



MARTIN O'MALLEY  
Governor

ANTHONY BROWN  
Lieutenant Governor

T. ELOISE FOSTER  
Secretary

DAVID C. ROMANS  
Deputy Secretary

**Amendment #1**  
**to**  
**Invitation for Bids (IFB)**  
**STATEWIDE DEBT COLLECTION SERVICES**  
**PROJECT NO. F10B9200003**  
**December 23, 2008**

Ladies and Gentlemen:

This Amendment is being issued to amend and clarify certain information contained in the above named IFB. All information contained herein is binding on all bidders who respond to this IFB. Specific parts of the IFB have been amended. The following revisions /deletions / additions are listed below; new language has been double underlined and marked in bold (ex. **new language**) and language deleted has been marked with a strikeout (ex. ~~language deleted~~).

1. Revise Key Information Summary Sheet on page iii, as follows:

**Closing Date and Time: ~~Monday, January 12, 2009~~ Thursday, January 22, 2009**  
**at 2:00 PM (Local Time)**

2. Revise Section 1.1.1 (Summary Statement) on page 1, as follows:

1.1.1 This Invitation for Bids (IFB) invites firms to submit bids to the Maryland Department of Budget and Management/Central Collection Unit (DBM/CCU), a principal department of the State of Maryland (State), substantiating in detail their qualifications and capabilities to perform collection services on primary assignments of delinquent debts owed to the State. The collection agency must operate within the 50 states and have at least one collection office located within the State of Maryland or within 100 miles of the CCU office located at 300 W. Preston Street in Baltimore, Maryland which will serve as the primary office for purposes of this contract. **The successful Bidder's collection office must be in place after approval of the award by the Board of Public Works and available immediately upon receipt of a Notice to Proceed.**

3. Revise Section 1.8 (Bids Due (Closing) Date) on page 4, as follows:

1.8 An unbound original and one (1) copy of the bid must be received by the Procurement Officer, at the address listed in Section 1.5A, no later than ~~Monday, January 12, 2009~~ **Thursday, January 22, 2009**, at 2:00 PM, Local Time, in order to be considered. An

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electronic version (on CD) of the Financial Proposal in MS Word or Excel format shall be enclosed with the unbound original Financial Proposal. Ensure that the CD is labeled with the IFB title, IFB project number, and Bidder name. Requests for extension of this date or time shall not be granted. Bidders mailing bids should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, bids received by the Procurement Officer after the closing date and time will not be considered. Bids delivered by email or facsimile shall not be considered.

Bids will be opened on ~~January 12, 2009~~ **January 22, 2009** at 2:30 PM, Local Time, in Room 164, 45 Calvert Street, Annapolis, Maryland in accordance with the provisions of COMAR 21.05.02.11B. Bids will be made available for public inspection at or within a reasonable time after bid opening. Any material claimed to be confidential or proprietary by the bidder must be clearly marked and shall be readily separable from the bid price form in order to facilitate public inspection of the non-confidential portion of the bid. The reason for each claim of confidentiality shall be included.

4. Revise Section 1.31 (Living Wage Requirements) on pages 8 and 9, as follows:

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

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$11.72 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total value are performed in the Tier 2 Area, a Bidder shall pay each covered employee at least \$8.81 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

~~The contract resulting from this solicitation has been determined to be a Tier 1 contract.~~

**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 must identify in their Bid the location(s) from which 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. This contract is determined to be a Tier 1 contract.

5. Revise Section 2.2 (Experience) on page 12, as follows:

2.2 Bidders must demonstrate that they have three (3) years minimum experience in the collection of debts similar to those described in ~~Part~~ Section 3.1.

6. Revise Section 3.12 (Invoicing and Payment) on page 17, as follows:

3.12 Except as specified in section 3.6, all payments on referred accounts are eligible for commission. The Contractor will be paid on the basis of the agreed percentage rate for all monies collected (whether principal, interest, or collection charges) on referred accounts. Any payments returned to CCU for insufficient funds (NSF, account closed, stopped payment, etc.), disputed by the account holder, etc. will be added back to the debtor's account(s) and will be reduced from a subsequent invoice as a credit as well as requiring that the commission be repaid to the State. This will be the sole consideration paid to the Contractor, and the State will not reimburse the Contractor, other than as part of this compensation, for the costs or expenses paid or incurred. Only one percentage rate can be submitted for the contract.

The CCU will pay invoices of the Contractor within thirty (30) days of receipt.

7. Revise Section 4.2.4 (Preparation/Submission of Bids) on page 18, as follows:

- 4.2.4 An unbound original, plus one (1) copy and an electronic version on CD (See Section 1.8) of the bid shall be submitted. The submission should include:
- a. Bid Form – Attachment F. Completed and signed by an individual who is authorized to bind the bidder to the services and prices contained in the bid.
  - b. Acknowledgement of the receipt of all addenda to the IFB, if any.
  - c. Bid/Proposal Affidavit – Attachment B
  - d. Minority Business Enterprise Forms – Attachments D-1 (Certified MBE Utilization and Fair Solicitation Affidavit) and D-2 (MBE Participation Schedule)
  - e. Minimum Qualifications Document – Attachment E
  - f. Living Wage Affidavit of Agreement – Attachment L

8. Remove Contract Section 29 (Liquidated Damages) on page 28, as follows:

~~29. Time is an essential element of the Contract and it is critical that the language interpretation services as specified in the RFP Section 2 be maintained in accordance with the terms and conditions provided in the RFP and herein and that the Contractor operates in an extremely reliable manner. In the event the Contractor fails to comply with such terms, the Contractor shall be liable for liquidated damages in the amount(s) and as provided for in the RFP.~~

9. Revise the Contract (Attachment A), as indicated on the attached pages.

10. Revise the Non-Disclosure Agreement (Attachment M), as indicated on the attached pages.

Date Issued: **December 23, 2008**

By: <signed>  
Andrea R. Lockett  
Procurement Officer

List of Attachments

1. Contract
2. Non-Disclosure Agreement

# ***ATTACHMENT A – CONTRACT***

## **STATEWIDE DEBT COLLECTION SERVICES**

THIS CONTRACT (the “Contract”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by and between \_\_\_\_\_ and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT, DIVISION OF PROCUREMENT POLICY AND ADMINISTRATION.

In consideration of the promises and the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **1. Definitions**

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

- 1.1 “Contract Manager” means the administrator designated by the Department. The Contract Manager is Ilene Carroll of the Department. The Department may change the Contract Manager at any time by written notice.
- 1.2 “Contractor” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.
- 1.3 “Department” means the Maryland Department of Budget and Management.
- 1.4 “Bid Form” means the Contractor’s Bid Form dated \_\_\_\_\_.
- 1.5 “Procurement Officer” means the officer designated by the Department. The Procurement Officer is Andrea R. Lockett of the Department. The Department may change the Procurement Officer at any time by written notice.
- 1.6 “IFB” means the Invitation for Bids for F10B9200003, and any amendments thereto issued in writing by the State.
- 1.7 “State” means the State of Maryland.

### **2. Scope of Work**

2.1 The Contractor shall provide the debt collection services as specified in the **IFB, Sections 1, 2 and 3**. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – Invitation for Bids - Project No. F10B9200003 dated December 5, 2008.  
Exhibit B – Contractor’s Bid - Project No. F10B9200003 dated \_\_\_\_\_

Exhibit C – State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_

Exhibit D – Bid/Proposal Affidavit, executed by the Contractor and dated \_\_\_\_\_

Exhibit E – Defalcation Bond, executed by the Contractor and dated \_\_\_\_\_

Exhibit F – Living Wage Affidavit, executed by the Contractor and dated \_\_\_\_\_

Exhibit G – Non-Disclosure Agreement, executed by the Contractor and dated \_\_\_\_\_

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

### **3. Time for Performance**

The Contract resulting from this IFB shall be for a period of five years beginning on May 1, 2009 and ending on April 30, 2014, unless terminated earlier as provided in this Contract. The Contractor shall provide services upon receipt of a Notice to Proceed from the Procurement Officer.

### **4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Exhibit B, Contractor's Bid Form. Except with the express written consent of the Procurement Officer, payment to the Contractor pursuant to this Contract shall not exceed \$1,500,000 (One Million, Five Hundred Thousand Dollars). Contractor shall notify the Contract Manager, in writing, at least 60 days before payments reach the specified amount. Any work performed by the Contractor in excess of the not-to-exceed amount without the prior written approval of the Procurement Officer is at the Contractor's risk of non-payment. 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.

4.2 The Contractor(s) shall invoice each individual requesting agency or non-State of Maryland government entity for receipt of payment. Payments from State of Maryland agencies or non-State of Maryland government entities to the Contractor shall be made no later than thirty (30) days after the requesting State agency or non-State of Maryland government entity's receipt of a proper invoice for services provided by the Contractor, acceptance by the requesting agency or non-State of Maryland government entity of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered shall include the Contractor's Federal Tax Identification Number which is \_\_\_\_\_. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or

withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Contractor's eMarylandMarketplace vendor ID number is \_\_\_\_\_.

## **5. Rights to Records**

5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

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

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. 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 prior written approval of the State.

## **7. Patents, Copyrights, 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 attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidentiality**

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

## **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, including but in no way limited to Contractor's failure to comply with the requirements of Section 9, above.

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

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

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



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

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

## **12. Disputes**

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

## **13. Maryland Law**

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

13.2 The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, 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 Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

## **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, 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 21.07.01.12 (A)(2).

#### **19. Delays and Extensions of Time**

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

#### **20. Suspension of Work**

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

## 21. Pre-Existing Regulations

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

## 22. Financial Disclosure

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

## 23. Political Contribution Disclosure

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

## 24. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract closeout and final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. The Contractor shall, upon request by the Department, surrender all and every copy of documents needed by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances. **At the end of three years, the 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. In the event that information is in electronic format that can not be removed, erased or otherwise deleted, that such information will continue to be protected under the confidentiality requirements contained in this Agreement.**

## 25. Representations and Warranties

The Contractor hereby represents and warrants that:

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

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

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

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

## **26. Cost and Price Certification**

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

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

## **27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the express prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the express prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 11 and 13 through 26 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

## **28. Parent Company Guarantee (If Applicable)**

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

## **29. Administrative**

29.1 **Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination. The Procurement Officer is Andrea R. Lockett of the Department.

29.2 **Contract Manager.** The Contract Manager is Ilene Carroll of the Department.

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

If to the State: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

**30. Commercial Nondiscrimination**

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

## **31. Prompt Pay Requirements**

31.1. If a contractor withholds payment of an undisputed amount to its subcontractor, the Agency, at its option and in its sole discretion, may take one or more of the following actions:

31.1.1 Not process further payments to the contractor until payment to the subcontractor is verified;

31.1.2 Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

31.1.3 Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;

31.1.4 Place a payment for an undisputed amount in an interest-bearing escrow account; or

31.1.5 Take other or further actions as appropriate to resolve the withheld payment.

31.2. An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3. An act, failure to act, or decision of a procurement officer or a representative of the Agency, concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:

31.3.1 Affect the rights of the contracting parties under any other provision of law;

31.3.2 Be used as evidence on the merits of a dispute between the Agency and the contractor in any other proceeding; or

31.3.3 Result in liability against or prejudice the rights of the Agency.

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

31.5. To ensure compliance with certified MBE subcontract participation goals, the Agency may, consistent with COMAR 21.11.03.13, take the following measures:

31.5.1 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.

31.5.2 This verification may include, as appropriate:

31.5.2.1 Inspecting any relevant records of the contractor;

31.5.2.2 Inspecting the jobsite; and

31.5.2.3 Interviewing subcontractors and workers.

31.5.2.4 Verification shall include a review of:

31.5.2.4.1 The contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and

31.5.2.4.2 The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

31.5.3 If the Agency determines that a contractor is in noncompliance with certified MBE participation goals, then the Agency will notify the contractor in writing of its findings, and will require the contractor to take appropriate corrective action.

31.5.3.1 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.

31.5.4 If the Agency determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Agency requires, then the Agency may:

31.5.4.1 Terminate the contract;

31.5.4.2 Refer the matter to the Office of the Attorney General for appropriate action; or

31.5.4.3 Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

31.5.5 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.

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

**CONTRACTOR**

By: \_\_\_\_\_ (SEAL)

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

Witness/Attest: \_\_\_\_\_

**STATE OF MARYLAND**

By: DEPARTMENT OF BUDGET AND MANAGEMENT

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

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

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

Approved for form and legal  
sufficiency this \_\_\_\_\_ day  
of \_\_\_\_\_, 200\_\_.

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

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



## ***ATTACHMENT M – NON-DISCLOSURE AGREEMENT***

**THIS NON-DISCLOSURE AGREEMENT** (“Agreement”) is made as of this \_\_\_ day of \_\_\_\_\_, 2009, by and between the State of Maryland (“the State”), acting by and through its Department of Budget and Management (the “Department”) and \_\_\_\_\_ (“Contractor”).

### **RECITALS**

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) for Statewide Debt Collection Services IFB No. F10B9200003 dated December 5, 2008, (the “IFB”); and

**WHEREAS**, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State to provide the Contractor and the Contractor’s employees and agents (collectively the “Contractor’s Personnel”) with access to certain confidential information regarding the personal information of the individual requiring debt collection, including but not limited to their name, home address and social security number (the “Confidential Information”).

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

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names 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 ~~RFP~~ **IFB** or who will otherwise have a role in performing any aspect of the ~~RFP~~ **IFB**, the Contractor shall first obtain the written consent of the State to any such dissemination. **Subcontractors (including those used to fulfill the Minority Business Enterprises goal) who perform debt collection services are inclusive of the non-employee agents required to execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor.** The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. **In the event the Contractor is served with a subpoena or court order requiring disclosure, the Contractor shall first obtain the State’s prior written consent to disclose the Confidential Information.**

5. 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.
6. 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).
7. ~~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.~~
8. 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.
9. 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/or 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/or costs.
10. ~~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 and the Contractor shall provide originals of such executed Agreements to the State.~~
11. 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; and
  - f. The Recitals are not merely prefatory but are an integral part hereof.

**Contractor/ Contractor's Personnel:**

By: \_\_\_\_\_(SEAL)

Printed Name and Title: \_\_\_\_\_

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

**Maryland Department of Budget & Management:**

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

Printed Name and Title \_\_\_\_\_

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

**EXHIBIT A**

**CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO  
THE CONFIDENTIAL INFORMATION**

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

SUBMIT AS REQUIRED IN SECTION 1.36 OF THE IFB