pricing points (such as pricing guarantees and pass-through pricing requirements);
- Results of internal audits;
- Results of external audits of the Vendor Contractor;

- Summary results of audits of applicable contract terms;
- Summary of clinical reviews and clinical audit issues;
- Copy of the Vendor Contractor’s response to the draft report and any modifications the Vendor Contractor has implemented as a result of the audit;
- Comparison of current year’s audit with prior year results (for audits after the initial audit); and
- Recommendations related to Vendor Contractor performance.

3.3.2 Standards and Acceptance Criteria for Final Audit Reports (Deliverables)

A. When presented for acceptance, a written deliverable provided to the State must satisfy the scope and requirements of the RFP for that deliverable. Final written audit reports shall not contain structural errors such as poor grammar, misspellings or incorrect punctuation, and shall:

- Be submitted on or before the due date contained in the Contractor’s approved Gantt chart;
- Be presented in a format appropriate for the subject matter and depth of discussion;
- Be organized in a manner that presents a logical flow and discussion of the deliverable’s content;
- Identify the date of submission and version number if applicable;
- Represent factual information reasonably expected to have been known at the time of submittal;
- Present information that is relevant to the portion of the deliverable in the submittal; and
- Meet the content requirements of the RFP Section 3.3.1 as determined by the Contract Manager.

B. An audit report is not accepted by the State until the Contract Manager determines that the report is compliant with this section 3.4 of the RFP. The Contractor shall revise and supplement the audit report as directed until it is accepted by the Contract Manager in the timeframe set forth in the Contractor’s approved Gantt chart. Subsequent or revised reports shall be identified as such.

3.3.3 Monthly Reports

The Contractor shall provide the following monthly reports for all audit and/or Optional Services (as defined in RFP Section 3.4) expected to exceed 30 days:

A. Monthly reports to the Contract Manager (or designee) shall include the information noted below with regard to each Audit Service Category. Reports shall be provided in MS Word or MS Excel unless the Contract Manager approves in writing another software format. The Contractor shall deliver reports to the Contract Manager as directed no later than the 10th calendar day of each month for the preceding month’s activities.

B. Monthly reports shall include but are not limited to the following information:

- a) Agency Name;
- b) Audit Service Category;
- c) Audit Start Date;
- d) Target Completion Date;
- e) Not to Exceed (NTE) Contract Dollar Value for each Service Category;
- f) Payments Received to Date for each Service Category;
- g) Status of Projects by Service Category; and
- h) Any other relevant information the State’s Contract Manager requests which is within the scope of work.

3.4 Optional Services

3.4.1 The Contractor shall be available to perform any additional Optional Services requested by the State on a task order basis. The State shall request a quote for hours in each of the labor categories (identified in Section 3.4.2) using the task order process outlined in Section 3.4.3. Performance of task order (optional) services shall be governed by the issued task order and the Contract. The Optional Services may include but are not limited to audits of large claims or disputed claims, litigation support in connection with an audit, or targeted in-depth audits of specialized processes. Such additional services, if any, will be billed in addition to the fixed price for scheduled audits at the labor rates proposed in the Contractor's financial proposal.

3.4.2 Labor Requirements for Optional Services

- A. All labor rates charged by the Contractor for the three services labor categories outlined in the price proposal (ATTACHMENT F) shall be fully - loaded labor rates including direct and indirect charges. Reimbursement for administrative/clerical duties, travel, parking and mileage will not be paid under the terms of the Contract.
- B. Contractors must use the labor categories provided for auditing services as indicated. Proposed audit services personnel must meet the following minimum requirements for experience and proficiency to be eligible for these labor categories:
- Principal/Partner - Must have a minimum of ten (10) years of experience providing healthcare auditing services;
 - Senior Auditor - Must have a minimum of five (5) years of experience providing healthcare auditing services; and
 - Junior Auditor - Must have a minimum of one (1) year of experience providing healthcare auditing services.

3.4.3 Task Order Process

Services shall be provided via a task order process using the pre-approved fully-loaded labor rates applicable to their labor categories as follows:

- A. The Contract Manager will e-mail a request to the Contractor to provide services. On occasion, the Contract Manager may contact the Contractor's Account Manager by telephone to orally convey the contents of a task order request. The request shall include at a minimum:
- a) The due date and time for submitting a response to the request;
 - b) Technical requirements and description of the services needed;
 - c) Specific information to be provided by the Contractor, such as:
 - A proposed work plan for the required services;
 - Maximum timeframe to complete the services required;
 - Required places(s) where work must be performed; or
 - State furnished information, work site, and /or access to equipment, facilities, or personnel; and
 - d) Requirements for reports;
- B. The Contractor shall e-mail a response to the Contract Manager within the specified time and shall include at a minimum:
- a) A response to the description of the service that details the Contractor's understanding of the work;

- b) A description of the proposed work plan including time schedules, in narrative (including, if specifically required/requested, a Gantt chart) to accomplish the requisite task. This description shall include a schedule of resources and related tasks, including an explanation of how these tasks will be completed;
 - c) Identification of those activities or phases that can be completed independently or simultaneously versus those that must be completed before another activity or phase can commence;
 - d) The personnel resources, including those of subcontractor(s), and estimated hours to complete the task;
 - e) A detailed written description of any work to be subcontracted, and the name and address of the subcontractor(s), including the participation of MBEs to support the Contractor’s MBE plan for the Audit Contract;
 - f) Proposed approach to satisfying the requirements of the task and development of task deliverables; and
 - g) A detailed cost estimate, using projected hours for each labor category and identification of staff members, to complete the project.
- C. The Contract Manager will review the response and may approve the work and provide a NTP or contact the Contractor to obtain additional information, clarification, revision, or declination of the work. If satisfied, the Contract Manager will then provide the written Notice to Proceed.

3.5 Security Requirements

3.5.1 Employee Identification

- (a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, the Contractor’s personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

3.5.2 Criminal Background Check

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

3.5.3 Information Technology

For purposes of this solicitation and the resulting Contract:

- (a) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; (2) is linked

or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of “personal information” under Md. Code Ann., Com. Law § 14-3501(d); or (4) falls within the definition of “personal information” under Md. Code Ann., State Govt. § 10-1301(c).

- (b) “Relevant subcontractor” includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (c) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and shall ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (d) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subcontractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

3.5.3.1 Information Security Requirements

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

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

- (d) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subcontractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subcontractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subcontractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (e) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation.
- (f) Enforce strong user authentication and password control measures over the Contractor/subcontractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- (g) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- (h) Ensure that State data is not commingled with the Contractor's and subcontractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
- (i) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2.

<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- (j) Enable appropriate logging parameters on systems supporting services provided under this Contract to Manager user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- (k) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.

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

3.5.3.2 Contingency / Disaster Recovery Plans

- (a) The Contractor and any relevant subcontractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- (b) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within 24 hours in order to avoid unacceptable consequences due to the unavailability of services.
- (c) The Contractor and any relevant subcontractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.
- (d) Such contingency and disaster recovery plans shall be available for the Department to inspect and to practically test at any reasonable time, and shall be subject to regular updating, revision, and testing throughout the term of the Contract.

3.5.3.3 Incident Response Requirement

- (a) The Contractor agrees to notify the Contract Manager when any Contractor and/or subcontractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- (b) The Contractor further agrees to notify the Contract Manager within one (1) Business Day of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Manager and Procurement Officer.

- (c) The Contractor agrees to notify the Contract Manager within two (2) hours if there is a threat to the Contractor and/or subcontractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
- (d) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Manager within one (1) Business Day after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (e) The Contractor, within one (1) Business Day of discovery, shall report to the Contract Manager any improper or non-authorized use or disclosure of Sensitive Data. The Contractor's report shall identify:
 1. the nature of the unauthorized use or disclosure;
 2. the Sensitive Data used or disclosed;
 3. who made the unauthorized use or received the unauthorized disclosure;
 4. what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 5. what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
 6. the Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- (f) The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- (g) This Section 3.5.3.3 shall survive expiration or termination of the Contract.

3.6 Insurance Requirements

- 3.6.1 The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3.6.2 The Contractor shall maintain Errors and Omissions/Professional/Cyber Liability insurance with minimum limits of \$5,000,000 per claim and annual aggregate.
- 3.6.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.6.4 The Contractor shall maintain Crime Insurance to cover employee theft with minimum single loss limit of \$1,000,000 per loss, and a single loss retention not to exceed \$10,000.

- 3.6.5 Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Contract Manager with current certificates of insurance, and shall update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Manager. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
 - b. Commercial General Liability as required in Section 3.6.1.
 - c. Errors and Omissions/Professional Liability as required in Section 3.6.2.
 - d. Automobile and/or Commercial Truck Insurance as required in Section 3.6.3.
 - e. Crime Insurance as required in Section 3.6.4.
- 3.6.6 The "State of Maryland, its officers, employees and agents" shall be listed as an additional insured on any Commercial General Liability, Auto Liability Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Worker's Compensation Insurance, which is currently handle by the Chesapeake Employer's Insurance Company (formerly Injured Worker's Insurance Fund). All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manager, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.6.7 The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

3.7 Problem Escalation Procedure

- 3.7.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- The Contractor shall provide contact information to the Contract Manager, as well as to other State personnel, as directed should the Contract Manager not be available.
- 3.7.2 The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- The process for establishing the existence of a problem;
 - Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;

- For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- Expedited escalation procedures and any circumstances that would trigger expedited escalation procedures;
- The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- A process for updating and notifying the Contract Manager of any changes to the PEP.

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

3.8 Retainage and Invoices

3.8.1 Retainage

Ten percent (10%) of each applicable milestone/task order invoice shall be held by the Department as retainage. The Contractor may invoice for retainage when all work for an audit cycle or task order is complete (per Service Category) and the final audit report has been accepted by the State.

3.8.2 Invoice Format

A. Invoices which include services of personnel who have not been preapproved by the Contract Manager will not be paid for their services.

B. Invoices for Fixed Rate Audit Milestone must include the following information:

1. Name, address and federal tax identification number of the Contractor;
2. Remittance address;
3. Invoice period (i.e. the period during which services covered by the invoice were performed);
4. Invoice date and invoice number;
5. Amount due;
6. Retainage amount on current invoice;
7. Retainage amount cumulative to date; and
8. The Fixed Rate Audit Milestone for each Service Category.

C. Invoices for Optional Services must include the following information:

1. Name, address and federal tax identification number of the Contractor;
2. Remittance address;
3. Invoice period (i.e. the period during which services covered by the invoice were performed);
4. Invoice date and invoice number;
5. Amount due;
6. Retainage amount on Task Order invoice; and
7. Additional supporting documentation must accompany the invoice. Such documentation, at a minimum, must include a list of each individual that worked on the Task Order and that the Contractor is billing for on the current invoice, each individual's assigned labor category for which they are billing, a description of the work performed and the total hours worked during the invoice period for each individual along with the detail of hours worked including actual start and stop times per day for each individual. Time documentation shall be either certified employee time

sheets or electronic time keeping records certified by the Contractor to be the actual time worked by the individuals on this Contract for the period being billed, or time documentation should include the individual's signature. The detailed time documentation must include the Contractor's supervisor's signature to certify hours worked In connection with any Optional Services that are billed on a fixed-rate hourly basis (See RFP Section 3.4),

- D. A pre-authorized representative of the Contractor must sign each invoice. Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information. The Contractor's Account Manager shall be the authorized representative that signs each invoice, but the Contractor may choose a different individual, so long as the Contractor notifies the Contract Manager of the designated representative's name, phone number and e-mail address within 15 business days of contract execution.

3.8.3 Invoice Timing and Procedure

A. An invoice shall be submitted after completion of each milestone. An invoice may not be submitted by the Contractor until the Contract Manager (or a designee) has accepted that the applicable Milestone has been successfully completed or achieved. Prior to the submission of an invoice, the Contractor shall submit a written notice to the Contract Manager that the Milestone has been completed. Such notice shall include at a minimum:

- Identification of Milestone;
- An expenditures report or detailed billing report that provides a description of the work performed toward completion of the Milestone and identification of the person performing the work; and
- Certification from an authorized representative of the Contractor that the work has been completely performed as described in the expenditures or detailed billing report. This individual should be the same person who signs invoices submitted to the Department and should be authorized to bind the Contractor to the certification of the work.

B. The Contractor shall submit the invoice to the Contract Manager within two business days after receipt of invoice submission approval. The pre-authorized representative of the Contractor shall certify that each invoice submitted is just and proper. A just and proper invoice includes those items listed in RFP Section 3.8.2 B (1-7).

C. Milestones for each audit cycle. The Contractor will be paid progress payments based upon successful completion of the following Milestones for each Audit Service Category during the course of the audit process:

1. Planning and Preparation for On-Site reviews;
2. On-Site Reviews;
3. Development and Delivery of Draft Audit Report;
4. Audit Vendor Contractor Meetings to discuss Draft Audit Report; and
5. Final Audit Report.

For audits of the Service Category 1-Medical Benefits Plans, contractor may present a prorated invoice upon completing of each individual Vendor Contractor being audited.

D. Task Orders (Optional Services). In connection with any Optional Services that are billed on a fixed-rate hourly basis (See RFP Section 3.4), the Contractor shall bill for the hours completed in the prior month. When all work under a Task Order for Optional Services has been completed and accepted, the Contractor may submit an invoice to recover retained amounts in connection with the Task Order.

3.8.4 Administrative and Travel Expenses

Reimbursement for travel, parking and mileage will not be paid by the State under the terms of the Contract. The State will not pay for administrative or clerical services; such services must be accounted for in the Contractor's fixed rates for milestones and fully-loaded labor rates for Optional Services.

3.9 Staffing Requirements

- 3.9.1 The Contractor shall staff this Contract such that the State's auditing needs are met, including, as appropriate, an account team.
- 3.9.2 The Contractor shall designate an Account Manager to serve as the primary contact for this Contract and for all billing/invoice matters.
- 3.9.3 The Contractor shall also designate additional key personnel to perform specific functions, such as:
- Audit Manager – Individual(s) who oversee, supervise, Manager or approve the work of others performing auditing activities. Only personnel who have minimum of five (5) years' experience providing auditing services relevant to the Service Category audit(s) being performed may fill this role.
 - Lead Auditor – Individual(s) responsible for on-site supervision of audit staff. Only personnel who have minimum of three (3) years' experience providing auditing services relevant to the Service Category audit(s) being performed may fill this role.
- 3.9.4 For the fixed rate audit services, the Contractor may use the same personnel for such functions, e.g. the Account Manager may also be the Audit Manager for the Service Category audit(s) performed by the Contractor. To the extent that more than one audit is required for the Service Category for which the Contractor is awarded a Contract, each audit shall have an individual that fulfills the Lead Auditor role for each audit being performed. For any Optional Services, the Contractor may designate a lead staff person other than the Account Manager.

For example, Service Category 1-Medical requires eight (8) audits to be performed, across three different plan types. Due to the overlapping of organizations that administer the different plans (e.g. Carefirst of Maryland, Inc. administers a PPO plan, and an EPO plan pursuant to contracts with the State), the five (5) required audits can be broken into various subgroups. As a result, an Offeror may propose to have one individual oversee the audits of all two plans administered by Carefirst. In the alternative, an Offeror may propose to have one individual oversee all PPO audits, regardless of Vendor Contractor.

As another example, Service Category 3- Prescription Drug Benefits requires a number of audits to be performed of one PBM. The different audits may be divided into different subgroups, such as the claims and pricing component audits in one audit team, while the pharmaceutical manufacturer agreement audits are performed by a different team led by a different Lead Auditor.

3.10 Availability of Key Personnel

Offerors shall ensure the key personnel identified in its proposal will be available to perform Contract requirements. Contractor key personnel shall not be reassigned to another task without the written concurrence of the State's Contract Manager for 180 calendar days from the Contract award date. If any key personnel leave the employment of the Contractor, or are approved for reassignment by the State's Contract Manager, the replacement must have equal or better qualifications than the incumbent and be approved by the State's Contract Manager.

3.11 MBE Reports

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

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

3.12 VSBE Reports

If this solicitation includes a VSBE Goal (see Section 1.41), the Contractor and its VSBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

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

3.13 SOC 2 Type 2 Audit Report

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

3.14 End of Contract Transition

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

SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

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

4.2 Proposals

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

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

To the Procurement Officer (see Section 1.5 “Procurement Officer”) prior to the date and time for receipt of Proposals (see Section 1.11 “Proposals Due (Closing) Date and Time”).

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

4.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD, DVD, or USB Flash Drive for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”).

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

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

4.3 Delivery

Offerors may either mail or hand-deliver Proposals.

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

4.4 Volume I – Technical Proposal

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

4.4.1 Format of Technical Proposal

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, four (4) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.2.1 “Title and Table of Contents,” Section 4.4.2.2 “Claim of Confidentiality,” Section 4.4.2.3 “Transmittal Letter,” Section 4.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 3.2.1 Response . . . ; “Section 3.2.2 Response . . . ,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

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

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

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

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

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 1.14 “Public Information

Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

4.4.2.3 Transmittal Letter (Submit under TAB B)

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

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title and Solicitation Number that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual’s Social Security Number (SSN);
- Offeror’s eMM number;
- Offeror’s MBE certification number (if applicable);
- Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and
- Acknowledgement of all addenda to this RFP.

4.4.2.4 Executive Summary (Submit under TAB C)

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” The Summary shall identify the Service Category(ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see RFP Section 1.22 for more information).

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

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

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

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

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

- a. The Offeror shall address each Scope of Work requirement (Section 3.2) in its Technical Proposal for each Service Category and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work (Section 3.2) requirement

shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

- b. The Offeror shall give a definitive **section-by-section** description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- c. The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- d. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department's Contract Manager should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in RFP Section 3.7.
- e. **Non-Compete Clause Prohibition:**
The Department seeks to maximize the retention of personnel working under this Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and to maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements of RFP Section 3.9.1 working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition each Offeror must include an affirmative statement in its technical proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State contract.
- f. The Offeror shall submit a Gantt chart detailing each milestone by month for each Service Category being proposed as required with its technical proposal per RFP Section 3.2.2 (A).

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

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

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

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

4.4.2.8 Offeror Qualifications and Capabilities (Submit under TAB G)

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

- a. The number of years the Offeror has provided the similar services;
- b. The number of clients/customers and geographic locations that the Offeror currently serves;
- c. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- d. The Offeror's process for resolving billing errors; and
- e. An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

4.4.2.9 References (Submit under TAB H)

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

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

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

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

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

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and

- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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

4.4.2.11 Financial Capability (Submit under TAB J)

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

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

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

4.4.2.12 Certificate of Insurance (Submit under TAB K)

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

4.4.2.13 Subcontractors (Submit under TAB L)

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

4.4.2.14 Legal Action Summary (Submit under TAB M)

This summary shall include:

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

4.4.2.15 Economic Benefit Factors (Submit under TAB N)

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

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

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

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

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

- a. generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- b. descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; or
- c. tax revenues from Maryland based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

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

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

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

to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

4.4.2.16 Certification of Review of Contracts/RFPs.

The requests for proposals that form the majority of the scope of work of the contracts to be audited in Categories 1 – 4 are posted on the Department's website (www.dbm.maryland.gov, using the links "Contractors," "Contract Library" and "Employee Benefits Contracts"). Each Offeror shall review these requests for proposals in order to be familiar with the contractual obligations to be audited. The State requires that the Offeror acknowledge that access to these public documents has been provided and that the Offeror reviewed the documents to the extent the Offeror deemed necessary to prepare the Offeror's proposal (technical and financial) by submitting Attachment P. The Contractor to which a contract is awarded for each Service Category shall be required to be familiar with the Vendor contracts to be audited.

4.4.3 Additional Required Technical Submissions (Submit under TAB O)

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

- a. Completed Bid/Proposal Affidavit (**Attachment B**);
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**);
- c. Certification of Review of Contract/RFPs (**Attachment P**); and
- d. Gantt Chart(s) per RFP Section 3.3.2 (A).

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

- a. A Signed Statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. ***see Section 1.22**;
- b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) ***see Section 1.33**;
- d. Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) ***see Section 1.36**;
- e. Completed Mercury Affidavit ***see Section 1.40**;
- f. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (**Attachment M-1**) ***see Section 1.41**; and
- g. Completed Location of the Performance of Services Disclosure (**Attachment N**) ***see Section 1.42**.

4.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 4.2 "Proposals," the Offeror shall submit an original unbound copy, four (4) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment F for each Service Category in which the Offeror is proposing to**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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

5.1 Evaluation Committee

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

5.2 Technical Proposal Evaluation Criteria

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

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

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

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

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

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

5.3 Financial Proposal Evaluation Criteria

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

5.4 Reciprocal Preference

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

- The Maryland resident business is a responsible Offeror;
- The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- The other state gives a preference to its resident businesses through law, policy, or practice; and

- The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

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

5.5 Selection Procedures

5.5.1 General

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

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

5.5.2 Selection Process Sequence

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

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

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

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

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

5.5.3 Award Determination

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

5.6 Documents Required upon Notice of Recommendation for Contract Award

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

- a. Contract (**Attachment A**),
- b. Contract Affidavit (**Attachment C**),
- c. MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; *see **Section 1.33**,
- d. MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; *see **Section 1.33**),
- e. Non-Disclosure Agreement (**Attachment J**), if applicable; *see **Section 1.37**,
- f. HIPAA Business Associate Agreement (**Attachment K**), if applicable; *see **Section 1.38**,
- g. VSBE **Attachment M-2**, if applicable *see **Section 1.41**,
- h. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 “Insurance Requirements,” listing the State as an additional insured, if applicable; *see **Section 3.4**.
- i. Conflict of Interest (**Attachment I**), if applicable * see **Section 1.36**.

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RFP ATTACHMENTS

ATTACHMENT A – Contract

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

ATTACHMENT B – Bid/Proposal Affidavit

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

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Minority Business Enterprise Forms

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

ATTACHMENT E – Pre-Proposal Conference Response Form

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

ATTACHMENT F – Financial Proposal Instructions and Form

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

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

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

ATTACHMENT H – Enrollment Data by Plan

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

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

ATTACHMENT J – Non-Disclosure Agreement

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

ATTACHMENT K – HIPAA Business Associate Agreement

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

ATTACHMENT L – Audit Period/Audit Cycle

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

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

ATTACHMENT N – Location of the Performance of Services Disclosure

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

ATTACHMENT O- Current Benefits Contracts

ATTACHMENT P- Certification of Review of Contracts/RFP's

ATTACHMENT A – CONTRACT

AUDIT SERVICES FOR STATE EMPLOYEE AND RETIREE HEALTH AND WELFARE BENEFITS PROGRAM

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

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

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract Manager” means the Department employee identified in Section 1.6 of the RFP as the Contract Manager.
- 1.3 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.4 “Department” means the Department of Budget and Management.
- 1.5 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.6 “Procurement Officer” means the Department employee identified in Section 1.5 of the RFP as the Procurement Officer.
- 1.7 “RFP” means the Request for Proposals for Audit Services for State Employee and Retiree Benefit Programs Solicitation # F10B6400003 and any addenda thereto issued in writing by the State.
- 1.8 “State” means the State of Maryland.
- 1.9 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

2. Scope of Contract

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

Exhibit A – The RFP
Exhibit B – State Contract Affidavit, executed by the Contractor and dated (date of Attachment C)
Exhibit C – The Proposal (Technical and Financial)

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the

Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately five years beginning January 1, 2017 and ending on December 31, 2021.

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

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract, including the base term and any option exercised by the State, shall not exceed \$ _____.

The Not to Exceed amounts, if exercised, for Optional Services are:

Service Category 1: NTE \$100,000,
Service Category 2: NTE \$40,000 for,
Service Category 3: NTE \$100,000 for, and
Service Category 4: NTE \$40,000.

Contractor shall notify the Contract Manager, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be

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

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

5. Rights to Records

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

6. Exclusive Use

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

7. Patents, Copyrights, and Intellectual Property

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

8. Confidential or Proprietary Information and Documentation

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

9. Loss of Data

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

10. Indemnification

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

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

11. Non-Hiring of Employees

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

12. Disputes

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

13. Maryland Law

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

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, sexual orientation, sexual identity, 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.

15. Contingent Fee Prohibition

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

16. Non-availability of Funding

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

17. Termination for Cause

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

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

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

25. Right to Audit

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

26. Compliance with Laws

The Contractor hereby represents and warrants that:

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

27. Cost and Price Certification

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

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

28. Subcontracting; Assignment

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

29. Liability

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

30. Parent Company Guarantee (If Applicable) (Note that if there is a guarantor, the guarantor should be named as party and signatory to the Contract and should be in good standing with SDAT)

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

31. Commercial Nondiscrimination

- 31.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, 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.

31.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

31.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

32. Prompt Pay Requirements

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

- a. Not process further payments to the contractor until payment to the subcontractor is verified;
- b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
- c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- e. Take other or further actions as appropriate to resolve the withheld payment.

32.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:

- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
- b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

32.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:

- a. Affect the rights of the contracting parties under any other provision of law;
- b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
- c. Result in liability against or prejudice the rights of the Department.

32.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.

32.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

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

33. Liquidated Damages

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

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

- 33.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$ 31.65 per day until the monthly report is submitted as required.
- 33.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$112.10 per MBE subcontractor.
- 33.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 33.1.4 Failure to meet the Contractor’s total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 33.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$100.00 per day until the undisputed amount due to the subcontractor is paid.

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

34. Living Wage

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

35. Contract Manager and Procurement Officer

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

36. 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
 45 Calvert Street, Room 143
 Annapolis, MD 21401
 Email:joy.epstein@maryland.gov
 Phone: 410-260-7570

If to the Contractor: _____

37. Compliance with Federal HIPAA and State Confidentiality Law

- 37.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:
- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
 - (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
 - (c) Otherwise providing good information management practices regarding all health information and medical records.
- 37.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected Bidder/Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.
- 37.3 Protected Health Information as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

38. Miscellaneous

- 38.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this contract and continue in full force and effect.
- 38.2 If any term contained in this contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

CONTRACTOR

STATE OF MARYLAND
DEPARTMENT OF BUDGET AND
MANAGEMENT

By:

By: David R. Brinkley, Secretary

Date

Or designee: _____

Witness/Attest

Date

Witness

Approved for form and legal sufficiency
this ____ day of _____, 2016.

Assistant Attorney General

APPROVED BY BPW: _____
(Date)

(BPW Item #)

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

(a) §7201, Attempt to Evade or Defeat Tax;

(b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,

(c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,

(d) §7205, Fraud and False Statements, or

(e) §7207, Fraudulent Returns, Statements, or Other Documents;

(10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

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

(ii) Not overturned on judicial review;

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

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

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

(ii) Not overturned on judicial review;

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

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

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

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and

subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

I FURTHER AFFIRM THAT:

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

M. I FURTHER AFFIRM THAT:

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

N. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number: _____ Address: _____

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

Name and Department ID Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
 - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 2016, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS

MBE ATTACHMENT D-1A (COMPLETE ONE FORM FOR EACH SERVICE CATEGORY) MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE - INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

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

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

- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime’s ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime’s ability to self-perform up to 50% of the overall goal (including up to 100% of any sub goal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B** Waiver Guidance, the MBE Prime’s ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining sub goal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA’s website (www.goma.maryland.gov) for the MBE Prime Regulations Q&A for illustrative examples.

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

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

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

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

SUBGOALS (IF APPLICABLE)

TOTAL AFRICAN AMERICAN MBE PARTICIPATION: _____ %
TOTAL ASIAN AMERICAN MBE PARTICIPATION: _____ %
TOTAL HISPANIC AMERICAN MBE PARTICIPATION: _____ %
TOTAL WOMEN-OWNED MBE PARTICIPATION: _____ %

OVERALL GOAL

TOTAL MBE PARTICIPATION (INCLUDE ALL CATEGORIES): _____ %

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

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

In connection with the Bid/Proposal submitted in response to Solicitation No. F10B6400003 I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE)

I acknowledge and intend to meet IN FULL the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent for Service Category _____.

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

OR

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

2. Additional MBE Documentation

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

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

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

3. Information Provided to MBE firms

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

4. MBE Participation Schedule

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

Prime Contractor	Project Description	PROJECT/CONTRACT NUMBER
		F10B6400003

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

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

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

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

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

(Continue on separate page if needed)

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

 Bidder/Offeror Name
 (PLEASE PRINT OR TYPE)

 Signature of Authorized Representative

 Address

 Printed Name and Title

 City, State and Zip Code

 Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

MBE ATTACHMENT D-1B
WAIVER GUIDANCE SERVICE CATEGORY-#

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

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

I. Definitions

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

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

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

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

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

II. Types of Actions Agency will Consider

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

A. Identify Bid/Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements

(a) Certain procurements will include a list of Bid/Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Bidder/Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

2. Identified Items of Work by Bidders/Offerors

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

(b) Where appropriate, Bidders/Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a Prime contractor to perform the work of a contract with its own organization does not relieve the Bidder/Offeror of the responsibility to make Good Faith Efforts.

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

(a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Bidder/Offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Bidders/offers may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Bidders/Offerors

(a) When the procurement does not include a list of Identified MBE Firms, Bidders/Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.

(b) Any MBE Firms identified as available by the Bidder/Offeror should be certified to perform the Identified Items of Work.

C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Bidder/Offeror should:

(a) provide the written solicitation at least 10 days prior to Bid/Proposal opening to allow sufficient time for the MBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Bidder/Offeror provides written solicitations.

3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Bidder/Offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; or

(b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate With Interested MBE Firms

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

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

(a) the names, addresses, and telephone numbers of MBE Firms that were considered;

(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

2. A Bidder/Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Bidder's/Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

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

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

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

(d) the number of MBE firms that the Bidder/Offeror solicited for that portion of the work;

(e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and

(f) the number of quotes received by the Bidder/Offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The Bidder/Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.

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

7. A Bidder/Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Bidder/Offeror concludes is not acceptable, the Bidder/Offeror must provide a written detailed statement listing the reasons for this conclusion. The Bidder/Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the Bidder/Offeror:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the Bidder/Offeror; and

2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

III. Other Considerations

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

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

IV. Documenting Good Faith Efforts

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

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

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

B. Outreach/Solicitation/Negotiation

1. The record of the Bidder's/Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). (**Complete Outreach Efforts Compliance Statement – Attachment D-2**).

2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) (**Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations**); and

(b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

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

1. For each MBE Firm that the Bidder/Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Bidder's/Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

2. For each certified MBE Firm that the Bidder/Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Bidder's/Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Bidder's/Offeror's Good Faith Efforts.

2. Submit any other documentation the Bidder/Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

MBE ATTACHMENT D-1B - Exhibit A
MBE Subcontractor Unavailability Certificate Service Category-#

1. It is hereby certified that the firm of _____
 _____ (Name of Minority firm)
 located at _____
 _____ (Number) _____ (Street)

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

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

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

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

_____	_____
MDOT CERTIFICATION #	TELEPHONE #

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

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

_____	_____	_____
Signature of Prime Contractor	Title	Date

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

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER
		F10B6400003

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

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

 Company Name

 Signature of Representative

 Address

 Printed Name and Title

 City, State and Zip Code

 Date

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

**PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO
MBE FIRMS SERVICE CATEGORY-# _____**

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER
		F10B6400003

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

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

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST SERVICE CATEGORY-# _____

PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS SERVICE

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER
		F10B6400003

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

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

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST SERVICE CATEGORY-# _____

PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE __ OF __

Prime Contractor	Project Description	SOLICITATION NUMBER
		F10B6400003

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

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

Please check if Additional Sheets are attached.

MBE ATTACHMENT D-2
OUTREACH EFFORTS COMPLIANCE STATEMENT SERVICE CATEGORY-#

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

In conjunction with the Bid/Proposal submitted in response to Solicitation No. F10B6400003, I state the following:

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

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

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

4. **Please Check One:**

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

5. **Please Check One:**

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MBE ATTACHMENT D-3A
MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION SERVICE
CATEGORY-#

PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

Provided that _____ (Prime Contractor's Name) is awarded the State Contract in conjunction with Solicitation No. F10B6400003, such Prime Contractor intends to enter into a subcontract with _____ (Subcontractor's Name) committing to participation by the MBE firm _____ (MBE Name) with MDOT Certification Number _____ which will receive at least \$ _____ which equals to ___% of the Total Contract Amount for performing the following products/services for the Contract:

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

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

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

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

MBE ATTACHMENT D-3B
MBE PRIME - PROJECT PARTICIPATION CERTIFICATION SERVICE
CATEGORY-#

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

Provided that _____ (Prime Contractor's Name) with Certification Number _____ is awarded the State contract in conjunction with Solicitation No. F10B6400003, such MBE Prime Contractor intends to perform with its own forces at least \$_____ which equals to ___% of the Total Contract Amount for performing the following products/services for the Contract:

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

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

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

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

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
List all payments made to MBE subcontractor named above during this reporting period: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice#</u></th> <th style="width: 50%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$		_____	List dates and amounts of any outstanding invoices: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 50%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$		_____
	<u>Invoice#</u>	<u>Amount</u>																																					
1.																																							
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1.																																							
2.																																							
3.																																							
4.																																							
Total Dollars Unpaid: \$		_____																																					

- If more than one MBE subcontractor is used for this contract, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Manager: _____ Contracting Unit and Address: _____ _____ mail to: _____

Signature: _____ **Date:** _____

(Required)

MBE ATTACHMENT D-4B
Minority Business Enterprise Participation
MBE Prime Contractor Report Service Category-#

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

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

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

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

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____ mail to:

Signature: _____ **Date:** _____
 (Required)

MBE ATTACHMENT D-5
Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report Service Category-#

Report#: _____ Reporting Period (Month/Year): _____ Report is due by the ___ of the month following the month the services were performed.	Contract #: F10B6400003 Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
-----------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

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

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____ mail to: _____

Signature: _____ **Date:** _____
 (Required)

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Solicitation Number F10B6400003
Audit Services for State Employee and Retiree Health and Welfare Benefits Program

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

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

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP Section 1.7 “Pre-Proposal Conference”):

Signature

Title

Name of Firm (please print)

ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS

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

The Financial Proposal Form is used to calculate the Offeror's TOTAL PROPOSAL PRICE for each Service Category. Follow these instructions carefully when completing your Financial Proposal Form:

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

ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS Cont'd.

Specific Instructions:

- A) At top of price sheet, fill in the Service Category which corresponds to the Price Proposal for each proposal submitted.

- B) In Section 1:
 - Record for each performance Milestone for each specified audit cycle the proposed fixed price associated with successful completion of the Milestone;
 - Record for each specified audit cycle the total proposed fixed prices for each of the Milestones 1 through 5 for services as outlined in Attachment F in rows A through E;
 - Add the Proposed Cycle Total prices for each of the five audit cycles A through E and enter a total on line F for the Total Price for Audit Service; and
 - The fixed price associated with successful completion of the first three Milestones may not exceed 60% of the total cost of completion of the audit cycle.

- C) In Section 2:
 - Record for each labor classification and each Audit Cycle enter the proposed fully-loaded hourly rate in columns A, B, and C.

ATTACHMENT F – FINANCIAL PROPOSAL FORM SERVICE CATEGORY _____

Proposed Annual Audit Cycle Prices, Auditing Services						
Auditing Services for the following Milestones						
	(1) Planning & Preparation for On-Site Reviews	(2) On-Site Reviews	(3) Draft Audit Report	(4) Audit Discussions/ Meetings	(5) Final Report	Proposed Audit Cycle Total Price= (1)+(2)+(3)+(4)+(5)
A. Audit Cycle 1 January 1, 2017 to December 31, 2017	\$	\$	\$	\$	\$	\$
B. Audit Cycle 2 January 1, 2018 to December 31, 2018	\$	\$	\$	\$	\$	\$
C. Audit Cycle 3 January 1, 2019 to December 31, 2019	\$	\$	\$	\$	\$	\$
D. Audit cycle 4 January 1, 2020 to December 31, 2020	\$	\$	\$	\$	\$	\$
E. Audit Cycle 5 January 1, 2021 to December 31, 2021	\$	\$	\$	\$	\$	\$
Total Proposal Price (Audit Cycle A+B+C+D+E) =						\$

ATTACHMENT F – FINANCIAL PROPOSAL FORM SERVICE CATEGORY Cont’d.

Optional Audit Services*			
Fully Loaded Labor Rate for each Labor Category			
	Principal	Senior Consultant	Junior Consultant
Audit Cycle 1	\$	\$	\$
Audit Cycle 2	\$	\$	\$
Audit Cycle 3	\$	\$	\$
Audit Cycle 4	\$	\$	\$
Audit Cycle 5	\$	\$	\$
*Optional Services may or may not be required during the contract term.			

Submitted By:

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

Offeror Name: _____

Offeror Address: _____

Location(s) from which services will be performed (City/State): _____

FEIN: _____ eMM # _____

Offeror Contact Information: Telephone: (____) ____ - _____ Fax: (____) ____ - _____

E-mail: _____

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

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

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

ATTACHMENT G-1

Maryland Living Wage Requirements Affidavit of Agreement

(submit with Bid/Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

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

Attachment H-State Enrollment Data Plan-Revised

ATTACHMENT H - STATE ENROLLMENT DATA BY PLAN

CY 2016 ENROLLMENT BY PLAN (preliminary as of 01/15/16)	Total <u>Enrollees</u>
<u>Carefirst BCBS – EPO</u>	<u>48,269</u> <u>47859</u>
<u>EPO (SLEOLA)</u>	<u>410</u>
<u>Carefirst BCBS – PPO</u>	<u>48,068</u> <u>47243</u>
<u>Carefirst BCBS- PPO (SLELOA)</u>	<u>825</u>
<u>Carefirst BCBS- POS (SLEOLA)</u>	<u>274</u>
<u>Carefirst BCBS -POS</u>	<u>274</u>
<u>UHC - EPO</u>	<u>12,225</u>
<u>UHC - PPO</u>	<u>8,634</u>
<u>Kaiser - IHM</u>	<u>2,468</u>
<u>UCCI - DPPO</u>	<u>93,889</u>
<u>ESI - Prescription Drugs</u>	<u>113,820</u>
<u>CYC - Health Care Spending Account</u>	<u>11,958</u>
<u>CYC - Dependent Care Spending Account</u>	<u>1,900</u>

ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

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

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

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

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

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

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

Date: _____ By: _____
(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

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

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Audit Services for State Employee and Retiree Health and Welfare Benefits Program Solicitation # F10B6400003 and

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

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

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, Confidential Information means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, State Govt. §10-1301) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or who will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former Personnel.

Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

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

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

Contractor: _____

Department of Budget and Management

By: _____ (SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and _____ (“Contractor”) dated _____, 2016 (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the _____ Department of Budget and Management and _____ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

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

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

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

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

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

DEFINITIONS.

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

3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.

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

DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;

- D. 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
- A. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
 - B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
 - C. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and
 - D. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
 - iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
 - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
 - E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;

- F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for Audit Services for State Employee and Retiree Benefit Plans Solicitation # F10B6400003 and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
 - 1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still

maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

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

V. CONSIDERATION

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

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

VII. MODIFICATION; AMENDMENT

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

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

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

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or

Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS

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

Name: Sherreon Washington
Address: 301 West Preston Street Room 510
Baltimore, MD 21201
Email: Sherreon.Washington1@maryland.gov
Phone: 410-767-8661

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

Address: _____

Attention: _____
Phone: _____

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

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

COVERED ENTITY:

By: _____

Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE:

By: _____

Name: _____

Title: _____

Date: _____

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

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

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

Description of the breach: _____

Date of the breach: _____ Date of discovery of the breach: _____

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

Number of individuals affected by the breach: _____

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

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

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

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

ATTACHMENT L – AUDIT PERIOD/AUDIT CYCLE

Audit Period	1/1/2016 12/31/2016	1/1/2017 12/31/2017	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020
Audit Cycle	1/01/2017 12/31/2017	1/1/2018 12/31/2018	1/1/2019 12/31/2019	1/1/2020 12/31/2020	1/1/2021 12/31/2021
1. Medical Plans					
a) PPO -					
Operational/Claims/PGs/Contract/Clinical/Internal Audit Reviews					
* CareFirst BCBS (two plans)	x	x	x	x	x
* United Healthcare Options	x	x	x	x	x
b) EPO -					
Operational/Claims/PGs/Contract/Clinical/Internal Audit Review					
* CareFirst BCBS (two plans)	x	x	x	x	x
* United Healthcare Select	x	x	x	x	x
c) IHM -					
Operational/PGs/Contract/Clinical/Internal Audit Review					
* Kaiser Permanente	x	x	x	x	x
d) POS –					
Operational/PGs/Contract/Clinical/Internal Audit Review					
* CareFirst	x	x	x	x	x
2. Dental Benefit Plans					
a) DPPO –					
Operational/Claims/PGs/Contract/Clinical, RFP Section 3.3.8 A 3/Internal Audit Review, RFP Section 3.3.9 A 1-5.					
* United Concordia	x	x	x	x	x
b) DHMO - Operational/PGs/Contract/Internal Audit Review, RFP Section 3.3.9 A 1-4.					
* Delta Dental	x	x	x	x	x
3. Prescription Drug Plan					
ESI until 12/31/2017, then subsequent Contractor afterwards					
*Audits of Manufacturers' Agreements, Payments and Rebates/Operational/Claims/PGs/Contract/Clinical/Internal Audit Review/ EGWP for Audit					
	x	x	x	x	x
4. Flexible Spending Accts					
CYC until 12/31/2016, then subsequent Contractor afterwards					
* Operational/Claims/PGs/Contract/Internal Audit Review	x	x	x	x	x

ATTACHMENT M-1
VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule

(submit with Bid/Proposal for each Service Category)

This document **MUST BE** included with the Bid/Proposal for each Service Category. If the Bidder/Offeror fails to complete and submit this form with the Bid/Proposal, the procurement officer may determine that the Bid is non-responsive or that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. F10B6400003, I affirm the following:

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

OR

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

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

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

ATTACHMENTS M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

ATTACHMENT M-1
VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule

(submit with Bid/Proposal for each Service Category #_____)

This document **MUST BE** included with the Bid/Proposal for each Service Category. If the Bidder/Offeror fails to complete and submit this form with the Bid/Proposal, the procurement officer may determine that the Bid is non-responsive or that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. F10B6400003, I affirm the following:

2. I acknowledge and intend to meet the overall verified VSBE participation goal of 1%.

Therefore, I will not be seeking a waiver.

OR

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

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

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

ATTACHMENT M-1
VSBE Prime/Subcontractor Participation Schedule

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

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

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

Continue on a separate page, if needed.

SUMMARY

TOTAL VSBE Participation: _____ %

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____
Title: _____
Date: _____

ATTACHMENT M-2
VSBE Subcontractor Participation Statement

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

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

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

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

PRIME CONTRACTOR SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____
Name, Title

By: _____
Name, Title

Date: _____

Date: _____

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

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

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

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
VSBE Prime Contractor Services Provided (if applicable):			
Subcontractor Name:		Contact Person:	
Phone:	Fax:		
VSBE Subcontractor Services Provided (if applicable):			
List all payments made to VSBE subcontractor named above during this reporting period:		List dates and amounts of any outstanding invoices:	
<u>Invoice#</u>	<u>Amount</u>	<u>Invoice #</u>	<u>Amount</u>
1.		1.	
2.		2.	
3.		3.	
4.		4.	
Total Dollars Paid: \$ _____		Total Dollars Unpaid: \$ _____	

Note1: If more than one VSBE subcontractor is used for this contract, you must use separate M-3 forms for each subcontractor.
 Note2: Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ mail to: _____

Signature: _____ Date: _____ (Required)

This form must be completed monthly
by all VSBE subcontractors.

ATTACHMENT M-4
Veterans Small Business Enterprise Participation
Subcontractor Paid/Unpaid VSBE Invoice Report

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

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

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

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____ mail to: _____

Signature: _____ **Date:** _____
(Required)

ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

(submit with Bid/Proposal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. F10B6400003, the following disclosures are hereby made:

1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:

___ have plans

___ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subcontractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):

a. Location(s) services will be performed:

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

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

Date: _____

Bidder/Offeror Name: _____

By: _____

Name: _____

Title: _____

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

ATTACHMENT O – CURRENT and FUTURE BENEFITS CONTRACTS

Contractor Name, Description of Services	DBM Contact and phone number	Contract Starting Date	Contract Ending Date	Renewal Options
<p>1) FSA-This Contract provides for a Flexible Spending Account Plans – Health Care and Dependent Daycare Programs. ConnectYourCare, LLC TBD new Vendor to take effect 1/1/2017-12/31/2021</p>	<p>Sherreon Washington DBM//EBD (410) 767-8661</p>	<p align="center">12/21/2010</p>	<p align="center">12/31/2016</p>	<p align="center">None</p>
<p>2) Dental-These contracts provide for a Dental DHMO & Vendor Contractor for a DPPO Plan for State employees and retirees. Delta Dental DHMO United Concordia DPPO</p>	<p>Sherreon Washington DBM/EBD (410) 767-8661</p>	<p align="center">8/14/2014</p>	<p align="center">12/31/2019</p>	<p align="center">None</p>
<p>3) Medical-These contracts provide for a Third Party Administrator to oversee the Preferred Provider Organization (PPO) Plan administration & claims disbursement for State employees and retirees. CareFirst of Maryland, Inc. United Health Care Services, Inc.</p>	<p>Sherreon Washington DBM/EBD (410) 767-8661</p>	<p align="center">8/14/2014</p>	<p align="center">12/31/2020</p>	<p align="center">2 two yr. renewals</p>

ATTACHMENT O – CURRENT and FUTURE BENEFITS CONTRACTS cont'd.

Contractor Name, Description of Services	DBM Contact and phone number	Contract Starting Date	Contract Ending Date	Renewal Options
4) Medical- These contracts provide for a Third Party Administrator to oversee the Exclusive Provider Organization Benefits Plans (EPO) for State employees and retirees. CareFirst of Maryland, Inc. United Health Care Services, Inc.	Sherreon Washington DBM/EBD (410) 767-8661	8/14/2014	12/31/2020	2 two yr. renewals
5) Medical- This contract provides for a Contract to oversee the Integrated Health Model (IHM) Plan for State employees and retirees. Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.	Sherreon Washington DBM/EBD (410) 767-8661	8/14/2014	12/31/2020	None
6) Medical- This contract provides for a Vendor Contractor to oversee the SLEOLA health plans for PPO, EPO, and POS plans for State Law Enforcement Officers Labor Alliance employees and dependents. CareFirst of Maryland, Inc.	Sherreon Washington DBM/EBD (410) 767-8661	8/14/2012	12/31/2019	None

ATTACHMENT O – CURRENT and FUTURE BENEFITS CONTRACTS cont'd.

Contractor Name, Description of Services	DBM Contact and phone number	Contract Starting Date	Contract Ending Date	Renewal Options
7) PBM- This contract provides for a Third Party Administrator to oversee the Pharmacy Benefit Plan Management Services & Pharmacy Purchasing Pool Management. Express Scripts, Inc. Vendor TBD new contract will take effect 1/1/2018-12/31/2022	Sherreon Washington DBM/EBD (410) 767-8661	2/9/2012	6/30/2017	None

ATTACHMENT P- CERTIFICATION OF REVIEW OF CONTRACTS/RFP'S

1. The Offeror, _____, hereby acknowledges that: (a) it has been provided with access by means of the Department’s website (www.dbm.maryland.gov), to the request(s) for proposals that form the scope of the work of the underlying contracts that will be audited pursuant to RFP No. F10B6400003 Audit Services for State Employees and Retirees Benefits Program; and (b) in order to protect the confidential and proprietary information of the State’s contractors, access to the proposals submitted by the Department’s contractors that perform the services to be audited will only be provided to the Contractor awarded an audit contract.

2. The Offeror certifies that it reviewed to its satisfaction the following request(s) for proposals in the course of preparing its technical and financial proposals in response to RFP No. F10B6400003 Audit Services for State Employees Benefits Program: (check applicable Service Category);

_____ **Service Category No. 1: Medical Plans** Health Plan Administration and Services Request for Proposals F10B5400002 (8/14/2014-12/31/2020 w/2 two year renewal options for EPO and PPO); and Request for Proposals F10B4400011 for SLEOLA (8/14/2012-12/31/2019) for PPO, EPO, POS.

_____ **Service Category No. 2: Dental Plans** Request for Proposals F10B3400005 for Dental Benefits Program (8/14/2014-12/31/2019);

_____ **Service Category No. 3: Pharmacy Benefits** Request for Proposals F10B0400006 for Pharmacy Benefits Plan, Management Services and Pharmacy Purchasing Pool Management (7/1/2011-6/30/2017); and Request for Proposals Pharmacy Benefits Plan Management Services and Pharmacy Purchasing Pool Management F10B6400005R to be issued February timeframe.

_____ **Service Category No. 4: Flexible Spending Accounts** Request for Proposals F10B9200027 for FSA Administration (12/21/2010- 12/31/2016); and Request for Proposals F10B6400004 for Third Party Administrator for Flexible Spending Accounts -Healthcare and Dependent Daycare (1/1/2017-12/31/2021).

3. The undersigned represents and warrants that he/she has the authority to bind the Offeror to the provisions of this certification.

OFFEROR NAME: _____

By: _____ Title: _____ Date _____