# RFP Template Version 2.0 Dated May 8, 2018

Dear RFP Procurement Officers,

This document contains an RFP template to aid in producing a complete solicitation. In producing a solicitation, all contributors should note following information:

1. Download the most recent template version on the State website before starting any new RFP draft: (http://procurement.maryland.gov/procurement-staff/).
2. Format is important. Auto-numbering and other formatting in the document is achieved through use of Word "Styles." **Please do not manually number any requirements.** See more styles-related instructions on page 1 (or perform a find for Word Styles instructions). Note that ALL requirements are to be numbered (no "simple bullets" or plain paragraphs).
3. Data entry and tailoring instructions are flagged throughout the document using guillemets (<< and >>). Where the text between the guillemets is one word such as <<solicitationName>>, perform a Word find and replace so that every instance is replaced throughout the document. See the *Basic RFP Tailoring* table below for more guidance. Tip: Perform a find on guillemets to find any remaining tailoring not yet completed. A find on double brackets "[[" and "]]" will locate all template instructions, which will help in ensuring all instructions have been addressed and deleted before publication.
4. What's in this version of the RFP?
    a. Updated language for security, SOC 2 Type 2, invoicing requirements among others;
    b. Updated tailoring instructions throughout the document;
    c. Changes in response to COMAR updates; and
    d. Streamlined the contract (Attachment M) by moving most IT-specific content into the RFP. (Important: Do not drop the new Attachment M into an RFP using a prior RFP template.)

| **Basic RFP Tailoring** | | |
|---|---|---|
| Perform a find and replace on the following text to begin customizing this RFP. Be sure to select "Match Case" in the Word Find/Replace dialog box (Home tab, select Replace button, click More, check Match Case). Remove this *Basic RFP Tailoring* table prior to release.<br>Note: Don't change the default fields for any information you do not yet know (Keep the appropriate line from this table until the substitution is made.).<br>Tip: Delete an instruction (found in red text) once you've performed the action or associated tailoring. The remaining instructions will act as a reminder to complete the task. | | |
| To insert the correct value of: | Find Text<br>Type exactly as typed below in the find/replace dialog, including brackets << >> where indicated, with "Match Case" selected. | Replace with Text<br>Do NOT include brackets in the "Replace with:" field. |
| Full name of the department or agency issuing the RFP | <<issuingAgencyName>> | Agency name |
| Acronym of the department or agency issuing the RFP | <<ISSUINGAGENCYACRONYM>> | Agency acronym |

| | | |
|---|---|---|
| Correct term, such as "Department" or "Agency" used throughout the boilerplate text | <<typeofAgency>> | Identifying term (e.g., Department, Agency, Administration, College) |
| Solicitation Title | <<solicitationTitle>><br>and again for all caps<br><<SOLICITATIONTITLE>> | Title |
| Solicitation Number | <<solicitationNumber>><br>and again for all caps<br><<SOLICITATIONNUMBER>> | Solicitation number |
| Procurement Officer | <<procurementOfficerName>> | Procurement Officer name |
| Contract Monitor | <<contractMonitorName>> | Contract Monitor name |
| As you progress through the template, perform a find/replace on other values flagged with << to change all similar values throughout the document. | | |

# STATE OF MARYLAND

# <<ISSUINGAGENCYNAME>> (<<ISSUINGAGENCYACRONYM>>)

# REQUEST FOR PROPOSALS (RFP)

# <<SOLICITATIONTITLE>>

# RFP NUMBER <<SOLICITATIONNUMBER>>

# ISSUE DATE: <<ISSUEDATE>>

[[If the RFP is designated as a Small Business Reserve Procurement, include the following notice:]]

## NOTICE TO OFFERORS

## SMALL BUSINESS RESERVE PROCUREMENT

This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501 —14-505, Annotated Code of Maryland, and that are certified by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) Small Business Reserve Program are eligible for award of a contract.

[[Required language:]]

## NOTICE

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace (eMM) https://emaryland.buyspeed.com/bso/ should register on eMM. See **Section 4.2**.

## MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO RESPOND TO THIS SOLICITATION.

## VENDOR FEEDBACK FORM

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

**Title: <<solicitationTitle>>**
**Solicitation No: <<solicitationNumber>>**

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 is simply too complicated. (Explain in REMARKS section)
   - ☐ We cannot be competitive. (Explain in REMARKS section)
   - ☐ Time allotted for completion of the Proposal is insufficient
   - ☐ Start-up time is insufficient
   - ☐ Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
   - ☐ Proposal requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
   - ☐ MBE or VSBE requirements (Explain in REMARKS section)
   - ☐ Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
   - ☐ Payment schedule too slow
   - ☐ Other: _____

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

# <<ISSUINGAGENCYNAME>> (<<ISSUINGAGENCYACRONYM>>)

# KEY INFORMATION SUMMARY SHEET

| | |
|---|---|
| **Request for Proposals** | <<Add as the first word the type of Contract: one of the following: Services, IT, Construction, Maintenance, A&W>> - <<solicitationTitle>> |
| **Solicitation Number:** | <<solicitationNumber>> |
| **RFP Issue Date:** | <<issueDate>> |
| **RFP Issuing Office:** | <<issuingAgencyName>> (<<ISSUINGAGENCYACRONYM>> or the "<<typeofAgency>>") |
| **Procurement Officer:**<br>**e-mail:**<br>**Office Phone:** | <<procurementOfficerName>><br><<procurementOfficerAddress>><br><<procurementOfficerEmail>><br><<procurementOfficerPhoneNumber>> |
| **Proposals are to be sent to:** | [[Use only one of the following three options and delete the other two.]]<br><<issuingAgencyLocation>><br>Attention: <<procurementOfficerName>><br>[[OR]]<br><<procurementOfficerEmail>><br>[[OR]]<br><<submitViaeMM>> |
| **Pre-Proposal Conference:** | <<preProposalDateAndTime>> Local Time<br><<preProposalLocation>><br>See **Attachment A** for directions and instructions. |
| **Questions Due Date and Time** | <<responseDueDateAndTime>> Local Time |
| **Proposal Due (Closing) Date and Time:** | <<responseDueDateAndTime>> Local Time<br>Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see **page iv**). |
| **MBE Subcontracting Goal:** | <<mbeGoal>>%<br><<with no subgoals.>><br>[[OR]]<br>with the following subgoals:<br><<mbeAfricanAmericanownedSubgoal>>% for African-American MBEs, |

| | |
|---|---|
| | <<mbeAsianAmericanSubgoal>>% for Asian-American MBEs,<br><<mbeHispanicAmericanownedSubgoal>>% for Hispanic-American MBEs, and<br><<mbeWomenownedSubgoal>>% for Woman-Owned MBEs. |
| **VSBE Subcontracting Goal:** | <<vsbeGoal>>% |
| **Contract Type:** | <<contractType>><br>[[E.g., firm fixed price, fixed price with cost adjustment, labor hour, indefinite quantity with fixed unit prices. Indicate if a combination of more than one type, e.g. fixed price with cost adjustment, time & materials, Indefinite Quantity with Firm Fixed Prices with Work Orders of Time & Materials and Fixed Price.]] |
| **Contract Duration:** | <<basePeriodofPerformance>> base period with <<optionPeriods>> option periods<br>[[Enter contract duration including startup period, approximate NTP date and any option periods. Delete reference to option periods if no options are planned. Example: Five (5) year base period with two (2) one-year option periods.]] |
| **Primary Place of Performance:** | <<primaryPlaceofPerformance>><br>[[Agency or building name , full street address, or as proposed by Offeror]] |
| **SBR Designation:** | <<isAnSBR>>[[Yes or No]] |
| **Federal Funding:** | <<federalFunding>>[[Yes or No]] |

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**Appendix <<performanceBondAppendixNumber>>. Performance Bond.....**Error! Bookmark not defined.

**Appendix <<paymentBondAppendixNumber>>. Payment Bond.....**Error! Bookmark not defined.

**Appendix <<proposalBidBondAppendixNumber>>. Proposal Bond.....**Error! Bookmark not defined.

# 1 Minimum Qualifications

[[Word "Styles" Instructions

This document contains some standard Word "Styles" to make formatting easier. Paste the text from other documents with NO formatting and then apply the styles. Take advantage of the Word feature "format painter" to mimic formats already in this RFP to pasted text. Use the following "Styles" to achieve the formatting indicated below:

Plain paragraph text: MD Text 0, and if indenting needed MD Text #Indent 1, MD Text #Indent 2, MD Text #Indent 3;

X.X Level heading: Heading 2;

X.X.X Level heading (when it's a heading label only): Heading 3;

x.x.x Numbering when it's a requirement: MD Text 1;

A., B., C., List: MD ABC; and

Basic paragraph text: MD Text 0.

Remember to use numbers for all list items instead of bullets. Use the Increase Indent / Decrease Indent buttons on the Home tab to generate the next level, such as 1), or the shortcut: ALT+SHIFT+left arrow or ALT+SHIFT+right arrow.]]

## 1.1 Offeror Minimum Qualifications

[[If there are no Offeror Minimum Qualifications for this solicitation, enter only the following sentence for this section and delete the rest:]]

There are no Offeror Minimum Qualifications for this procurement.

[[If there are Offeror Minimum Qualifications for this solicitation, enter the following language as applicable for this section and number each Minimum Qualification.]]

To be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that, within the last seven (7) years, the following Minimum Qualifications have been met:

1.1.1 The Offeror shall have . . .[[e.g., three (3) years of experience providing…]].

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal . . . [[e.g., one or more references from the past five years that collectively able to attest to the Offeror's required years of experience in providing . . ]].

1.1.2 The Offeror shall be certified . . .[[e.g., by the Maryland Insurance Administration as a …. ]].

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal . . .[[e.g., a current certificate issued by the Maryland Insurance Administration evidencing the Offeror's certification as a . . .]].

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

# 2 Contractor Requirements: Scope of Work

## 2.1 Summary Statement

2.1.1 The <<issuingAgencyName>> (<<ISSUINGAGENCYACRONYM>> or the "<<typeofAgency>>") is issuing this Request for Proposals (RFP) in order to <<[[Enter a brief description of the services to be performed or goods to be furnished.]]>>.

2.1.2 It is the State's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror and the State.

2.1.3 The <<typeofAgency>> intends to make <<a single award>>[[Tailor according to the RFP. Replace single award with "up to X awards" if there is the possibility for multiple awards, with "X" being the maximum number of awards. If more than one award is possible based on different Service Categories/Functional Areas or Regions/Counties, state so here.]] as a result of this RFP. See RFP **Section 4.9 Award Basis** for more Contract award information.

2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

[[For a COTS or SaaS solution consider including and tailoring, or remove the following language:]]

2.1.5 The purpose of this solicitation is to procure a state-of-the-art commercially available COTS application to <<[[Briefly describe the business need and/or required functionality of the software application.]]>>.

2.1.6 The State does not wish to procure a software application still under development. The COTS software utilized in the solution shall be operational (i.e., not under development) and generally available by the due date of the Proposal.

2.1.7 [[For DoIT-issued contracts only. All other agencies remove this paragraph.]] The Contract applies exclusively to all entities to which Subtitle 3 of Title 3A of the State Finance and Procurement Article is applicable pursuant to Section 3A-302 of the State Finance and Procurement Article.

2.1.8 A Contract award does not ensure a Contractor will receive all or any State business under the Contract.

[[NOTE: For procurements with a contract type of indefinite quantity with firm fixed unit prices or indefinite quantify with fixed unit prices subject to adjustment, cost reimbursement, or a combination of indefinite quantity and cost reimbursement, the <<typeofAgency>> may choose to allow non-State of Maryland government entities or organizations to utilize the Contract. In such a case, include the following or similar language of Section below. Please consult with your Assistant Attorney General regarding this Section and the exact wording of the language, especially for contracts with two or more contract type components when "fixed price" is one of the components.]]

2.1.9 Maryland State and local entities as defined in Finance and Procurement 13-110(a)(5)(i) and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or not-for-profit entities:

A. Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;

B. Shall not constitute purchases by the State or State agencies under the Contract;

C. Shall not be binding or enforceable against the State; and

D. May be subject to other terms and conditions agreed to by the Contractor and the purchaser.

2.1.10 All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity requesting services under the Contract. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

## 2.2 Background and Purpose

[[Provide a description of the purpose of this solicitation, and any background information that may be helpful to vendors in preparing the responses. A brief summary of this section should be included in Section 2.1 of this solicitation.

Particularly for IT solicitations: Describe the system to be supported. Describe the background and system technology, components, interfaces, etc. that would be pertinent for the Contractor to provide adequate maintenance support. Delete the headings below that aren't needed.

Clearly indicate what additional resources are supporting this system. Include what business processes it supports, identify users, system products, etc.

HINT: if you are typing "the contractor will" then you are writing requirements. ]]

### 2.2.1 Project Goals

[[Remove headings if inapplicable.]]

A.

B.

### 2.2.2 Current Environment

A.

B.

### 2.2.3 Existing Hardware

A.

B.

### 2.2.4 Existing Software

A.

B.

### 2.2.5 Existing Data/Content Management

A.

B.

### 2.2.6 Existing Reporting

A.

B.

### 2.2.7 State Staff and Roles

[[Include descriptions of any existing project management office or other management structure that the contractor will be working with. Include as part of the "State responsibilities" any information that is actually assigned to another contractor. Examples include how a change control board is set up, the relationship of different project teams to the contractor. ]]

In addition to the Procurement Officer and Contract Monitor, the State ……

A. State Project Manager

1) The State will provide a State Project Manager who will be responsible for……

B. The State Project Manager will provide the following: …….

1) Other State Furnished Roles

### 2.2.8 Other State Responsibilities

[[Adjust as appropriate.]]

A. The State will provide normal office working facilities and equipment reasonably necessary for Contractor performance under the Contract. Any special requirements (e.g., reprographic services, computer time, key data entry) shall be identified.

B. The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor's performance of the work, and will provide such additional assistance and services as is specifically set forth.

## 2.3 Responsibilities and Tasks

[[Insert the Contract specifications into the solicitation here.]]

### 2.3.1 Heading for agency requirements

### 2.3.2 Heading for agency requirements

### 2.3.3 Heading for agency requirements

### 2.3.4 Heading for agency requirements

### 2.3.5 Heading for agency requirements

### 2.3.6 Heading for agency requirements

### 2.3.7 Heading for agency requirements

[[The following sections apply to IT solicitations, but may be applicable for service solicitations containing IT components. Carefully read the boilerplate below for applicability to this RFP.]]

### 2.3.8 Contractor-Supplied Hardware, Software, and Materials

[[Tailor these as appropriate for your needs. You may find that some of these are duplicates to other sections. Edit and move them around Section 2 as appropriate.]]

A. By responding to this RFP and accepting a Contract award, the Offeror specifically agrees that for any software, hardware or hosting service that it proposes, the State will have the right to purchase such item(s) from another source, instead of from the selected Offeror.

B. SaaS applications shall be accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email) or a program interface.

C. The State shall be permitted limited user-specific application configuration settings.

D. The Contractor is responsible for the acquisition and operation of all hardware, software and network support related to the services being provided, and shall keep all software current.

E. All Upgrades and regulatory updates shall be provided at no additional cost.

F. The State requires that the Offeror price individual software modules separately.

G. The State also requires that the Offeror provide fully functional, generally available software and multiple-user licenses for purchase as needed throughout the life of the Contract.

H. The Offeror shall install and provide all documentation for the software furnished under the Contract.

[[If applicable, describe the agency's strategy under the Contract for acquiring necessary hardware, software, or materials. Modify the following optional text appropriate for this RFP:]]

I. Hardware and software costs procured as part of the RFP cannot exceed 49 percent of the total Contract value.

J. Material costs shall be passed through with no mark-up by the Contractor.

K. The Contractor shall prepare software releases and stage at the <<typeofAgency>> for validation in the system test environment. The <<typeofAgency>> will provide authorization to proceed. The <<typeofAgency>> will have the ability to manage the distribution of these releases to the appropriate sites. To support this requirement, the Contractor shall propose, provide and fully describe their solution for updating all sites with any new software releases.

L. The Offeror shall provide <<manufacturer or provider's standard warranty for the item. *Offeror shall identify the duration of the standard warranty*>>. [[Adjust this section to clearly state your expectations for any equipment furnished under the contract. For instance, you may specify that you want a warranty for a period coinciding with the duration of the Contract. Note that equipment warranty is associated with a PURCHASE, not SaaS or IaaS. ]] Any warranty period for goods and services will not commence until acceptance of the products or services by the <<typeofAgency>>. Notwithstanding anything to the contrary, all defective items must be replaced at no additional cost to the State. [[Note with any hardware/software provided under this RFP may warrant that the, Contractor demonstrate that it is a licensed reseller or distributor of the item. ]]

M. Acceptance criteria for hardware [[Insert if any specific requirements pertaining to acceptance of equipment.]]

### 2.3.9 Required Project Policies, Guidelines and Methodologies

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting Information Technology projects, which may be created or changed periodically. Offeror is required to review all applicable links provided below and state compliance in its response.

It is the responsibility of the Contractor to ensure adherence and to remain abreast of new or revised laws, regulations, policies, standards and guidelines affecting project execution. These include, but are not limited to:

A. The State of Maryland System Development Life Cycle (SDLC) methodology at: http://doit.maryland.gov/SDLC/Pages/agile-sdlc.aspx ;;

B. The State of Maryland Information Technology Security Policy and Standards at: http://www.DoIT.maryland.gov- keyword: Security Policy;

C. The State of Maryland Information Technology Non-Visual Standards at: http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx;

[[For any RFP that might have MITDP components include the MITDP oversight: ]]

D. The State of Maryland Information Technology Project Oversight at: http://doit.maryland.gov/epmo/Pages/ProjectOversight.aspx;

E. The Contractor shall follow project management methodologies consistent with the most recent edition of the Project Management Institute's Project Management Body of Knowledge Guide; and

[[Insert any additional policies and guidelines in this list.]]

### 2.3.10 Product Requirements

A. Offerors may propose open source software; however, the Offeror must provide operational support for the proposed software as part of its Proposal.

B. Offeror shall be authorized to furnish the proposed goods and services. Offerors proposing to resell services of another entity must be authorized by such other entity (See RFP **Section 5.3.2.**Error! Reference source not found..

C. No international processing for State Data: As described in **Section 3.7 Security Requirements**, Offerors are advised that any processing or storage of data outside of the continental U.S. is prohibited. [[Offerors may take an exception to this term, which is non-negotiable when there is Sensitive Data (which includes PII, PHI and confidential data).]]

D. Offeror consistent expiration dates: A PO for a service already being delivered to the <<typeofAgency>> under the Contract shall terminate on the same calendar day as the prior product/service. As appropriate, charges shall be pro-rated. [[This is intended to allow you to make additional incremental purchases for things such as licenses without having expiration dates that are tied to the date you asked for more licenses. Delete if inapplicable to your RFP.]]

E. Any Contract award is contingent on the State's agreement, during the Proposal evaluation process, to any applicable terms of use and any other agreement submitted under **Section 5.3.2.**Error! Reference source not found.**.** Such agreed upon terms of use shall apply c onsistently across services ordered under the Contract.

F. The Contractor shall not establish any auto-renewal of services beyond the period identified in Contract documents.

G. In addition to any notices of renewal sent to the <<typeofAgency>>, Contractors shall email notices of renewal to the e-mail address designated by the Contract Monitor.

### 2.3.11 Maintenance and Support

Maintenance and support, and Contractor's ongoing maintenance and support obligations, are defined as follows:

[[For all requirements, review for applicability.]]

A. Maintenance commences at the <<_____.>> [[For instance, this could be at State acceptance of initial startup activities.]] Billing for such maintenance and support shall commence after _____. [[Clearly indicate when maintenance begins. For instance, maintenance could start at State acceptance of initial startup activities. If there is an activity that must be complete before maintenance (and associated billing) can begin, clearly indicate it's when the State **ACCEPTS** the deliverable.]]

B. Software maintenance includes all future software updates and system enhancements applicable to system modules licensed without further charge to all licensed users maintaining a renewable software support contract. [[Delete if inapplicable. If this is SaaS, then this can be tweaked because there are no software support contracts but there may be updates and upgrades.]]

C. Support shall be provided for superseded releases and back releases still in use by the State.

D. For the first year and all subsequent Contract years, the following services shall be provided for the current version and one previous version of any Software provided with the Deliverables, commencing upon <<[[Insert commencement OR cross reference where commencement is already referenced in these requirements.]]>>:

1) Error Correction. Upon notice by State of a problem with the Software (which problem can be verified), reasonable efforts to correct or provide a working solution for the problem.

2) Material Defects. Contractor shall notify the State of any material errors or defects in the Deliverables known, or made known to Contractor from any source during the life of the Contract that could cause the production of inaccurate or otherwise materially incorrect results. The Contractor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.

3) Updates. Contractor will provide to the State at no additional charge all new releases and bug fixes (collectively referred to as "Updates") for any software Deliverable developed or published by the Contractor and made available to its other customers.

[[List Contractor duties and responsibilities. Adjust as appropriate. Review boilerplate text in other sections to ensure consistency and avoid duplication between sections.]]

E. Operations tasks to include virus scans

F. Activity reporting

G. User support (Help Desk)

1) Contractor shall furnish Help Desk services for <<xxxxxxxxxxxxxxx>>

2) Help Desk services are available during Normal State Business Hours. [[Adjust if other hours are required. Remember, Normal State Business Hours is a defined term (see Appendix 1).]]

3) Contractor shall utilize a help desk ticketing system to record and track all help desk calls. The ticketing system shall record with a date and timestamp when the ticket was opened and when the ticket was closed.

4) <<Help Desk services shall be furnished using resources familiar with the State's account (i.e., calls shall not be sent to a general tier 1 call queue)>>. [[Revise or delete as desired.]]

2.3.11.1 Technical Support [[Note: technical support and help desk are not the same.]]

A. "Technical Support" means Contractor-provided assistance for the services or Solution furnished under the Contract, after initial end-user support confirms a technical issue that requires additional troubleshooting capabilities; sometimes referenced as Tier II – IV support.

B. Technical Support shall be available during Normal State Business Hours. [[Adjust if other hours are required. Remember, Normal State Business Hours is a defined term (see Appendix 1).]]

C. The State shall be able to contact a Technical Support team member 24 hours per day, 7 days per week, 365 days per year.

D. Contractor Personnel providing technical support shall be familiar with the State's account (i.e., calls shall not be sent to a general queue). [[Adjust as appropriate. Support that isn't sent to a general queue may cost more.]]

E. Contractor shall return calls for service of emergency system issues (see Section 2.6 Service Level Agreement) within one (1) hour.

F. Calls for non-emergency IT service requests will be returned within three (3) hours or immediately the following day if after Normal State Business Hours. [[Adjust to match B.]]

G. The State shall be provided with information on software problems encountered at other locations, along with the solution to those problems, when relevant to State software.

2.3.11.2 Backup

[[Decide how backups will be performed, and if you're interested in having pricing from the Offeror for performing backups, include it as an option in your Financial Proposal Form that you might exercise. Insert information here regarding what the Contractor is expected to perform with regard to Backup/Disaster Recovery (DR).

SaaS contracts may or may not offer backup and DR as part of its service, or the agency may elect to perform backups.

Note that backup time periods need to be synchronized with data retention requirements associated with ending the Contract; see **Section 3.2.**

Example language (verify all the language in each sentence is applicable to your Contract):]]

The Contractor shall:

A. Perform backups of the web, application, and database servers on a regular basis. This shall include daily incremental backups and full weekly backups of all volumes of servers;

B. Retain daily backups for one (1) month and weekly backups shall be retained for two (2) years;

C. Store daily backups off-site.

[[OR]]

D. Provide backups of the configuration and data on a regular basis as a Contract option. Contractor shall describe backup services offered, and shall offer pricing for this option in the Financial Proposal Form (**Attachment B**);

E. Meet the Recovery Time Objective (RTO) and Recovery Point Objective (RPO) metrics defined in **Section 2.6 Service Level Agreement**. [[Note: if you use this as a requirement in the SLAs, be sure to define the terms RTP and RPO in the definitions and also define how they are measured. ]]

[[ALTERNATIVE REQUIREMENTS for backups:]]

F. Perform backups for all application and configuration data that necessary to restore the application to full operability on suitable hardware. The backup shall consist of at least:

1) Incremental daily backups, retained for one (1) month,
2) Full weekly backups, retained for three (3) months, and
3) Last weekly backup for each month maintained for two (2) years;

G. Maintain one annual backup for at least <<10>> years;

H. Send the weekly backup electronically to a facility designated by the State;

I. Encrypt the backups using a shared key;

J. Perform a backup recovery at least semi-annually; and

K. Provide on demand support for the State's recovery of a backup set.

## 2.4 Deliverables

[[Adjust the standard language for your RFP. Generally speaking, a deliverable is something that has acceptance criteria (e.g., Timesheets are not deliverables). For SaaS and IaaS, deliverables would include anything produced during the Startup period and monthly reports.

Agencies must remain cognizant that acceptance of a deliverable in order to facilitate payment to a Contractor leaves the Agency with limited recourse if the deliverable is sub-par.]]

### 2.4.1 Deliverable Submission

[[Carefully read the boilerplate below for applicability to this RFP. If you specify that certain paperwork must be completed, then it can be an audit finding if the RFP is not run according to the defined expectations.]]

A. For every deliverable, the Contractor shall request the Contract Monitor confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.

B. [[Revise this paragraph if you do not wish to use a Deliverable Product Acceptance Form. Check other paragraphs for applicability.]] For every deliverable, the Contractor shall submit to the Contract Monitor, by e-mail, an Agency Deliverable Product Acceptance Form (DPAF), an example of which is provided on the DoIT web page here: http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf.

C. Unless specified otherwise, written deliverables shall be compatible with Microsoft Office, Microsoft Project or Microsoft Visio within two (2) versions of the current version. At the Contract Monitor's discretion, the Contract Monitor may request one hard copy of a written deliverable.

D. A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. This review process is entered into when the Contractor completes a deliverable.

E. For any written deliverable, the Contract Monitor may request a draft version of the deliverable, to comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**. Drafts of each final deliverable, except status reports, are required at least two weeks in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**.

### 2.4.2 Deliverable Acceptance

A. A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in **Section 2.4.4 Deliverable Descriptions/Acceptance Criteria**.

B. The Contract Monitor shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contract Monitor is responsible for coordinating comments and input from various team members and stakeholders. The Contract Monitor is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.

C. The Contract Monitor will issue to the Contractor a notice of acceptance or rejection of the deliverable in the DPAF (see online sample). Following the return of the DPAF indicating "Accepted" and signed by the Contract Monitor, the Contractor shall submit a proper invoice in accordance with the procedures in **Section 3.3**. The invoice must be accompanied by a copy of the executed DPAF or payment may be withheld.

D. In the event of rejection, the Contract Monitor will formally communicate in writing any deliverable deficiencies or non-conformities to the Contractor, describing in those deficiencies what shall be corrected prior to acceptance of the deliverable in sufficient detail for the Contractor to address the deficiencies. The Contractor shall correct deficiencies and resubmit the corrected deliverable for acceptance within the agreed-upon time period for correction.

### 2.4.3 Minimum Deliverable Quality

The Contractor shall subject each deliverable to its internal quality-control process prior to submitting the deliverable to the State.

Each deliverable shall meet the following minimum acceptance criteria:

A. Be presented in a format appropriate for the subject matter and depth of discussion.

B. Be organized in a manner that presents a logical flow of the deliverable's content.

C. Represent factual information reasonably expected to have been known at the time of submittal.

D. In each section of the deliverable, include only information relevant to that section of the deliverable.

E. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.

F. Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.

G. Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.

H. Must contain the date, author, and page numbers. When applicable for a deliverable, a revision table must be included.

I. A draft written deliverable may contain limited structural errors such as incorrect punctuation, and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with minimum deliverable quality criteria above.

### 2.4.4 Deliverable Descriptions/Acceptance Criteria

In addition to the items identified in the table below, the Contractor may suggest other subtasks, artifacts, or deliverables to improve the quality and success of the assigned tasks.

[[Identify every deliverable expected from your Contractor.For staff augmentation RFPs, do not expect all deliverables to be listed in the deliverables table. There should be sufficient requirements to describe the job expectations, and include here typically status reports and maybe one or two other key deliverables.]]

**Deliverables Summary Table***

| ID # | Deliverable Description | Acceptance Criteria | Due Date / Frequency |
|---|---|---|---|
| | Integrated Project Schedule | Microsoft Project schedule demonstrating tasks, task estimates, resource assignments, and dependencies for both Agency and Contractor Personnel, with tasks no less than 8 hours and no greater than 80 hours. | Initial Delivery: NTP+ <<x>> Business Days<br>Updates: Weekly<br>[[Be clear if a due date is Business Days or calendar days.]] |
| | | | [[You can specify "as identified in the approved project schedule."]] |

*The deliverables summary table may not list every contractually-required deliverable. Offerors and Contractors should read the RFP thoroughly for all Contract requirements and deliverables.

## 2.5 Optional Features or Services, Future Work

[[Put in optional work that might occur in the future here; otherwise remove the section. Use this section to more clearly define scope but not have an "option" with associated pricing, or to actually describe an option that can be exercised by the State.]]

### 2.5.1 <<Potential Future Work>> (Fixed Price / T&M) [[Place any unconfirmed work here. If the work is a priced option, label it as OPTION. Otherwise, it should be considered a further description of potential scope, or "potential future work" that qualifies the scope but isn't something with enough information to ask for pricing.]]

## 2.6 Service Level Agreement (SLA)

[[If this section is inapplicable to this RFP, insert the following sentence:]]

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### 2.6.1 Definitions

[[In order to use Problem and Problem resolution time, a help desk and help desk ticketing requirements must be defined in the RFP.]]

A. A "Problem" is defined as any situation or issue reported via a help desk ticket that is related to the system operation that is not an enhancement request.

B. "Problem resolution time" is defined as the period of time from when the help desk ticket is opened to when it is resolved.

C. Monthly Charges: for purposes of SLA credit calculation, Monthly Charges are defined as the charges set forth in **Attachment B, Financial Proposal Form,** invoiced during the month of the breach for the monthly fixed services, or, in the event of annual billing, 1/12 of the annual invoice amount **Financial Proposal Form.**

### 2.6.2 SLA Requirements

The Contractor shall:

[[Adjust this list as appropriate.]]

A. Be responsible for complying with all performance measurements, and shall also ensure compliance by all subcontractors.

B. Meet the Problem response time and resolution requirements as defined in **Section 2.6.9**.

C. Provide a monthly report to monitor and detail response times and resolution times.

D. Log Problems into the <<Contractor-supplied>> help desk software and assign an initial severity (Emergency, High, Medium or Low as defined in **Section 2.6.9**).

E. Respond to and update all Problems, including recording when a Problem is resolved and its resolution. Appropriate <<typeofAgency>> personnel shall be notified when a Problem is resolved.

F. The <<typeofAgency>> shall make the final determination regarding Problem severity.

G. Contractor shall review any Problem with <<typeofAgency>> to establish the remediation plan and relevant target dates.

### 2.6.3 SLA Effective Date (SLA Activation Date)

SLAs set forth herein shall be in effect beginning with the commencement of monthly services as of the completion of the <<[[Pick one: Transition-In Period OR implementation OR a definition developed for this solicitation.]]>>.

Beginning on the SLA Activation Date, for any performance measurement not met during the monthly reporting period, the SLA credit for that individual measurement shall be applied to the Monthly Charges.

### 2.6.4 Service Level Reporting

[[Measurements do not have to be by month, although the default language in this section is by month. Tailor the time period appropriate to contract needs, and verify all instances of "monthly" in this Section are appropriate.]]

A. Contractor performance will be monitored by <<typeofAgency>>.

B. The Contractor shall provide detailed monthly reports evidencing the attained level for each SLA.

C. The Contractor shall provide a monthly summary report for SLA performance.

D. Monthly reports shall be delivered <<via e-mail>> to the Contract Monitor by <<the 15th of the following month>>. Procurement Officers you can configure this to say that they must be delivered on a regular schedule in advance of the invoice

E. If any of the performance measurements are not met during the monthly reporting period, the Contractor will be notified of the standard that is not in compliance.

### 2.6.5 SLA Service Credits

[[If the Offeror furnishes the performance measurements, update the language to indicate that the information is in the Contract and add a corresponding requirement in the Technical Proposal instructions (Section 5.3) to request the service level metrics, reports, and SLA credits.]]

Time is an essential element of the Contract. For work that is not completed within the time(s) specified in the service level metrics <<below *OR* in the Contract>>, the Contractor shall be liable for service credits in the amount(s) provided for in the Contract.

Service credits will be cumulative for each missed service requirement. The State, at its option for amount due the State as service credits, may deduct such from any money payable to the Contractor or may bill the Contractor as a separate item. In the event of a catastrophic failure affecting <<all services OR the entire Solution>>, all affected SLAs shall be credited to the State.

[[Include only if specifying service level metrics:]]<<In no event shall the aggregate of all SLA credits paid to the State in any calendar month exceed 25%>> of the Monthly Charges.

Example: If the Monthly Charges were $100,000 and one SLA were missed, with an applicable 4% credit, the credit to the monthly invoice would be $4,000, and the State would pay a net Monthly Charge of $96,000.

The parties agree that any assessment of service credits shall be construed and treated by the parties not as imposing a penalty upon the Contractor, but as compensation to the State for the Contractor's failure to satisfy its service level obligations.

### 2.6.6 Root Cause Analysis

[[Delete if inapplicable.]]

If the same SLA measurement yields an SLA credit more than once, the Contractor shall conduct a root cause analysis. Such root cause analysis shall be provided within 30 days of the second breach, and every breach thereafter.

In addition, for each 'Emergency' or 'High' priority Problem, the affected parties will perform a root cause analysis and institute a process of problem management to prevent recurrence of the issue.

### 2.6.7 Service Level Measurements Table (System performance)

[[OPTION 1 – Offeror identifies metrics. Use the table format so offers are more consistent.]]

Offeror shall complete the table below with its proposed service level metrics and SLA credits.

| No. | Service Requirement | Measurement | Service Level Agreement | SLA Credit |
|---|---|---|---|---|
| 1 | Problem Response Time – High (example) | (Example) Average Response Time for High Priority Problems. | 98% <15 minutes | 1% |

[[OPTION 2 – State identifies metrics.]]

The Contractor shall comply with the service level measurements in the following table:

[[Select a SUBSET of the service measurement table below and tailor the ones you select to match your need. Add other metrics suitable for your RFP.]]

| No. | Service Requirement | Measurement | Service Level Agreement | SLA Credit |
|---|---|---|---|---|
| 1 | Problem Response Time – High | Average Response Time for High Priority Problems. | 98% <15 minutes | 1% |
| 2 | Problem Response Time - Normal | Average Response Time for Normal or Low Priority Problems | 98% <2 hours | 1% |
| 3 | Problem Resolution Time - High | Resolution Time for each High Priority Problem | 98% <4 hours | 1% |
| 4 | Problem Resolution Time - Normal | Resolution Time for Normal Priority Problems | 98% <24 hours | 1% |
| 5 | Problem Resolution Time - Low | Resolution Time for Low Priority Problems | 98% <72 hours | 1% |
| 6 | Scheduled Downtime/ Maintenance | Scheduled maintenance and downtime shall only occur during non-business hours*. The Contractor shall provide 14 calendar days' notice prior to any scheduled downtime. | <6 hours each month | <<X%>> |
| 7 | Service Availability | All application functionality and accessibility shall be maintained at 99.5% uptime performance levels. Contractor shall minimize or eliminate unscheduled network downtime to .5% or less. | <99.5% | <<X%>> |
| 9 | Disaster Recovery | Contractor shall provide recovery and continuity of operations within <<X>> hours of a System/network failover. | <<xx hours>> | <<X%>> |
| 10 | Notification of Security Incident | Notification of a Security Incident within <<X>> minutes of occurrence | | <<X%>> |
| 11 | Security Incident Reporting | Security incident reporting requirement in <<X>> minutes or <<X>> hours | <<xx hours>> | <<X%>> |
| 12 | Escrow Update | Update escrow within <<X>> days of a change.<br>Failure to update escrow | <<xx days>> | <<X%>> |

The State shall have the unilateral right to reallocate percentages among the various SLAs annually on the anniversary of the Contract, provided that such reallocation will not exceed the cap identified in **Section 2.6.5**. [[End of OPTION 2.]]

### 2.6.8 Problem Response Definitions and Times

[[If no service level metrics are desired, this table can be used to describe the State's basic expectations without metrics or SLA credits.]]

The Contractor shall meet the Problem response time and resolution requirements.

The Contractor shall provide a monthly report to monitor and detail response times and resolution times.

[[Review the table and revise the metrics and text below. Make sure these times align with any help desk or technical support hour requirements elsewhere in the RFP. ]]

| Service Priority | Response Time | Resolution Time | Response Availability | Work Outage | Users Affected |
|---|---|---|---|---|---|
| Emergency | Less than 15 minutes | Within 2 hours of first report | 24 hours per day, seven days per week | Major portions of the System are inaccessible Systems or users are unable to work, or to perform some portion of their job. | Users or internal System functionalities are impaired. To include <<Claimants and Employers>> |
| High | Less than 30 minutes | Within 4 hours after first report | 24 hours per day, seven days per week | Major portions of the System are inaccessible Systems or users are unable to work, or to perform some portion of their job. | Affects the majority of users to include public facing users <<Claimants & Employers>> Affects high profile users (i.e. executive management) |
| Normal | Within 2 hours | Within 1 day (24 hours) after first report. If the outage is not resolved a resolution plan must be in place. | Mon-Fri, 7AM-7PM | Specific non-critical features are not operating as specified Systems or users are unable to perform a small portion of their job, but are able to complete most tasks. | Affects a number of users |
| Low | Within 2 hours | Within 3 days (72 hours) after first report. If the outage is not resolved a resolution plan must be in place. | Mon-Fri, 7AM-7PM | Lower priority features that can be done manually are not operating as specified Often a request for service with ample lead time. | Affects a number of users |

### 2.6.9 Service Level Measurements Table (Help Desk Calls)

[[Contact your oversight analyst if you have needs for extensive help desk SLAs. Remove heading if not required.]]

# 3 Contractor Requirements: General

[[Section Headings in this section must be preserved and not rearranged. Any additional sections pertinent to this section must be added at end of this section.]]

## 3.1 Contract Initiation Requirements

A. Contractor shall schedule and hold a kickoff meeting within 10 Business Days of NTP Date. At the kickoff, the Contractor shall furnish <<an updated Project Schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning to the Contractor's Solution. >> [[Update as appropriate. Remove if no kickoff meeting planned.]]

B.

C.

[[This section may not be applicable if you are initiating a project with this RFP. If this RFP is for ongoing services, this may be necessary. If this section is inapplicable to this RFP, insert the following text.]]

THIS SECTION IS INAPPLICABLE TO THIS RFP.

[[Insert information here regarding what the Contractor is expected to perform as part of the ONE TIME transition-in period of the contract. Defining transition-in requirements helps to clarify the requirements for the new Contractor.]]

## 3.2 End of Contract Transition

[[This section is designed for to help ensure a successful transition for contracts where services are anticipated to continue after the Contract ends, if you do not anticipate the need for services to continue in the future, beyond the term of the Contract, or if contract transition is adequately addressed elsewhere, then you may insert the language "Reserved" in the heading for this section (to preserve numbering).]]

3.2.1 The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to <<60>> days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:

A. Provide additional services and support as requested to successfully complete the transition;

B. Maintain the services called for by the Contract at the required level of proficiency;

C. Provide updated System Documentation (see Appendix 1), as appropriate; and

D. Provide current operating procedures (as appropriate).

3.2.2 The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.

3.2.3 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor.

3.2.4 The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:

A. The Contractor shall provide a draft Transition-Out Plan <<120 Business Days>> in advance of Contract end date.

B. The Transition-Out Plan shall address at a minimum the following areas:

1) Any staffing concerns/issues related to the closeout of the Contract;

2) Communications and reporting process between the Contractor, the <<typeofAgency>> and the Contract Monitor;

3) Security and system access review and closeout;

4) Any hardware/software inventory or licensing including transfer of any point of contact for required software licenses to the <<typeofAgency>> or a designee;

5) Any final training/orientation of <<typeofAgency>> staff;

6) Connectivity services provided, activities and approximate timelines required for Transition-Out;

7) Knowledge transfer, to include:

a) A working knowledge of the current system environments as well as the general business practices of the <<typeofAgency>>;

b) Review with the <<typeofAgency>> the procedures and practices that support the business process and current system environments;

c) Working knowledge of all technical and functional matters associated with the Solution, its architecture, data file structure, interfaces, any batch programs, and any hardware or software tools utilized in the performance of the Contract;

d) Documentation that lists and describes all hardware and software tools utilized in the performance of the Contract;

e) A working knowledge of various utilities and corollary software products used in support and operation of the Solution;

8) Plans to complete tasks and any unfinished work items (including open change requests, and known bug/issues); and

9) Any risk factors with the timing and the Transition-Out schedule and transition process. The Contractor shall document any risk factors and suggested solutions.

C. The Contractor shall ensure all documentation and data including, but not limited to, System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.

D. The Contractor shall provide copies of any current daily and weekly back-ups to the <<typeofAgency>> or a third party as directed by the Contract Monitor as of the final date of transition, but no later than the final date of the Contract.

E. Access to any data or configurations of the furnished product and services shall be available after the expiration of the Contract as described in **Section 3.2.5**.

### 3.2.5 Return and Maintenance of State Data

[[Include this section for all services where the Contractor will have access or control of any State data.]]

A. Upon termination or the expiration of the Contract Term, the Contractor shall: (a) return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data; (b) preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the

expiration of 90 days ("the retention period") from the date of termination or expiration of the Contract term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State; and (d) prepare an accurate accounting from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.

B. During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor.

C. In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.

## 3.3 Invoicing

### 3.3.1 General

A. The Contractor shall <<send OR e-mail>> the original of each invoice and signed authorization to invoice to the Contract Monitor and <<List individual>> at e-mail address: <<e-mail address>>.

B. All invoices for services shall be verified by the Contractor as accurate at the time of submission.

C. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:

1) Contractor name and address;
2) Remittance address;
3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
4) Invoice period (i.e. time period during which services covered by invoice were performed);
5) Invoice date;
6) Invoice number;
7) State assigned Contract number;
8) State assigned (Blanket) Purchase Order number(s);
9) Goods or services provided;
10) Amount due; and
11) Any additional documentation required by regulation or the Contract.

D. Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.

E. The <<typeofAgency>> reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the <<typeofAgency>> with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and

conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

F. Any action on the part of the <<typeofAgency>>, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

G. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.

H. Invoices for final payment shall be clearly marked as "FINAL" and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

### 3.3.2 Invoice Submission Schedule

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

A. For items of work for which there is one-time pricing (see **Attachment B** – Financial Proposal Form) those items shall be billed in the month following the acceptance of the work by the <<typeofAgency>>.

B. For items of work for which there is annual pricing, see **Attachment B**– Financial Proposal Form, those items shall be billed in equal monthly installments for the applicable Contract year in the month following the performance of the services.

### 3.3.3 Deliverable Invoicing [[Remove if payment is not by deliverable. Adjust as appropriate.]]

A. Deliverable invoices shall be accompanied by notice(s) of acceptance issued by the State for all invoices submitted for payment. Payment of invoices will be withheld if a signed DPAF is not submitted (see online example at http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf).

B. Payment for deliverables will only be made upon completion and acceptance of the deliverables as defined in **Section 2.4**.

### 3.3.4 Time and Materials Invoicing

[[Remove subsection if inapplicable for requirements **or** for Work Orders.]]

A. All time and material invoices shall be accompanied by a signed timesheet as described below <<Adjust as appropriate. Service contracts typically do not use a DPAF as evidence of deliverable completion and acceptance.>> and notice(s) of acceptance issued by the State: DPAF for each time period invoiced (see online example at http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf)>>. Include for each person covered by the invoice the following, individually listed per person: name, hours worked, hourly labor rate, invoice amount and a copy of each person's timesheet for the period signed by the Contract Monitor.

B. Time Sheet Reporting [[Adjust as appropriate.]]

Within three (3) Business Days after the 15th and last day of the month, the TO Contractor shall submit a semi-monthly timesheet for the preceding half month providing data for all resources provided under the Contract.

At a minimum, each semi-monthly timesheet shall show:

1) Title: "Time Sheet for <<xxxxx>>";
2) Issuing company name, address, and telephone number;
3) For each employee /resource:
   a) Employee / resource name, and
   b) For each Period ending date, e.g., "Period Ending: mm/dd/yyyy" (Periods run 1st through 15th, and 16th through last day of the month.):
      i) Tasks completed that week and the associated deliverable names and ID#s;
      ii) Number of hours worked each day;
      iii) Total number of hours worked that Period;
      iv) Period variance above or below 40 hours;
      v) Annual number of hours planned under the Task Order;
      vi) Annual number of hours worked to date; and
      vii) Balance of hours remaining;
4) Annual variance to date (Sum of periodic variances); and
5) Signature and date lines for the Contract Monitor.

C. Time sheets shall be submitted to the Contract Monitor prior to invoicing. The Contract Monitor shall sign the timesheet to indicate authorization to invoice.

**3.3.5 For the purposes of the Contract an amount will not be deemed due and payable if:**

A. The amount invoiced is inconsistent with the Contract;

B. The proper invoice has not been received by the party or office specified in the Contract;

C. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;

D. The item or services have not been accepted;

E. The quantity of items delivered is less than the quantity ordered;

F. The items or services do not meet the quality requirements of the Contract;

G. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;

H. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or

I. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

**3.3.6 Travel Reimbursement**

[[If no travel will be reimbursed, insert the following text:]]

Travel will not be reimbursed under this RFP.

[[Otherwise, adjust as appropriate:]]

A. There shall be no reimbursement for Routine Travel. Contractor shall not be reimbursed for Non-Routine Travel without prior Contract Monitor approval.

B. Routine Travel is defined as travel within a 50-mile radius of the <<typeofAgency>>'s base location, as identified in the RFP, or the Contractor's facility, whichever is closer to the consulting site. There will be no payment for labor hours for travel time or reimbursement for any travel expenses for work performed within these radiuses or at the Contractor's facility.

C. Non-routine Travel is defined as travel beyond the 50-mile radius of <<typeofAgency>>'s base location, as identified in the RFP, or the Contractor's facility, whichever is closer to the consulting site. Non-routine travel will be reimbursed according to the State's travel regulations and reimbursement rates, which can be found at: www.DBM.maryland.gov - search: Fleet Management. If non-routine travel is conducted by automobile, the first 50 miles of such travel will be treated as routine travel and as described in **Section 3.3.7.A**, and will not be reimbursed. The Contractor may bill for labor hours expended in non-routine traveling beyond the identified 50-mile radius, only if so specified in the RFP or Work Order.

### 3.3.7 Retainage

[[If this solicitation does not require retainage, delete the entire section INCLUDING the section heading. If this solicitation does require retainage, consult your oversight analyst and AAG.]]

## 3.4 Liquidated Damages

### 3.4.1 MBE Liquidated Damages

MBE liquidated damages are identified in Attachment M. [[Delete this line if there is no MBE goal and enter:]]

Inapplicable because there is no MBE goal for this RFP.

### 3.4.2 Liquidated Damages other than MBE

[[A determination to include Liquidated Damages, how they should be calculated, and to what they should apply should be made in consultation with your agency's AAG pursuant to COMAR 21.07.01.14. If your solicitation does not include Liquidated Damages for the Scope of Work, then insert the appropriate statement below.]]

THIS SECTION IS INAPPLICABLE TO THIS RFP.

## 3.5 Disaster Recovery and Data

The following requirements apply to the Contract:

### 3.5.1 Redundancy, Data Backup and Disaster Recovery

A. Unless specified otherwise in the RFP, Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the Contract term. Any force majeure provisions of the Contract do not limit the Contractor's obligations under this provision.

B. The Contractor shall have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the 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.

1) The Contractor shall furnish a DR site.

2) The DR site shall be at least 100 miles from the primary operations site, and have the capacity to take over complete production volume in case the primary site becomes unresponsive.

C. The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.

D. The Contractor shall test the contingency/DR 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 (1) annual test shall include backup media restoration and failover/fallback operations at the DR location. The Contractor shall send the Contract Monitor a notice of completion following completion of DR testing.

E. Such contingency and DR plans shall be available for the <<typeofAgency>> to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

### 3.5.2 Data Export/Import

A. The Contractor shall, at no additional cost or charge to the State, in an industry standard/non-proprietary format:

1) perform a full or partial import/export of State data within 24 hours of a request; or

2) provide to the State the ability to import/export data at will and provide the State with any access and instructions which are needed for the State to import or export data.

B. Any import or export shall be in a secure format per the Security Requirements.

### 3.5.3 Data Ownership and Access

[[If data is part of the Contract's scope, AAG must approve any changes to below language.]]

A. Data, databases and derived data products created, collected, manipulated, or directly purchased as part of a RFP are the property of the State. The purchasing State agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.

B. Public jurisdiction user accounts and public jurisdiction data shall not be accessed, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of the Contract, including as necessary to perform the services hereunder or (4) at the State's written request.

C. The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.

D. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.

E. The Contractor shall not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

3.5.4 Provisions in Sections 3.5.1 – 3.5.3 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.5.1-3.5.3 (or the substance thereof) in all subcontracts.

## 3.6 Insurance Requirements

[[The insurance requirements and minimums stated below are general examples to be adjusted to reflect the necessary requirements and minimums for your Scope of Work.]]

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

3.6.1 The following type(s) of insurance and minimum amount(s) of coverage are required:

A. Commercial General Liability - of $1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and $3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.

B. Errors and Omissions/Professional Liability - $1,000,000 per combined single limit per claim and $3,000,000 annual aggregate.

C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of $1,000,000 per loss, and a minimum single loss retention not to exceed $10,000. The State of Maryland and the <<typeofAgency>> should be added as a "loss payee."

D. Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars ($10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the State's claimants or employers is processed or stored.

E. Worker's Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than. one million dollars ($1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.

F. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) 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.

3.6.2 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.

3.6.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance

coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.

3.6.4 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

3.6.5 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.

3.6.6 Subcontractor Insurance

The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

## 3.7 Security Requirements

[[Review this section for applicability and tailor as appropriate:]]

The following requirements are applicable to the Contract:

### 3.7.1 Employee Identification

A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.

B. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.

C. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.

D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

### 3.7.2 Security Clearance / Criminal Background Check

[[Use only one of the Criminal Background Check paragraphs below, as applicable; delete the others. If no background check is required insert the following sentence:]]

A security clearance is not required for Contractor Personnel assigned to the Contract.

[[Otherwise adjust the paragraphs to meet RFP needs.

For Contractor Personnel when the Contractor Is Responsible for Background Checks. Note: If only certain functions to be performed under the Contract necessitate a background check, the following background check requirement may be changed to designate those functions and limit background checks to Contractor and subcontractor personnel performing those designated functions, e.g., personnel in contact with vulnerable populations, personnel handling State funds, personnel conducting bookkeeping functions, personnel with access to Sensitive Data.]]

A. A criminal background check for each << Pick one: for any Contractor Personnel providing <<on-site OR any OR list specific services/roles impacted>> shall be completed << Pick

one: prior to each Contractor Personnel providing any services under the Contract OR within four (4) months of Contract award OR describe what is appropriate.>>.

B. The Contractor shall obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.

[[OR]]

C. The Contractor shall obtain from each individual required to obtain a criminal background check a statement permitting a criminal background check. The <<typeofAgency>> will obtain a criminal background check for each individual using a source of its choosing.

[[OR (for Temporary Personnel Contracts)]]

D. The Contractor shall obtain criminal background checks on candidates it sends for employment at the <<typeofAgency>>. At a minimum, these checks must contain convictions and probation before judgment (PBJ) pleadings within the State of Maryland. This check may be performed by a public or private entity.

E. [[Keep when Contractor Performs the check, otherwise delete this paragraph:]]The Contractor shall provide certification to the <<typeofAgency>> that the Contractor has completed the required criminal background check described in this RFP for each required Contractor Personnel prior to assignment, and that the Contractor Personnel have successfully passed this check.

[[Pick one of E only, E and F, or F and G. Paragraph F is optional if E is kept but required if G is kept. E provides more discretion for the Contract Monitor.]]

F. Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.

G. The CJIS criminal record check of each Contractor Personnel who will work on State premises shall be reviewed by the Contractor for convictions of any of the following crimes described in the Annotated Code of Maryland, Criminal Law Article:

1) §§ 6-101 through 6-104, 6-201 through 6-205, 6-409 (various crimes against property);

2) any crime within Title 7, Subtitle 1 (various crimes involving theft);

3) §§ 7-301 through 7-303, 7-313 through 7-317 (various crimes involving telecommunications and electronics);

4) §§ 8-201 through 8-302, 8-501 through 8-523 (various crimes involving fraud);

5) §§9-101 through 9-417, 9-601 through 9-604, 9-701 through 9-706.1 (various crimes against public administration); or

6) a crime of violence as defined in CL § 14-101(a).

H. Contractor Personnel with access to systems supporting the State or to State data who have been convicted of a felony or of a crime involving telecommunications and electronics from the above list of crimes shall not be permitted to work on State premises under the Contract;

Contractor Personnel who have been convicted within the past five (5) years of a misdemeanor from the above list of crimes shall not be permitted to work on State premises.

I. A particular on-site location covered by the Contract may require more restrictive conditions regarding the nature of prior criminal convictions that would result in Contractor Personnel not being permitted to work on those premises. Upon receipt of a location's more restrictive conditions regarding criminal convictions, the Contractor shall provide an updated certification regarding the Contractor Personnel working at or assigned to those premises.

### 3.7.3 On-Site Security Requirement(s)

[[If this section is inapplicable to this RFP, insert the following sentence:]]

THIS SECTION IS INAPPLICABLE TO THIS RFP.

[[If this section is applicable to this RFP, adjust as appropriate for this RFP:]]

A. For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State's conditions and queries are satisfied.

1) Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.

2) Some State sites, especially those premises of the Department of Public Safety and Correctional Services, require each person entering the premises to document and inventory items (such as tools and equipment) brought onto the site, and to submit to a physical search of his or her person. Therefore, Contractor Personnel shall always have available an inventory list of tools being brought onto a site and be prepared to present the inventory list to the State staff or an officer upon arrival for review, as well as present the tools or equipment for inspection. Before leaving the site, the Contractor Personnel will again present the inventory list and the tools or equipment for inspection. Upon both entering the site and leaving the site, State staff or a correctional or police officer may search Contractor Personnel. Depending upon facility rules, specific tools or personal items may be prohibited from being brought into the facility.

B. Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the <<typeofAgency>> may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the <<typeofAgency>>.

C. Further, Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that controls the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default.

### 3.7.4 Information Technology

[[The following Information Technology Security provisions are to be included in Contracts where there is the collection, accessing, usage, storage, processing, disposition, and/or disclosure of State data, including "Sensitive Data" such as PII, PHI, or other private/confidential data. These provisions are designed to coincide with the SOC 2 Type 2 Audit Report provisions in the RFP, and should always be included in the solicitation when the SOC 2 Type 2 Audit Report requirement is included. If your solicitation does not have any requirements that relate to these Information Technology provisions, delete this Information Technology section and revise subsection numbering accordingly.]]

The Contractor shall:

1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.7.5**);

2) 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 the Contract; and

3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

### 3.7.5 Data Protection and Controls [[Review for applicability.]]

A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment ("Security Best Practices"). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.

B. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):

1) Establish separate production, test, and training environments for systems supporting the services provided under the Contract and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section 3.7.5**.

2) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides https://www.cisecurity.org/, Security Technical Implementation Guides (STIG) http://iase.disa.mil/Pages/index.aspx, or similar industry best practices to reduce the systems' surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor's system configuration files.

3) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization security measures.

4) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.

5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.

6) Encryption algorithms which are utilized for encrypting data shall 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

7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.

8) 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 remediation, if required. The <<typeofAgency>> 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 the Contract.

9) Ensure system and network environments are separated by properly configured and updated firewalls.

10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.

11) By default "deny all" and only allow access by exception.

12) Review, at least annually, 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.

13) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The <<typeofAgency>> shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

14) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current 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.

15) Ensure State data is not processed, transferred, or stored outside of the United States ("U.S."). The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.

16) Ensure Contractor's Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor -owned equipment to a State LAN/WAN.

17) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the 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. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.

18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The <<typeofAgency>> 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 the Contract.

### 3.7.6 Security Logs and Reports Access [[Review for applicability.]]

A. For a SaaS or non-State hosted solution, the Contractor shall provide reports to the State in a mutually agreeable format.

B. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to the Contract.

### 3.7.7 Security Plan [[Review for applicability.]]

A. The Contractor shall protect State data according to a written security policy ("Security Plan") no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.

B. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.

C. The Security Plan shall address compliance with the PCI DSS for payment card processing). [[Delete if no PCI.]]

D. [[Delete the following if Task Orders inapplicable]]<<If any Security Plan information, including procedures, are different based on a Task Order, Contractor shall furnish such differences to the respective TO Manager.>>

### 3.7.8 PCI Compliance [[Review for applicability.]]

A. Contractor shall at all times comply, and ensure compliance with, all applicable Payment Card Industry ("PCI") Data Security Standards ("DSS"), including any and all changes thereto. Contractor shall provide the <<typeofAgency>>with documented evidence of current compliance to PCI DSS within 30 days of an <<typeofAgency>>request.

B. The Contractor shall annually furnish to the State evidence of the PCI Security Standards Council's (SSC) acceptance or attestation of the Contractor's conformance to the relevant PCI DSS requirements by a third party certified to perform compliance assessments.

C. The Contractor shall ensure that the scope of the annual SOC 2 Type II Report specified under **Section 3.9** includes testing to confirm the PCI assessment results.

### 3.7.9 Security Incident Response

A. The Contractor shall notify the <<typeofAgency>> in accordance with **Section 3.7.9A-D** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:

1) notify the <<typeofAgency>> within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, <<typeofAgency>> chief information officer and <<typeofAgency>> chief information security officer;

2) notify the <<typeofAgency>> within two (2) hours if there is a threat to Contractor's Solution as it pertains to the use, disclosure, and security of State data; and

3) provide written notice to the <<typeofAgency>> within one (1) Business Day after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the State (or <<typeofAgency>>) requests concerning such unauthorized use or disclosure.

B. Contractor's notice shall identify:

1) the nature of the unauthorized use or disclosure;

2) the State 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.

C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of

Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.

D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State (or <<typeofAgency>>) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

#### 3.7.10 Data Breach Responsibilities

[[This section only applies when a data breach occurs with respect to State data within the possession or control of the Contractor.]]

A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:

1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;

2) Cooperate with the State to investigate and resolve the data breach;

3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and

4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.

B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.

3.7.11 Additional security requirements may be established in a Task Order and/or a Work Order. [[Delete if Task Orders or Work Orders are not allowed in this solicitation.]]

3.7.12 The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.

3.7.13 Provisions in **Sections** <<**3.7.1 – 3.7.10**>> shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Sections** <<**3.7.4-3.7.10**>> (or the substance thereof) in all subcontracts.

## 3.8 Problem Escalation Procedure

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

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

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

A. The process for establishing the existence of a problem;

B. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;

C. 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;

D. Expedited escalation procedures and any circumstances that would trigger expediting them;

E. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;

F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and

G. A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

## 3.9 SOC 2 Type 2 Audit Report

[[Contact your oversight analyst for language if there is the potential for FUTURE Sensitive Data handling. If a Contractor SOC 2 Type 2 Report **is not** required for this Contract, enter only the following sentence for this section and delete the rest.]]

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

[[Include the following SOC 2 Type 2 Report clause when the Contractor will collect, process, transmit, store, organize, maintain, or dispose of critical or sensitive information on behalf of the <<typeofAgency>> as part of its Contract responsibilities.]]

**3.9.1 A SOC 2 Type 2 Audit applies to the Contract. The applicable trust principles are: << Security, Availability, Processing Integrity, Confidentiality, or Privacy – The <<typeofAgency>> to choose which of the five trust principles apply>>as defined in the aforementioned Guidance.**

[[Consult with your AAG, Chief Information Officer, or a director of internal audits to determine which trust principles are applicable for your Contract.]]

**3.9.2 In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor's handling of Sensitive Data or the <<typeofAgency>>'s critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and**

**operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the "Information Functions and Processes." Such audits shall be performed in accordance with audit guidance: Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the <<typeofAgency>>, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:**

A. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the "SOC 2 Audit" or "SOC 2 Report"). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.

B. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.7**, relevant to the trust principles identified in 3.9.1: as defined in the aforementioned Guidance.

C. The audit scope of each year's SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year's SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.

D. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the <<typeofAgency>> under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.

E. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the <<typeofAgency>>.

F. The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.

G. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information

Functions and Processes being provided to the <<typeofAgency>> under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the <<typeofAgency>> will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).

H. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.9.2.A**, the <<typeofAgency>> shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The <<typeofAgency>> will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.

I. Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor and shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

## 3.10 Experience and Personnel

### 3.10.1 Preferred Offeror Experience

[[This section is where the agency will put desired characteristics for the company that will be evaluated. If <<typeofAgency>> has no specific Offeror experience qualifications for evaluating the Proposal, then insert:]]

THIS SECTION IS INAPPLICABLE TO THIS RFP.

[[Note that with any hardware/software provided under this RFP you may wish to require that the Contractor demonstrate that it is a licensed reseller or distributor of the item.]]

[[Insert additional experience requirements here.]]

The following experience is expected and will be evaluated as part of the Technical Proposal (see the Offeror experience, capability and references evaluation factor from **Section 6.2**):

A. Demonstrated knowledge of ….

B. Prior senior level experience (doing ….)

C. Breadth of knowledge in….

### 3.10.2 Personnel Experience

[[This section is where the agency will put desired characteristics for the Key Personnel that will be evaluated. If <<typeofAgency>> has no specific proposed **Key personnel** experience / qualifications for evaluating the Proposal, then insert:]]

THIS SECTION IS INAPPLICABLE TO THIS RFP.

[[Insert additional experience requirements here. This is the section to include mandatory requirements for any staff not included as Key Personnel.]]

The following experience is expected and will be evaluated as part of the Technical Proposal (see the capability of proposed resources evaluation factor from **Section 6.2**):

A. Demonstrated knowledge of ….

B. Prior senior level experience (doing ….)

C. Breadth of knowledge in….

### 3.10.3 Number of Personnel to Propose [[Delete if inapplicable.]]

As part of the Proposal evaluation, Offerors shall propose exactly <<numberOfProposedPersonnelAllowed>> personnel who are expected to be available as of the start date specified in the Notice to Proceed (NTP Date). Offerors shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the <<typeofAgency>>. Offerors may generally describe planned positions in a Staffing Plan. Such planned positions may not be used as evidence of fulfilling personnel minimum qualifications.

### 3.10.4 Key Personnel Identified [[Delete if inapplicable.]]

For the Contract, the following positions to be identified in the Technical Proposal will be considered Key Personnel, and shall be required to meet the qualifications stated in **Section 3.10** and **Appendix <<laborCategoriesAppendixNumber>>.** [[Currently, Appendix <<laborCategoriesAppendixNumber>> has a large number of labor category descriptions. Please update Appendix <<laborCategoriesAppendixNumber>>so that only labor categories appropriate for this solicitation are included.]]

A. <<Role or Labor Category 1>>

B. <<Role or Labor Category 2>>

C. <<Role or Labor Category 3>>

### 3.10.5 Labor Categories [[Delete if inapplicable.]]

[[Labor Categories must be included for contracts with hourly rates based on labor categories or task orders. Selection of labor categories: See a list of labor categories in Appendix <<laborCategoriesAppendixNumber>>. Remove any labor categories inapplicable to this RFP from the labor category list in the appendix and the price sheet while ensuring enough labor categories exist to meet possible future needs.]]

A. The Labor Categories are identified and described <<below>>[[Or in Appendix]] <<laborCategoriesAppendixNumber>>. To be responsive to this RFP, Offerors must be capable of providing personnel meeting the minimum requirements for all the labor categories listed. Offerors shall submit a Financial Proposal Form (**Attachment B**) that provides labor rates for all labor categories for all Contract years (initial term and any option periods). Actual resumes shall be provided only for Key Personnel as described in **Section 3.10.4**. Resumes for resources provided later shall be coordinated by the Contract Monitor per the Technical Proposal and, if requested in a Work Order, shall be governed by the Work Order process.

B. Each Labor Category includes Titles, Position Description, Education and Experience (General and Specialized).

C. Education and experience described below in the Labor Category constitute the minimum requirements for candidates performing work under this RFP. All experience required must have occurred within the most recent ten (10) years.

### 3.10.6 Contractor Personnel Experience Equivalency (including Key Personnel submitted in response to this RFP) [[Delete if inapplicable.]]

A. A Substitution of Education for Experience: Bachelor's Degree or higher may be substituted for the general and specialized experience for those labor categories requiring a High School Diploma. A Master's Degree may be substituted for two years of the general and specialized

experience for those labor categories requiring a Bachelor's Degree. Substitution shall be reviewed and approved by the State at its discretion.

B. Substitution of Experience for Education: Substitution of experience for education may be permitted at the discretion of the State.

C. Substitution of Professional Certificates for Experience: Professional certification (e.g., Microsoft Certified Solutions Expert, SQL Certified Database Administrator) may be substituted for up to two (2) years for general and specialized experience at the discretion of the State.

### 3.10.7 Contractor Personnel Maintain Certifications [[Delete if inapplicable.]]

Any Contractor Personnel provided under this RFP shall maintain in good standing any required professional certifications for the duration of the Contract.

### 3.10.8 Work Hours [[Delete or adjust as applicable.]]

Unless otherwise specified, the following work hours requirements are applicable:

A. Business Hours Support: Contractor shall assign Contractor Personnel to support <<Pick one; Normal State Business Hours (see definition in **Appendix 1**) OR <<typeofAgency>> business hours (<<hh:mm AM>> to <<hh:mm>> PM), Monday through Friday except for State holidays>>.

B. <<If Task Orders are used>> Needs beyond the hours described in paragraph A may be defined in a Task Order.

C. Contractor Personnel may also be required to provide occasional support outside of normal State Business Hours, including evenings, overnight, and weekends, to support specific efforts and emergencies, such as to resolve system repair or restoration. Hours performing activities must be billed on an actual time worked basis at the rates proposed.

D. [[Alternate Language. Delete or adjust as necessary.]] Scheduled non-Business Hours Support: Once personnel have demonstrated an understanding of the <<typeofAgency>> infrastructure, they will also be required to participate in a rotating emergency on-call schedule, providing non-Business Hours support. Typically, personnel assigned to <<typeofAgency>> non-Business Hours support are required to be on-call 24 hours a day for a seven-day period, one week out of every four to five weeks.

E. State-Mandated Closings: Contractor Personnel shall be required to participate in any State-mandated closings. In this event, the Contractor will be notified in writing by the Contract Monitor of these details.

F. Minimum and Maximum Hours: Full-time Contractor Personnel shall work 40 hours per week with starting and ending times as approved by the Contract Monitor. A flexible work schedule may be used with Contract Monitor approval, including time to support any efforts outside core business hours. Contractor personnel may also be requested to restrict the number of hours Contractor personnel can work within a given period of time that may result in less than an eight-hour day or less than a 40-hour work week.

G. Vacation Hours: Requests for leave shall be submitted to the Contract Monitor at least two weeks in advance. The Contract Monitor reserves the right to request a temporary replacement if leave extends longer than one consecutive week. In cases where there is insufficient coverage, a leave request may be denied.

## 3.11 Substitution of Personnel

[[Even if the RFP requires no Key Personnel, keep this section because the substitution clauses in **Section 3.11.4-D** may still be needed.]]

### 3.11.1 Continuous Performance of Key Personnel

When Key Personnel are identified for the Contract, the following apply:

A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Monitor or specified in the Contract, Key Personnel shall be assigned to the State of Maryland as a dedicated resource.

B. 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 the Contract without the prior written approval of the Contract Monitor.

C. The provisions of this section apply to Key Personnel identified in any Task Order proposal and agreement, if issued, and any Work Order Request and Work Order, if issued.

### 3.11.2 Definitions

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

A. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.

B. **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.

### 3.11.3 Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in **Section 3.11.4**.

A. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.

B. The Contractor shall provide the Contract Monitor with a substitution request that shall include:

1) A detailed explanation of the reason(s) for the substitution request;

2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;

3) The official resume of the current personnel for comparison purposes; and

4) Evidence of any required credentials.

C. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.

D. The Contract Monitor 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 Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

### 3.11.4 Replacement Circumstances

A. Directed Personnel Replacement

1) The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, <<typeofAgency>> policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.4.A.2**.

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

3) Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may 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 Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.

4) Replacement or substitution of Contractor 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.

5) If the Contract Monitor determines to direct substitution under **3.11.4.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

6) In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.11.4.A.1** 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. Key Personnel Replacement

1) To replace any Key Personnel in a circumstance other than as described in **3.11.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.11.3** to the Contract Monitor at least fifteen (15) days prior

to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

2) Key Personnel Replacement Due to Sudden Vacancy

a) The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1**.

b) Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.3** 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

a) If any Key Personnel has been absent from his/her job for a period of ten (10) days 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 and items to the Contract Monitor as required under **Section 3.11.3**.

b) 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 Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

### 3.11.5 Substitution Prior to and Within 30 Days After Contract Execution

Prior to Contract execution or within thirty (30) days after Contract execution, the Offeror may not substitute proposed Key Personnel except under the following circumstances (a) for actual full-time personnel employed directly by the Offeror: the vacancy occurs due to the sudden termination, resignation, or approved leave of absence due to an Extraordinary Personal Event, or the death of such personnel; and (b) for any temporary staff, subcontractors or 1099 contractors: the vacancy occurs due to an Incapacitating event or the death of such personnel. To qualify for such substitution, the Offeror must demonstrate to the State's satisfaction the event necessitating substitution. Proposed substitutions shall be of equal caliber or higher, in the State's sole discretion. Proposed substitutes deemed by the State to be less qualified than the originally proposed individual may be grounds for pre-award disqualification or post-award termination.

## 3.12 Minority Business Enterprise (MBE) Reports

If this solicitation includes an MBE Goal (see **Section 4.26**), the Contractor shall:

A. Submit the following reports by the 10th of each month to the Contract Monitor and the <<typeofAgency>>'s MBE Liaison Officer:

1) 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

2) (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 an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) by the 10th of each month to the Contract Monitor and the <<typeofAgency>>'s MBE Liaison Officer 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, type of work performed by each, and 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 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.

## 3.13 Veteran Small Business Enterprise (VSBE) Reports

If this solicitation includes a VSBE Goal (see **Section 4.27**), the Contractor shall:

A. Submit the following reports by the 10th of the month following the reporting period to the Contract Monitor and the <<typeofAgency>> VSBE representative:

1) VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (**Attachment E-3**) 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; and

2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.

B. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and <<typeofAgency>> VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (**Attachment E-4**).

C. 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.

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 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.

E. At the option of the <<typeofAgency>>, upon completion of the Contract and before final payment and 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.

## 3.14 Work Orders

[[If this section is inapplicable to this RFP, insert the following sentence. Some agencies use the term "Task Order" for this section instead. Make sure the term you use, whether Work Order or Task Order, is defined in Appendix 1.]]

THIS SECTION IS INAPPLICABLE TO THIS RFP.

[[A work order process may be used to expand the activities performed under the RFP **as long as it is within the overall scope of work described within the RFP**. A work order may be T&M or fixed price, as appropriate for your RFP. A work order may also be for a specific set of work or for a resource (when the RFP is used more in line as a staffing model). However, if you anticipate using the RFP for T&M work orders, the Financial Proposal Form must have the relevant labor categories and rates. Rates must be determined at RFP issuance. Strike references to a time and material Work Order if the Financial Proposal Form will not include pricing options for T&M.]]

A. Additional <<PICK both or just one: services and resources>> will be provided via a Work Order process. Work shall not begin in advance of a fully executed Work Order. A Work Order may be issued for <<pick one or both: either fixed price or time and materials (T&M) pricing>>. T&M Work Orders will be issued in accordance with pre-approved Labor Categories with the fully loaded rates proposed in **Attachment B**. [[Remove last sentence if no T&M.]]

B. Work Order Requests (See sample at http://doit.maryland.gov/contracts/Documents/_procurementForms/WorkOrderSample.pdf) for the provision of services or resources that are within the scope of this RFP will be issued to the Contractor. The Work Order Request will include:

1) Technical requirements and description of the service or resources needed;

2) Performance objectives and/or deliverables, as applicable;

3) Due date and time for submitting a response to the request; and

4) Required place(s) where work must be performed.

C. The Contractor shall e-mail a response to the Contract Monitor within the specified time and include at a minimum:

1) A response that details the Contractor's understanding of the work;

2) A price to complete the Work Order Request using the format provided using the format provided (see online sample).

3) A description of proposed resources required to perform the requested tasks, with labor categories listed in accordance with **Attachment B**.

4) An explanation of how tasks shall be completed. This description shall include proposed subcontractors and related tasks.

5) Contractor's expectations for State-furnished information, work site, and/or access to equipment, facilities, or personnel

6) The proposed personnel resources, including any subcontractor personnel, to complete the task.

D. For a T&M Work Order, the Contract Monitor will review the response and will confirm the proposed labor rates are consistent with this RFP. For a fixed price Work Order, the Contract Monitor will review the response and will confirm the proposed prices are acceptable.

E. The Contract Monitor may contact the Contractor to obtain additional information, clarification or revision to the Work Order, and will provide the Work Order to the Procurement Officer for a determination of compliance with the Contract and a determination whether a change order is appropriate. Written Procurement Officer approval is required before Work Order execution by the State.

F. Proposed personnel on any type of Work Order shall be subject to <<typeofAgency>> approval. The Contractor shall furnish resumes of proposed personnel specifying the labor category(ies) proposed. The Contract Monitor shall have the option to interview the proposed personnel and, in the event of an interview or not, shall notify the Contractor of acceptance or denial of the personnel.

G. Performance of services under a Work Order shall commence consistent with an NTP issued by the Contract Monitor for such Work Order.

## 3.15 Additional Clauses

[[This section may be used for agency-specific clauses that are not included elsewhere in the RFP. Sections 3.15.1-3.15.5 are specific to IT solicitations. Section 3.15.6 should be included in all solicitations. If sections are inapplicable or added, delete and renumber sections accordingly.]]

The Contractor shall be subject to the requirements in this section and shall flow down the provisions of **Sections 3.15.1 – 3.15.5** (or the substance thereof) in all subcontracts.

### 3.15.1 Custom Software

[[If custom software is part of the Contract's scope, do not change this language without AAG approval.]]

A. As described in the sample Contract (**Attachment M**), the State shall solely own any custom software, including, but not limited to application modules developed to integrate with a COTS, source-codes, maintenance updates, documentation, and configuration files, when developed under the Contract.

B. Upon a Contractor's voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, Contractor's dissolution, Contractor's discontinuance of support of any software or system, the Contractor shall convey to the State all rights, title, and interests in all custom software, licenses, software source codes, and all associated System Documentation that comprises any solutions proposed as a part of the Contract These rights include, but are not limited to, the rights to use, and cause others to use on behalf of the State, said software, software documentation, licenses, software source codes, and System Documentation.

### 3.15.2 Custom Source Code

[[If custom software is part of the Contract's scope, do not change this language without AAG approval. ]]

A. For all custom software provided to the State pursuant to any Contract, the Contractor shall either provide the source code directly to the State in a form acceptable to the State, or deliver two copies of each software source code and software source code documentation to a State-approved escrow agent at no additional cost to the State following the terms set forth in the sample contract (**Attachment M**) and in **Section 3.15.3** below.

B. The State shall have the right to audit custom software source code and corresponding software source code documentation for each software product that comprises the solution as represented by the Contractor. This audit shall be scheduled at any time that is convenient for the parties to be present. The State shall be provided with software or other tools required to view all software source code.

C. The Contractor shall provide the current source code and documentation for all custom software to the State at the time of Contract termination.

### 3.15.3 Source Code Escrow

[[If source code escrow is part of the Contract's scope, do not change this language without AAG approval. Keep this section if the Contract might include source code escrow. Delete this clause if inapplicable, and revise the numbering of the clauses in the Contract accordingly. Otherwise, delete this section and its heading, renumbering any subsequent sections.]]

Source Code Escrow applies to the Contract. The Contractor shall perform source code escrow as described herein.

A. The State will be named as a beneficiary under an escrow agreement ("Escrow Agreement") that shall be entered into between the Contractor and an escrow agent ("Escrow Agent") within <<xxx>> days of the date hereof pursuant to which Contractor shall deliver a Source Code Escrow Package to Escrow Agent. The term "Source Code Escrow Package" means: a) a complete copy in machine-readable form of the source code and executable code of the software licensed to the State under the Contract; b) a complete copy of any existing design documentation and user documentation; and/or c) complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. The Escrow Agreement shall govern the maintenance and release of the Source Code Escrow Package, and Contractor agrees to update, enhance, or otherwise modify such Source Code Escrow Package promptly upon each release of a new version of any component thereof. Contractor shall pay all fees and expenses charged by Escrow Agent, including, but not limited to, fees and expenses related to the State being a named beneficiary under the Escrow Agreement. The State shall treat the Source Code Escrow Package as Contractor's confidential information. Under all circumstances, the Source Code Escrow Package shall remain the property of Contractor. The State shall only use the Source Code Escrow Package as contemplated in the Contract (including, but not limited to confidentiality provisions and usage restrictions). The Escrow Agent shall maintain the Source Code Escrow Package in a repository located in the United States.

B. In the event that the Escrow Agent either ceases providing escrow services to Contractor or Contractor determines in its reasonable business judgment that the Escrow Agent is no longer providing acceptable services, Contractor shall replace the Escrow Agent with another escrow agent, using an agreement which provides the State with rights no less advantageous than those in the Escrow Agreement. In such case, the new escrow agent shall be substituted

in all ways for the incumbent Escrow Agent with respect to **Section 3.15.3.A** above and all references herein to Escrow Agent shall be deemed to include such substitute escrow agent.

C. Contractor shall inform the State of the availability of an escrow for any third party software solutions it provides to the State.

D. In addition to the rights and obligations contained in the Escrow Agreement referenced in **Section 3.15.3.A**, the State shall have the Software Escrow Package released by the Escrow Agent to the State's possession immediately upon any voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, including but not limited to a general assignment for the benefit of including but not limited to a general assignment for the benefit of creditors, the appointment of a receiver for business or assets; creditors, the appointment of a receiver for business or assets; Contractor's dissolution or liquidation, voluntary or otherwise; the State has compelling reasons to believe that such events will cause Contractor to fail to meet its obligations in the foreseeable future; or Contractor's discontinuance of support or failure to support in accordance with the Contract any software system or if the Contractor is otherwise unable or unwilling to provide the Source Code Escrow Package. This condition will also be considered met if after repeated e-mail and phone requests by the State for service, the State makes a request for service in writing to the Contractor's last known address served by certified signed receipt required mail delivery by U.S. Post Office or by a nationally recognized (in the United States) overnight carrier, and the Contractor remains unresponsive, meaning that the Contractor is unable to acknowledge message receipt, unwilling or otherwise unable to satisfy the request for a period longer than 45 days from attempt to deliver the written request.

### 3.15.4 Purchasing and Recycling Electronic Products

[[If this solicitation does not include purchases or removal of electronic products, enter only the following sentence for this section and delete the rest.]]

This section does not apply to this solicitation.

[[If this solicitation does include purchases or removal of electronic products, enter the following language for this section:]]

A. State Finance and Procurement Article, Md. Code Ann. § 14-414, requires State agencies purchasing computers and other electronic products in categories covered by EPEAT to purchase models rated EPEAT Silver or Gold unless the requirement is waived by the DoIT. This information is located on the DGS web site: http://www.dgs.maryland.gov/Pages/GreenOperations/GreenPurchasing/Guidelines/electronics.aspx

B. Guidelines provided by DGS require planning and coordination of the proper disposition of Information Technology equipment. State Finance and Procurement Article, Md. Code Ann. § 14-415, requires State agencies awarding contracts for services to recycle electronic products to award the contract to a recycler that is R2 or e-Stewards certified. This information is located on the DGS web site: http://www.dgs.maryland.gov/Pages/GreenOperations/GreenPurchasing/Guidelines/electronics.aspx

C. Guidelines provided by DoIT discuss information and guidance on the proper disposition of IT equipment, media sanitization, and protecting confidential information stored on media. This information is located in the State's Information Technology (IT) Security Policy http://doit.maryland.gov/support/pages/securitypolicies.aspx. Section 6.5 Media Protection provides guidance on proper precautions to protect confidential information stored on media.

### 3.15.5 Change Control and Advance Notice

A. Unless otherwise specified in an applicable Service Level Agreement, the Contractor shall give seven (7) days advance notice to the State of any upgrades or modifications that may impact service availability and performance.

B. Contractor may not modify the functionality or features of any SaaS provided hereunder if such modification materially degrades the functionality of the SaaS.

### 3.15.6 No-Cost Extensions

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

# 4 Procurement Instructions

## 4.1 Pre-Proposal Conference

4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.

4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals.

4.1.3 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1** eMM).

[[For an in-person Conference, include the following (as applicable).]]

4.1.4 Attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.

4.1.5 In order to assure adequate seating and other accommodations at the Conference, please e-mail the Pre-Proposal Conference Response Form (**Attachment A**) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The <<typeofAgency>> will make a reasonable effort to provide such special accommodation.

4.1.6 [[f necessary]]Seating at the Conference will be limited to two (2) attendees per vendor.

[[If an online Conference will be held use the following language:]]

4.1.7 Those wishing to attend the web conference may request a meeting invitation by emailing <<contact name>> at <<contact email>>no later than 2:00 PM on <<deadline for contacting>>. An invitation e-mail is required for registration, and therefore attendance. Upon receipt of the email, the Procurement Officer will reply with a registration email with a link that may be used to register for the conference. Registration must be completed by 2:00 PM <<registration deadline>>.

[[The following is optional. Delete this paragraph if it does not apply to this RFP. If a site visit is required, complete the highlighted information.

**NOTE:** Depending on your procurement's requirements, a site visit may be beneficial to prospective Offerors. If so, the language below may be inserted when appropriate, and this section title changed to "Pre-Proposal Conference and Site Visit(s)." If there are limitations as to how many vendor representatives may attend, the <<typeofAgency>> should state so below. If visits to multiple sites are recommended, it is suggested that separate, advance registrations be made available for each, and the schedule for the site visits be distributed prior to the Pre-Proposal Conference if possible. The <<typeofAgency>>should also address whether prospective Offerors can request a follow-up site visit, or if no additional, follow-up visits will be allowed. Finally, if any site visit is offered, the Pre-Proposal Conference Response Form should include a section where vendors can indicate whether they intend to attend the site visit, and should include spaces for the vendor to name its representative(s) that will attend the site visit.

Delete the following if inapplicable.]]

4.1.8 A site visit has been pre-scheduled for <<date of site visit>>, beginning at <<start time of site visit>> Local Time, at <<full address of site with building name and room number>>. All

prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

## 4.2 eMaryland Marketplace (eMM)

4.2.1 eMM is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMM.

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

## 4.3 Questions

4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (<<solicitationNumber>> - <<solicitationTitle>>), and shall be submitted in writing via e-mail to the Procurement Officer <<select the appropriate phrase:at least five (5) days prior to the Proposal due date [[OR, if an IT procurement use:]] no later than the date and time specified the Key Information Summary Sheet.>> 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.

4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMM.

4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the <<typeofAgency>> unless it issues an amendment in writing.

## 4.4 Procurement Method

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

## 4.5 Proposal Due (Closing) Date and Time

4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.

4.5.2 Requests for extension of this date or time shall not be granted.

4.5.3 Offerors submitting Proposals should allow sufficient 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 the Key Information Summary Sheet will not be considered.

4.5.4 The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address indicated on the Key Information Summary Sheet.

4.5.5 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.

4.5.6 Proposals may not be submitted by <<e-mail or>>[[Remove if e-mail is allowed.]] facsimile. Proposals will not be opened publicly.

4.5.7 Potential Offerors 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).

## 4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

[[If you wish to consider accepting Multiple or Alternate Proposals, discuss with your procurement supervisor, oversight agency and legal counsel.]]

## 4.7 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.

## 4.8 Public Information Act Notice

4.8.1 The 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 (See also RFP **Section 5.3.2.B** "Claim of Confidentiality"). This 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.

4.8.2 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.

## 4.9 Award Basis

A 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 6** for further award information.

[[If more than one award is authorized, including multiple service categories or functional areas, contact your oversight agency and your AAG for help identifying the appropriate changes throughout the RFP.]]

## 4.10 Oral Presentation

[[Oral Presentations are strongly recommended. If a live software demonstration will be part of the oral presentation, include this information in this section.]]

Offerors may be required to make oral presentations to State representatives. Oral presentations are considered part of the Technical Proposal. 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. The Procurement Officer will notify Offerors of the time and place of oral presentations.

## 4.11 Duration of Proposal

[[While 120 days, as listed below, is the usual time period for Proposals to be irrevocable, for very complicated procurements this time period may be changed to 150 or even 180 days.]]

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

## 4.12 Revisions to the RFP

4.12.1 If the RFP is revised before the due date for Proposals, the <<typeofAgency>> shall post any addenda to the RFP on eMM and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMM for any addenda issued prior to the submission of Proposals.

4.12.2 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.

4.12.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.

4.12.4 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.

4.12.5 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, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

## 4.13 Cancellations

4.13.1 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, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.

4.13.2 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

4.13.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with COMAR 21.01.03.01.A(4).

## 4.14 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, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

## 4.15 Protest/Disputes

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

## 4.16 Offeror Responsibilities

4.16.1 Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.

4.16.2 All subcontractors shall be identified and a complete description of their role relative to the Proposal shall 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) to this RFP (see **Section 4.26** "Minority Participation Goal" and **Section 4.27** "VSBE Goal").

4.16.3 If the Offeror 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's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

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

## 4.17 Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror's Proposal. The <<typeofAgency>> reserves the right to accept or reject any exceptions.**

## 4.18 Proposal Affidavit

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

## 4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

## 4.20 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 shall not become so in arrears during the term of the Contract if selected for Contract award.

## 4.21 Verification of Registration and Tax Payment

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

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

## 4.22 False Statements

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

4.22.1 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.

C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.

4.22.3 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 (5) years or both.

## 4.23 Payments by Electronic Funds Transfer

By submitting a Proposal in response to this solicitation, the Offeror, if selected for award:

4.23.1 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 successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

4.23.2 Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf.

## 4.24 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 Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment

requirements outlined in the Contract, Section 31 "Prompt Pay Requirements" (see **Attachment M**), should an MBE goal apply to this RFP. Additional information is available on GOSBA's website at: http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf.

## 4.25 Electronic Procurements Authorized

4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the <<typeofAgency>> may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.

4.25.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, [[Remove all references to facsimile in this section if you don't plan to accept facsimile. Adjust grammar accordingly.]]e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., https://emaryland.buyspeed.com/bso/), and electronic data interchange.

4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

A. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:

1) The RFP;

2) Any amendments and requests for best and final offers;

3) Pre-Proposal conference documents;

4) Questions and responses;

5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;

6) Notices of award selection or non-selection; and

7) The Procurement Officer's decision on any Proposal protest or Contract claim.

B. The Offeror or potential Offeror may use e-mail to:

1) Submit Proposals; [[Retain if applicable. Otherwise delete this line. Currently not allowed for services contracts.]]

2) Ask questions regarding the solicitation;

3) 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 and;

4) Submit a "No Proposal Response" to the RFP.

C. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

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

A. Submission of initial Proposals [[If Proposals are to be accepted via e-mail, delete this line and renumber remaining requirements. E-mail is currently not allowed for services contracts.]];

B. Filing of protests;

C. Filing of Contract claims;

D. Submission of documents determined by the <<typeofAgency>> to require original signatures (e.g., Contract execution, Contract modifications); or

E. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

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

## 4.26 MBE Participation Goal

[[If there is no MBE goal for this solicitation, enter only the following sentence for this section and delete the remainder of this section.]]

There is no MBE subcontractor participation goal for this procurement.

[[If there is a MBE goal for this solicitation, enter and complete the following language for this section.]]

### 4.26.1 Establishment of Goal and Subgoals

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

Notwithstanding any subgoals established for this RFP, 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.

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

**An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP**

**will result in the State's rejection of the Offeror's Proposal for the applicable Service Category. This failure is not curable.**

4.26.2 Attachments.

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

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

B. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
3. The 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 there is more than one Functional Area or Service Category within the RFP, include the following language. Edit the highlighted language to be specific to the number and type of Functional Areas or Service Categories in the RFP.]]

**An Offeror must properly complete and submit a separate Attachment D-1A, MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule, for EACH Service Category (I and II) for which it is submitting a proposal. If an Offeror is submitting a proposal for each of Service**

**Categories I and II, the Offeror must submit two separate Attachment D-1As, one for each of the two Service Categories.**

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

4.26.3 Offerors are responsible for verifying that each MBE (including any MBE prime and 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.

4.26.4 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 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**); and

C. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

D. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

***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.***

4.26.5 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.maryland.gov/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.**

4.26.6 The 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.

4.26.7 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M**, **Section 2.1**).

4.26.8 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 M**, **Liquidated Damages for MBE, section 39**[[Verify this contract clause number, as it may vary based on other clauses in the contract]].

4.26.9 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 subgoals, 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 subgoals, the MBE prime must also identify other 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 subgoal classifications but can self-perform up to 100% of the stated subgoal.

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. Refer to MBE forms (**Attachment D**) for additional information.

## 4.27 VSBE Goal

[[If there is no VSBE goal for this solicitation, enter only the following sentence for this section, and delete the rest.]]

There is no VSBE participation goal for this procurement.

[[If there is a VSBE goal for this solicitation, enter and complete the following language for this section.]]

### 4.27.1 Purpose

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

B. Veteran-Owned Small Business Enterprises must be verified by the Office of Small and Disadvantaged Business Utilization (OSDBU) of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at http://www.va.gov/osdbu.

### 4.27.2 VSBE Goal

A. A VSBE participation goal of the total Contract dollar amount has been established for this procurement as identified in the Key Information Summary Sheet.

B. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

### 4.27.3 Solicitation and Contract Formation

A. In accordance with COMAR 21.11.13.05 C (1), this solicitation requires Offerors to:

1) Identify specific work categories within the scope of the procurement appropriate for subcontracting;

2) Solicit VSBEs before Proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;

3) Attempt to make personal contact with the VSBEs solicited and to document these attempts;

4) Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and

5) Attempt to attend preProposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.

B. The Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Offeror:

1) 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 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; and

2) Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.

[[If there is more than one Functional Area or Service Category within the RFP, include the following language. Edit the highlighted language to be specific to the number and type of Functional Areas or Service Categories in the RFP.]]

**An Offeror must properly complete and submit a separate Attachment E-1, VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule, for EACH Service Category (I and II) for which it is submitting a proposal. If an Offeror is submitting a proposal for each of Service Categories I and II, the Offeror must submit two separate Attachment E-1s, one for each of the two Service Categories.**

C. 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.

D. In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-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.

E. 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 E-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 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 reasonably susceptible of being selected for award.***

## 4.28 Living Wage Requirements

[[This section does not apply for product purchases or service contracts under $100,000. If the solicitation is for product only, use the statement below and delete the sub-paragraphs following. If the value of services is expected to be close to $100,000 include the section.]]

There is no Living Wage requirement for this procurement.

[[Otherwise delete the above statement and retain the subparagraphs below.]]

A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over $100,000. Maryland Code Ann., State Finance and Procurement Article, § 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.

B. 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. 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.

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

D. 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 a Tier 2 Area of the State. 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.

1) 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. 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, the Contract will

be determined to be a Tier (enter "1" or "2," depending on where the majority of the service recipients are located) Contract.

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

3) 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.

4) 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.

E. 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. See COMAR 21.11.10.07.

F. The Offeror shall identify in the Proposal the location from which services will be provided.

G. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change.

## 4.29 Federal Funding Acknowledgement

[[If the Contract to be awarded under this procurement does not contain federal funds, enter only the following sentence for this section and delete the rest.]]

This Contract does not contain federal funds.

[[If the Contract to be awarded under this procurement does contain federal funds, enter and complete the following language for this section.]]

4.29.1 There are programmatic conditions that apply to the Contract due to federal funding (see **Attachment G**).

[[Check with your AAG for applicability of 4.29.2 and 4.29.3 to this solicitation.]]

4.29.2 The total amount of federal funds allocated for the <<name of administration or facility>> is $<<federal funds amount)>> in Maryland State fiscal year <<current fiscal year>>. This represents <<divide federal funds amount by the total of the unit's budget%>>% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.

4.29.3 The Contract contains federal funds. The source of these federal funds is: <<name of federal program for funds source e.g., Medicaid, Ryan White, Title X>>. The CFDA number is: <<insert Catalog of Federal Domestic Assistance number>>. The conditions that apply to all federal funds awarded by the <<typeofAgency>> are contained in Federal Funds **Attachment G**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment G** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions, which are part of the Contract.

## 4.30 Conflict of Interest Affidavit and Disclosure

[[A conflict of interest affidavit should be included with all solicitations.]]

4.30.1 The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal.

4.30.2 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.

4.30.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services << under OR individual Task Orders issued under >> the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

4.30.4 Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that "an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement." Any Offeror submitting a Proposal in violation of this provision shall be classified as "not responsible." See COMAR 21.05.03.03.

## 4.31 Non-Disclosure Agreement

### 4.31.1 Non-Disclosure Agreement (Offeror)

[[If a Non-Disclosure Agreement is not required for reviewing information prior to Proposal submission, enter only the following sentence for this section and delete the rest under this 4.31.1 heading:]]

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

[[If a Non-Disclosure Agreement is required for this solicitation, enter the following language for this section:]]

Certain documentation may be available for potential Offerors to review at a reading room at <<address>>. Offerors who review such documentation will be required to sign a Non-Disclosure Agreement (Offeror) in the form of **Appendix <<Offeror NDA Attachment Number>>.** Please contact the Procurement Officer to schedule an appointment.

### 4.31.2 Non-Disclosure Agreement (Contractor)

[[If a Non-Disclosure Agreement is not required for this solicitation, enter only the following sentence for this section and delete the rest. DoIT strongly recommends an NDA for any services contract.]]

A Non-Disclosure Agreement (Contractor) is not required for this procurement.

[[If a Non-Disclosure Agreement is required for this solicitation, enter the following language for this section:]]

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

## 4.32 HIPAA - Business Associate Agreement

[[If a HIPAA Business Associate Agreement is not required for this solicitation, enter only the following sentence for this section and delete the rest.]]

A HIPAA Business Associate Agreement is not required for this procurement.

[[If a HIPAA Business Associate Agreement is required for this solicitation, enter the following language for this section, and select the appropriate Contract clause option in the Contract – Attachment M.]]

Based on the determination by the <<typeofAgency>> that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. 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 Offeror with the next highest overall-ranked Proposal.

## 4.33 Nonvisual Access

[[If this solicitation does not contain Information Technology (IT) provisions, enter only the following sentence for this section and delete the rest.]]

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

[[If this solicitation does contain Information Technology (IT) provisions, enter the following language for this section.]]

4.33.1 By submitting a Proposal in response to this RFP, the Offeror, if selected for award warrants that any Information Technology offered under the Proposal will meet the Non-visual Access Clause noted in COMAR 21.05.08.05 and described in detail below. The Non-visual Access Clause referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations, which can be found at: www.doit.maryland.gov, keyword: NVA. Note that the State's Non-visual Access Clause has distinct requirements not found in the federal Section 508 clauses.

4.33.2 The Offeror warrants that the Information Technology to be provided under the Contract:

A. Provides equivalent access for effective use by both visual and non-visual means;

B. Will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use;

C. If intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and

D. Is available, whenever possible, without modification for compatibility with Software and hardware for non-visual access.

4.33.3 The Offeror further warrants that the cost, if any, of modifying the Information Technology for compatibility with Software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of the Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

## 4.34 Mercury and Products That Contain Mercury

[[If this solicitation does not include the procurement of products known to likely include mercury as a component, enter only the following sentence for this section and delete the rest.]]

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

[[If this solicitation does include the procurement of products known to likely include mercury as a component, choose and enter the following "Option" language for this section, as applicable). Note for IT purchases, Option 3 is typically the only one selected.]]

**[[Option 1.** This clause provides a price preference to only those products that are mercury-free. Enter the percentage preference for "X."]]

The <<typeofAgency>> shall give a price preference of <<X >>percent (X%) (not to exceed 5%; see COMAR 21.05.08.09) to Proposals for products or equipment that are mercury-free. The Offeror must submit a Mercury Affidavit in the form of **Attachment K** with its Proposal.

[[**Option 2.** This clause provides a price preference to those products that are mercury-free or which provide the least amount of mercury. Enter the percentage preference for "X."]]

The <<typeofAgency>>shall give a price preference of <<X >>percent (<<X>>%) (not to exceed 5%; see COMAR 21.05.08.09) to Proposals for products or equipment that are mercury-free or, if mercury-free products or equipment are not offered, to the Proposals for products or equipment containing the least amount of mercury necessary to meet performance requirements. The Offeror must submit a Mercury Affidavit in the form of **Attachment K** with its Proposal.

[[**Option 3.** This clause requires that all products be mercury-free.]]

All products or equipment provided pursuant to this solicitation shall be mercury-free products. The Offeror must submit a Mercury Affidavit in the form of **Attachment K** with its Proposal.

## 4.35 Location of the Performance of Services Disclosure

[[If this procurement is **not** anticipated to have an estimated value of $2,000,000.00 or more, enter only the following sentence for this section and delete the rest.]]

This solicitation does not require a Location of the Performance of Services Disclosure.

[[If this procurement is anticipated to have an estimated value of $2,000,000.00 or more and includes services, enter the following language for this section:]]

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

<<Services under this Contract must be performed in the United States.>> [[Mandatory if this is one of the four categories of: architectural services, construction-related services, engineering services, and energy performance services. Optional for other types of services *but* the rationale given in Attachment L must meet the standards listed at the end of the Attachment. Also, double check the security boilerplate for consistency.]]

## 4.36 Department of Human Services (DHS) Hiring Agreement

[[If this solicitation does not require a DHS Hiring Agreement, enter only the following sentence for this section and delete the rest.]]

This solicitation does not require a DHS Hiring Agreement.

[[If this solicitation does require a DHS Hiring Agreement, enter the following language for this section:]]

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 DHS Hiring Agreement. A copy of this Agreement is included as **Attachment O**. This Agreement must be provided within five (5) Business Days of notification of recommended award.

## 4.37 Small Business Reserve (SBR) Procurement

[[If this solicitation **is** not designated as a Small Business Reserve (SBR) Procurement, enter only the following sentence for this section and delete the rest.]]

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

[[If this solicitation is designated as a Small Business Reserve (SBR) Procurement, enter the following language for this section.]]

4.37.1 This is a Small Business Reserve Procurement for which award will be limited to certified small business vendors. Only businesses that meet the statutory requirements set forth in State Finance and Procurement Article, §§14-501—14-505, Annotated Code of Maryland, and that are certified by GOSBA Small Business Reserve Program are eligible for award of a contract.

4.37.2 For the purposes of a Small Business Reserve Procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:

A. It is independently owned and operated;

B. It is not a subsidiary of another business;

C. It is not dominant in its field of operation; and

1) With respect to employees, in its most recently completed three (3) fiscal years:

a) Its wholesale operations did not employ more than 50 persons;

b) Its retail operations did not employ more than 25 persons;

c) Its manufacturing operations did not employ more than 100 persons;

d) Its service operations did not employ more than 100 persons;

e) Its construction operations did not employ more than 50 persons; and

f) The architectural and engineering services of the business did not employ more than 100 persons; and

2) With respect to gross sales, in its most recently completed three (3) fiscal years:

a) The gross sales of its wholesale operations did not exceed an average of $4,000,000;

b) The gross sales of its retail operations did not exceed an average of $3,000,000;

c) The gross sales of its manufacturing operations did not exceed an average of $2,000,000;

d) The gross sales of its service operations did not exceed an average of $10,000,000;

e) The gross sales of its construction operations did not exceed an average of $7,000,000; and

f) The gross sales of its architectural and engineering operations did not exceed an average of $4,500,000.

D. Note: If a business has not existed for three (3) years, the employment and gross sales average or averages shall be the average for each year or part of a year during which the business has been in existence.

E. Further information on the certification process is available at eMaryland Marketplace.

4.37.3 **Ineligible Proposals**. Under a small business reserve procurement, a business that is not a certified small business is ineligible for award of a contract.

4.37.4 Before awarding a contract under a procurement designated as a small business reserve procurement, the Procurement Officer shall verify that the apparent awardee is certified by the Governor's Office of Small, Minority & Women Business Affairs as a small business. A procurement contract award under a small business reserve may not be made to a business that has not been SBR certified.

## 4.38 Bonds

[[If this solicitation does not require any type of surety bond, you may delete the entire section INCLUDING the section heading. Include 4.38.4, and 4.38.5, renumbering as appropriate, when there is at least one surety bond.]]

### 4.38.1 Proposal Bond

Each Offeror must submit with its Proposal a Proposal Bond or other suitable security, as summarized in **<<4.38.4>>**, in the amount of five percent (5%) of the Total Evaluated Price, guaranteeing the availability of the goods and services at the offered price for 180 days after the due date for receipt of Proposals.

The bond shall be in the form provided in **Appendix <<proposalBidBondAppendixNumber>>.**

The Offeror may request a release of the bond after the date of the award in return for a release signed by the Contractor and accepted by the <<typeofAgency>>.

The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

[[The bond format in the attachment is as specified in COMAR. It Is DoIT's guidance for agencies to NOT UTILIZE A BOND FORM OTHER THAN THE ONE IN THIS RFP. Contractors often send a bond form. DoIT strongly recommends not accepting these forms because often these contractor-supplied forms contain additional terms.]]

### 4.38.2 Performance Bond

[[Performance bonds should be used sparingly for high risk procurements. If this solicitation does not require a Payment Bond, you may delete the entire section INCLUDING the section heading. If this solicitation does require software escrow, see DoIT for attachments appropriate to this section. Note: a Performance Bond must be submitted not later than the date of contract execution.]]

A. The successful Offeror shall deliver a Performance Bond, or other suitable security, to the State after notification of recommended award.

B. The successful Offeror must submit a Performance Bond, or other suitable security in the amount of <<$1,000,000.00>>, guaranteeing that the Contractor shall well and truly perform the Contract.

C. The Performance Bond shall be in the form provided in **Appendix <<performanceBondAppendixNumber>>** and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the State, or other acceptable security for bond as described in COMAR 21.06.07, as summarized in **<<4.38.4>>**.

D. The Performance Bond shall be maintained throughout the term of the Contract, and renewal option period(s), if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the State.

E. The Performance Bond may be renewable annually. The Contractor shall provide to the State, 30 days before the annual expiration of the bond, confirmation from the surety that the bond will be renewed for the following year. Failure to timely provide this notice shall constitute an event of default under the Contract. Such a default may be remedied if the Contractor obtains a replacement bond that conforms to the requirements of the Contract and provides that replacement bond to the State prior to the expiration of the existing Performance Bond.

F. The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

G. After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the <<typeofAgency>>'s sole discretion. If any reduction is granted, the <<typeofAgency>>'s shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the <<typeofAgency>>'s sole discretion.

### 4.38.3 Payment Bond

[[If this solicitation does not require a Payment Bond, you may delete the entire section INCLUDING the section heading.]]

### 4.38.4 Acceptable security

Acceptable security shall be as described below, identified within and excerpted from COMAR 21.06.07:

A. Acceptable security for Proposal, performance, and payment bonds is limited to:

1) A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;

2) A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;

3) Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;

4) An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer.

### 4.38.5 Surety Bond Assistance Program

Assistance in obtaining bid, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to $750,000. MSBDFA may also guarantee up to 90% of a surety's losses as a result of a Contractor's breach of Contract; MSBDFA exposure on any bond guaranteed may not, however, exceed $900,000. Bonds issued directly by the program will remain in effect for the duration of the Contract, and those surety bonds that are

guaranteed by the program will remain in effect for the duration of the surety's exposure under the Contract. To be eligible for bonding assistance, a business must first be denied bonding by at least one surety on both the standard and specialty markets within 90 days of submitting a bonding application to MSBDFA. The applicant must employ fewer than 500 full-time employees or have gross sales of less than $50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75 percent of the work, and the business or its principals must have a reputation of good moral character and financial responsibility. Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of the state's tax base. Applicants are required to work through their respective bonding agents in applying for assistance under the program. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Commerce
Maryland Small Business Development Financing Authority
MMG Ventures
826 E. Baltimore Street
Baltimore, Maryland 21202
Phone: (410) 333-4270
Fax: (410) 333-2552

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

# 5 Proposal Format

## 5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

- Volume I –Technical Proposal
- Volume II – Financial Proposal

## 5.2 Proposal Delivery and Packaging

5.2.1 Proposals delivered by facsimile <<and e-mail>> shall not be considered.

5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.

[[Choose one:

Option 1. For Paper Submission use the following instructions and delete Option 2. ]]

5.2.3 Offerors may submit Proposals by hand or by mail as described below to the address provided in the Key Information Summary Sheet.

A. Any Proposal 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. The State recommends a delivery method for which both the date and time of receipt can be verified.

B. For hand-delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror.

5.2.4 The Procurement Officer must receive all Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.

5.2.5 Offerors shall provide their Proposals in two separately sealed and labeled packages as follows:

A. Volume I - Technical Proposal consisting of:

1) One (1) original executed Technical Proposal and all supporting material marked and sealed,

2) <<Four (4)>> duplicate copies of the above separately marked and sealed,

3) an electronic version of the Technical Proposal in Microsoft Word format, version 2007 or greater,

4) the Technical Proposal in searchable Adobe PDF format, and

5) a second searchable Adobe PDF copy of the Technical Proposal with confidential and proprietary information redacted (see **Section 4.8**).

B. Volume II - Financial Proposal consisting of:

1) One (1) original executed Financial Proposal and all supporting material marked and sealed,

2) <<four (4)>> duplicate copies of the above separately marked and sealed,

3) an electronic version of the Financial Proposal in searchable Adobe PDF format, and [[Add a line if you want the Financial Proposal in another format such as Excel in addition to the Adobe format.]].

4) a second searchable Adobe pdf copy of the Financial Proposal, with confidential and proprietary information redacted(see **Section 4.8**).

5.2.6 Affix the following to the outside of each sealed Proposal. Include the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Unless the resulting package will be too unwieldy, the State's preference is for the separately sealed Technical and Financial Proposals to be submitted together in a single package to the Procurement Officer and including a label bearing:

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

5.2.7 Label each electronic media (CD, DVD, or flash drive) on the outside with the RFP title and number, name of the Offeror, and volume number. Electronic media must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

[[Option 2. For **e-mail** electronic submission use the following instruction, but remember you cannot refuse paper submissions so the paper instructions are still appropriate even for a planned e-mail submission.]]

5.2.8 Offerors may submit Proposals by electronic means as described.

A. Electronic means includes e-mail to the Procurement Officer address listed on the Key Information Summary Sheet.

B. Any Offeror wishing to deliver a hard copy (paper) Proposal shall contact the Procurement Officer for instructions.

5.2.9 E-mail submissions

A. All Proposal e-mails shall be sent with password protection.

B. The Procurement Officer will not accept submissions after the date and exact time stated in the Key Information Summary Sheet. The date and time of submission is determined by the date and time of arrival in the Procurement Officer's e-mail box. Time stamps on outgoing email from Contractors shall not be accepted. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.

C. The State has established the following procedure to restrict access to Proposals received electronically: all Proposal documents must be password protected, and the password for the Technical Proposal must be different from the password for the Financial Proposal. Offerors will provide these two passwords to <<ISSUINGAGENCYACRONYM>> upon request or their Proposal will be deemed not susceptible for award. Subsequent submissions of Proposal content will not be allowed.

D. The Procurement Officer will only contact those Offerors with Proposals that are reasonably susceptible for award.

E. Proposals submitted via e-mail must not exceed <<_____>> Mb. If a submission exceeds this size, split the submission into two or more parts and include the appropriate part number in the subject (e.g., part 1 of 2) after the subject line information below.

F. The e-mail submission subject line shall state the RFP <<solicitationNumber>> and either "Technical" or "Financial."

5.2.10 Two Part Submission:

A. Technical Proposal consisting of:

1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater,

2) Technical Proposal in searchable Adobe PDF format,

3) a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.8**), and

B. Financial Proposal consisting of:

1) Financial Proposal and all supporting material in <<xxxx>> format,

2) Financial Proposal in searchable Adobe PDF format,

3) a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

## 5.3 Volume I - Technical Proposal

NOTE: Omit all **pricing information** from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

5.3.1 In addition to the instructions below, responses in the Offeror's Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., "Section 2.2.1 Response . . .; "Section 2.2.2 Response . . .,"). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

5.3.2 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:

A. 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.

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

Any information which is claimed to be 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. An explanation for each claim of confidentiality shall be included (see **Section 4.8 "Public Information Act Notice"**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.

C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)

The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and

time. Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.

D. 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."

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 **Section 4.16 "Offeror Responsibilities"**).

The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. **Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**

E. 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 RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.2.I**.

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

[[Read all and make sure they make sense for your Proposal.]]

1) The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and 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 an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order, and shall contain a cross reference to the requirement.

2) 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.

3) 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, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP **Section 2**, Contractor Requirements: 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. [[This section is optional language; delete if inapplicable.]]

4) Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal. [[Optional language; delete if inapplicable.]]

5) The Offeror shall identify the location(s) from which it proposes to provide 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. [[Optional language; delete if inapplicable.]]

6) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains 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 **Section 3.8**.

7) The Offeror shall provide a Backup solution/ strategy recommendation as part of its Proposal. [[Optional language; amend or delete if inapplicable.]]

8) Disaster Recovery and Security Model description - For hosted services, the Offeror shall include its DR strategy, and for on premise, a description of a recommended DR strategy. [[Optional language; amend or delete if inapplicable.]]

9) The Offeror shall include a deliverable description and schedule describing the proposed Deliverables as mapped to the State SDLC and the Deliverables table in **Section 2.4.4**. The schedule shall also detail proposed submission due date/frequency of each recommended Deliverable. [[Optional language; delete if inapplicable.]]

10) The Offeror shall include an SLA as identified in **Section 2.6**, including service level metrics offered and a description how the metrics are measured, any SLA credits should the service level metrics not be met, and how the State can verify the service level. The Offeror shall describe how service level performance is reported to the State. [[Optional language; delete if inapplicable.]]

11) Description of technical risk of migrating from the existing system. [[Optional language; delete if inapplicable.]]

12) [[Optional language; delete if inapplicable.]] Non-Compete Clause Prohibition:

The <<typeofAgency>> seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize 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 Section <<enter applicable subsection number(s)>> 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 business.

[[Add any additional items for Offerors to address or include in their Proposals that are specific to your RFP.]]

13) Product Requirements

[[Carefully review the items below for applicability and delete if inapplicable.]]

a) Offerors may propose open source software; however, the Offeror must provide operational support for the proposed software.

b) Details for each offering: The Offeror shall provide the following information for each offering:

i) Offering Name;

ii) Offeror relationship with manufacturer (e.g., manufacturer, reseller, partner);

iii) Manufacturer;

iv) Short description of capability;

v) Version (and whether version updates are limited in any way);

vi) License type (e.g., user, CPU, node, transaction volume);

vii) Subscription term (e.g., annual);

viii) License restrictions, if any;

ix) Operational support offered (e.g., customer support, help desk, user manuals online or hardcopy), including description of multiple support levels (if offered), service level measures and reporting;

x) Continuity of operations and disaster recovery plans for providing service at 24/7/365 level;

xi) Ability of the offering to read and export data in existing State enterprise data stores. Offerors in their Proposals shall describe the interoperability of data that can be imported or exported from the Solution, including generating industry standard formats;

xii) Any processing or storage of data outside of the continental U.S;

xiii) Any limitations or constraints in the offering, including any terms or conditions (e.g., terms of service, ELA, AUP, professional services agreement, master agreement) – see also <<**Section 5.3.2.**Error! R eference source not found.>>;[[This cross reference will change if you omit any optional sections below.]]

xiv) Compatibility with the State's existing single sign-on system, SecureAuth or other single sign-on approaches;

xv) APIs offered, and what type of content can be accessed and consumed;

xvi) Update / upgrade roadmap and procedures, to include: planned changes in the next 12 months, frequency of system update (updates to software applied) and process for updates/upgrades;

xvii) Frequency of updates to data services, including but not limited to, datasets provided as real-time feeds, and datasets updated on a regular basis (e.g., monthly, quarterly, annually, one-time);

xviii) What type of third party assessment (such as a SOC 2 Type II audit) is performed, the nature of the assessment (e.g., the trust principles and scope of assessment), and whether the results of the assessment pertinent to the State will be shared with the State. See also **Section 3.9**;

xix) Offeror shall describe its security model and procedures supporting handling of State data. If more than one level of service is offered, the Offeror shall describe such services. Include, at a minimum:

(1) procedures for and requirements for hiring staff (such as background checks),

(2) any non-disclosure agreement Contractor Personnel sign,

(3) whether the service is furnished out of the continental U.S. (see security requirements in **Section 3.7**),

(4) Certifications such as FedRAMP,

(5) Third party security auditing, including FISMA,

(6) Published Security Incident reporting policy, and

(7) Cybersecurity insurance, if any, maintained.

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

[[Remove the next paragraph if key resources are not sought as part of the Proposal. DoIT enforces a maximum of four proposed personnel during the evaluation process, who are presumed to be key personnel. ]]

As part of the evaluation of the Proposal for this RFP, Offerors shall propose exactly <<three (3)>> key resources and shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the <<typeofAgency>>. All other planned positions shall be described generally in the Staffing Plan, and may not be used as evidence of fulfilling company or personnel minimum qualifications.

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in **Section 3.10.2**. Specifically, the Offeror shall:

1) 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.

2) Include individual resumes for 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.

3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Offerors should be aware of restrictions on substitution of Key Personnel prior to RFP award (see Substitution Prior to and Within 30 Days After Contract Execution in Section 3.11.5). [[Remove last sentence if proposed personnel are not included.]]

4) 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.

5) If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.

H. Offeror Qualifications and Capabilities (Submit under TAB G)

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in **Section 3.10.1**. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

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

I. References (Submit under TAB H)

[[Confirm the quantity and recentness of the references are not too restrictive for the goods and services sought.]]

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP **Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:

1) Name of client organization;
2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
3) Value, type, duration, and description of goods and services provided.

The <<typeofAgency>> reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

J. 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 goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

1) The State contracting entity;
2) A brief description of the goods and services provided;
3) The dollar value of the contract;
4) The term of the contract;
5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
6) 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.

K. Financial Capability (Submit under TAB J)

[[Optional. Services should keep this section. For product purchases you may substitute "This section does not apply to this RFP" while keeping the heading.]]

The 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:

1) Dun & Bradstreet Rating;

2) Standard and Poor's Rating;

3) Lines of credit;

4) Evidence of a successful financial track record; and

5) Evidence of adequate working capital.

L. 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 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

M. 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 VSBE subcontracting goal(s), 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. 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.

N. Legal Action Summary (Submit under TAB M)

[[Optional. Services should keep this section. For product purchases. You may substitute "This section does not apply to this RFP" while keeping the heading.]]

This summary shall include:

1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;

2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;

3) A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and

4) In instances where litigation is ongoing and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

O. Economic Benefit Factors (Submit under TAB N)

[[This section is discretionary, see COMAR 21.05.03.03 and the BPW Advisory 1996-4. If you remove it, check for any cross references to subsequent sections that need to be renumbered. Also remove the associated evaluation criteria.]]

1) 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 the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3).

[[Note: The default wording in the last sentence of the paragraph above may not be appropriate to use in all circumstances, such as when multiple awards are possible and Offerors will not know the amount of services each will be requested to provide until after Contract award. For such situations, the <<typeofAgency>> should include, in lieu of the default wording provided above, some alternative basis for Offerors to project the economic benefit of their Proposals. i.e. such benefit might be based upon each $1,000, $10,000, etc. of Contract value; or the benefit may be requested as part of a task order Proposal in response to a task order RFP.]]

2) 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.

3) 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.

4) 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.

5) In responding to this section, the following do not generally constitute economic benefits to be derived from the 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 the Contract; or

   c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.

6) 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 the Contract.

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

a) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**

b) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;

c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;

d) Subcontract dollars committed to Maryland small businesses and MBEs; and

e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)

1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.

2) Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror's services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.

3) For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.

4) A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:

   i) Third-party POC name and alternate for verification

   ii) Third-party POC mailing address

   iii) Third-party POC telephone number

   iv) Third-party POC email address

   v) If available, a Re-Seller Identifier

## 5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the <<typeofAgency>>.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

# 6 Evaluation and Selection Process

## 6.1 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 <<typeofAgency>> reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

## 6.2 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.

[[The Technical Criteria listed below are generic samples. You are free to revise these and include additional, more specific Evaluation Criteria, but if you choose to do so, make sure you reference particular RFP sections, as in the samples below.]]

6.2.1 Offeror's Technical Response to Requirements and Work Plan (See RFP **§ 5.3.2.F**)

The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. 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.

6.2.2 Experience and Qualifications of Proposed Staff (See RFP **§ 5.3.2.G**)

6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP **§ 5.3.2.H**)

6.2.4 Economic Benefit to State of Maryland (See RFP **§ 5.3.2.O**) [[Delete if removed from 5.3.2. Double check the cross reference.]]

[[Add additional evaluation criteria, if appropriate.]]

## 6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see **Section 6.5.2.D**) 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 B** - Financial Proposal Form.

[[For procurements that will produce revenue for the State, the wording of this section should be as follows:]]

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

## 6.4 Reciprocal Preference

6.4.1 Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences

over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:

A. The Maryland resident business is a responsible Offeror;

B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;

C. The other state gives a preference to its resident businesses through law, policy, or practice; and

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

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

## 6.5 Selection Procedures

### 6.5.1 General

A. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP 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.

B. With or without discussions, the State may determine the Offeror to be not responsible or the 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.

### 6.5.2 Selection Process Sequence

A. 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 a MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal.

B. 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.

C. 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.

D. 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.

E. 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. **Offerors may only perform limited substitutions of proposed personnel as allowed in Section 3.11 (Substitution of Personnel**). [[Remove this statement if no proposed personnel requested.]]

### 6.5.3 Award Determination

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

## 6.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7** – **RFP Attachments and Appendices**.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

# 7 RFP ATTACHMENTS AND APPENDICES

**Instructions Page**

A Proposal submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as "with Proposal" in the "When to Submit" column in Table 1 below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the "Applies" and "Label" columns in Table 1.

For documents required as part of the Proposal:

4. For e-mail submissions, submit one (1) copy of each with signatures.
5. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the "When to Submit" column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the "When to Submit" column.

[[Search for << to see the attachments and appendices that may be changed. Attachments with no <<>> are mandatory. Adjust the "Applies?" column as appropriate. Appendices may be removed, so all appendices remaining in the table should be Y. See the instructions in the appendices portion of the table below for appendix labeling instructions. ]]

**Table 1: RFP ATTACHMENTS AND APPENDICES**

| Applies? | When to Submit | Label | Attachment Name |
|---|---|---|---|
| <<Y>> | Before Proposal | A | Pre-Proposal Conference Response Form |
| Y | With Proposal | B | Financial Proposal Instructions and Form |
| Y | With Proposal | C | Bid/Proposal Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf) |
| <<Y>> | With Proposal | D | MBE Forms D-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf)<br>**IMPORTANT:** If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal. |

| Applies? | When to Submit | Label | Attachment Name |
|---|---|---|---|
| <<Y>> | 10 Business Days after recommended award | D | MBE Forms D-1B, D-1C,D-2, D-3A, D-3B (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf)<br>**Important:** Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award. |
| <<N>> | As directed in forms | D | MBE Forms D-4A, D-4B, D-5 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) |
| <<N>> | With Proposal | E | Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf)<br>**IMPORTANT:** If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal. |
| <<N>> | 5 Business Days after recommended award | E | VSBE Forms E-1B, E-2, E-3 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf)<br>**Important:** Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award. |
| <<Y>> | With Proposal | F | Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf) |
| <<N>> | With Proposal | G | Federal Funds Attachments (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf) |
| Y | With Proposal | H | Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf) |

| | | | |
|---|---|---|---|
| Y | 5 Business Days after recommended award – However, suggested with Proposal | I | Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf) |
| <<N>> | 5 Business Days after recommended award – However, suggested with Proposal | J | HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf) |
| <<N>> | With Proposal | K | Mercury Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf) |
| <<N>> | With Proposal | L | Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf) |
| Y | 5 Business Days after recommended award | M | Sample Contract (included in this RFP) |
| Y | 5 Business Days after recommended award | N | Contract Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf) |
| <<N>> | 5 Business Days after recommended award | O | DHS Hiring Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf) |

**Appendices**

**[[Remove appendices not used in this RFP, add any additional appendices specific to this RFP, and renumber all.**

**Perform a find and replace using the entire <<>> code in the Label column to automatically renumber the Appendices in the rest of the document.]]**

| Applies? | When to Submit | Label | Attachment Name |
|---|---|---|---|
| Y | n/a | 1 | Abbreviations and Definitions (included in this RFP) |
| Y | With Proposal | 2 | Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf) |
| Y | Before Proposal, as directed in the RFP. | 3 | Non-Disclosure Agreement (Offeror) [[Delete if inapplicable.]] |

| | | | |
|---|---|---|---|
| | | | (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-3-Non-Disclosure-Agreement-Offeror-1.dotx) |
| Y | n/a | <<laborCategories AppendixNumber>> | Labor Categories [[Delete if inapplicable.]] (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-x-Labor-Categories.dotx) |
| Y | With Proposal | <<laborResumeFormAppendixNumber>> | Labor Resume Form [[Delete if inapplicable.]] (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-xx-Labor-Resume-Form.dotx) |
| Y | 5 Business Days after recommended award | <<performanceBondAppendixNumber>> | Performance Bond [[Delete if inapplicable.]] (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-z-Performance-Bond.dotx) |
| Y | 5 Business Days after recommended award | <<paymentBondAppendixNumber>> | Payment Bond [[Delete if inapplicable.]] (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-yy-Payment-Bond.dotx) |
| Y | With Proposal | <<proposalBidBondAppendixNumber>> | Proposal Bond [[Delete if inapplicable.]] (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-y-Bid_Proposal-Bond.dotx) |
| | | | [[Include any others specific to this solicitation.]] |
| **Additional Submissions** | | | |
| **Applies?** | **When to Submit** | **Label** | **Document Name** |
| Y | 5 Business Days after recommended award | | Evidence of meeting insurance requirements (see **Section 3.6**); 1 copy |
| Y | 10 Business Days after recommended award | | PEP; 1 copy |
| Y | 10 Business Days after recommended award | | Fully executed Escrow Agreement; 1 copy [[Remove if no escrow.]] |
| <<Y>> | With deliverables | -- | Deliverable Product Acceptance Form (DPAF) (see online at http://doit.maryland.gov/contracts/Documents/_pro |

| | | | |
|---|---|---|---|
| | | | curementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf<br><br>[[Delete entire line if it's inapplicable and renumber appendices.]] |
| | | | [[Include any others specific to this solicitation.]] |

# Attachment A. Pre-Proposal Conference Response Form

**Solicitation Number <<solicitationNumber>>**

<<solicitationTitle>>

A Pre-Proposal conference will be held on <<preProposalDate>>, at <<preProposalLocation>>.

Please return this form by <<preProposalFormDue>>, advising whether or not your firm plans to attend. The completed form should be returned via e-mail or fax to the Procurement Officer at the contact information below:

<<procurementOfficerName>>
<<ISSUINGAGENCYACRONYM>>
E-mail: <<procurementOfficerEmail>>
Fax #: <<procurementOfficerFax>>

Please indicate:

_____ Yes, the following representatives will be in attendance.
Attendees (Check the RFP for limits to the number of attendees allowed):
1.
2.
3.

_____ No, we will not be in attendance.

| |
|---|
| Please specify whether any reasonable accommodations are requested (see RFP § 4.1"Pre-Proposal conference"): |

Offeror: _____
*Offeror Name (please print or type)*

By: _____
*Signature/Seal*

Printed Name: _____
*Printed Name*

Title: _____
*Title*

Date: _____
*Date*

**Directions to the Pre-Proposal Conference**

<<preProposalDirections>>

# Attachment B. Financial Proposal Instructions & Form

## B-1 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 in accordance with the instructions on the Financial Proposal Formand 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. 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, e.g., .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 Formhave 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 21.05.03.03.F, 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 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 <<typeofAgency>> does not guarantee a minimum or maximum number of units or usage in the performance of the 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.

[[Add additional instructions as needed to assist Offerors in the completion of the Financial Proposal Form. Also, verify the instructions above are appropriate for the type of prices being solicited. If inappropriate, delete any conflicting instructions.]]

## B-1 Financial Proposal Form

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

[[The Financial Proposal Form should be included as a separate Excel document with formulas that automatically calculate the Offeror's Total Proposal Price. All cells except those in which the Offeror enters its line item prices and its signatory information must be locked. A generic sample is provided below. Use the footer below on the Excel document for signatures. Reference that Financial Proposal Form document here.]]

See separate Excel Financial Proposal Form labeled xxxxx.xls.

[[Include the signature block below in your Financial Proposal Form.]]

Submitted by:

Offeror:

---

Offeror Name (please print or type)

By:

---

Signature of Authorized Representative

Printed Name:

---

Printed Name

Title:

---

Title

Date:

---

Date

Address:

---

Company Address

# Attachment C. Proposal Affidavit

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf.

# Attachment D. Minority Business Enterprise (MBE) Forms

[[If this solicitation does not include an MBE goal, enter only the following sentence for this Attachment and delete the rest of these "D" Attachments.]]

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

[[If this solicitation does include an MBE goal, include the following language. Agency should insert the participation goal and subgoal amounts from the PRG and Subgoal Worksheet in the blanks below and delete any of the subgoals that do not apply to this solicitation and then delete these instructions.**]]**

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf.

This solicitation includes a Minority Business Enterprise (MBE) participation goal of _____ percent and all of the following subgoals:

_____ percent for African American-owned MBE firms;

_____ percent for Hispanic American-owned MBE firms;

_____ percent for Asian American-owned MBE firms;

_____ percent for Women-owned MBE firms.

[[If this solicitation does not include MBE subgoals, remove the subgoal list and change the end of the sentence to say "and no subgoals."]]

# Attachment E. Veteran-Owned Small Business Enterprise (VSBE) Forms

[[If this solicitation **does not** include a VSBE goal (see RFP Section 4.27), enter only the following sentence for this Attachment and delete the rest of these "E" Attachments.]]

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

[[If this solicitation does include a VSBE goal (see RFP Section 4.27), enter the following language for these Attachments. Agency should insert the participation goal amount from the PRG, then delete these instructions.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf.

This solicitation includes a VSBE participation goal of ____%.

# Attachment F. Maryland Living Wage Affidavit of Agreement for Service Contracts

[[If this solicitation does not meet the living wage requirements (see item A below) **delete the content under this heading and the Living Wage Affidavit form,** leaving only the following sentence for this Attachment:]]

This solicitation does not require a Living Wage Affidavit of Agreement.

[[If this solicitation requires living wage affidavit of agreement, enter the following language for these Attachments:]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf to complete the Affidavit.

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/prev/livingwage.shmtl and clicking on Living Wage for State Service Contracts.

# Attachment G. Federal Funds Attachments

[[If this solicitation does not include federal funding (see RFP Section 4.29), enter only the following sentence for this Attachment and delete the rest of these "G" Attachments.]]

This solicitation does not include a Federal Funds Attachment.

[[If this solicitation does include federal funding (see RFP Section 4.29), enter the language below for these Attachments. Note that the Procurement Officer should check to see if there are any additional requirements or restrictions relative to the applicable federal funding source, and should incorporate such additions into the solicitation as necessary.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf.

# Attachment H. Conflict of Interest Affidavit and Disclosure

[[If this solicitation **does not** require a Conflict of Interest Affidavit and Disclosure (see RFP Section 4.30), enter only the following sentence for this Attachment and delete the rest.]]

This solicitation does not require a Conflict of Interest Affidavit and Disclosure.

[[If this solicitation does require a Conflict of Interest Affidavit and Disclosure (see RFP Section 4.30), enter the following language for this Attachment.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf.

# Attachment I. Non-Disclosure Agreement (Contractor)

[[If this solicitation **does not** require a Non-Disclosure Agreement (see RFP Section 4.31), enter only the following sentence for this Attachment and delete the rest. As mentioned in 4.31, NDAs are strongly recommended.]]

This solicitation does not require a Non-Disclosure Agreement.

[[If this solicitation does require a Non-Disclosure Agreement (see RFP Section 4.31), enter the following language for this Attachment.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf.

# Attachment J. HIPAA Business Associate Agreement

[[If this solicitation does not require a HIPAA Business Associate Agreement (RFP see Section 4.32), enter only the following sentence for this Attachment and delete the rest.]]

This solicitation does not require a HIPAA Business Associate Agreement.

[[If this solicitation does require a HIPAA Business Associate Agreement (see RFP Section 4.32, enter the following language for this Attachment.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf.

# Attachment K. Mercury Affidavit

[[If this solicitation **does not** include the procurement of products known to likely include mercury as a component (see RFP Section 4.34), enter only the following sentence for this Attachment and delete the rest. For IT purchases, a Mercury Affidavit is required when any equipment is purchased by the State.]]

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

[[If this solicitation **does** include the procurement of products known to likely include mercury as a component (see RFP Section 4.34), enter the following language for this Attachment.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf.

# Attachment L. Location of the Performance of Services Disclosure

[[If this procurement is **not** anticipated to have an estimated value of $2,000,000.00 or more (see RFP Section 4.35), enter only the following sentence for this Attachment and delete the rest.]]

This solicitation does not require a Location of the Performance of Services Disclosure.

[[If this procurement is anticipated to have an estimated value of $2,000,000.00 or more (see RFP Section 4.35), enter the following language for this Attachment.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf.

# Attachment M. Contract

<<ISSUINGAGENCYNAME>> (<<ISSUINGAGENCYACRONYM>>)

"<<solicitationTitle>>"

<<solicitationNumber>>

THIS CONTRACT (the "Contract") is made this ____ day of _____, 20__ by and between _____ (the "Contractor") and the STATE OF MARYLAND, acting through the MARYLAND <<ISSUINGAGENCYNAME>> ("<<ISSUINGAGENCYACRONYM>>" or the "<<typeofAgency>>").

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

## 1. Definitions

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

1.1 "COMAR" means Code of Maryland Regulations.

1.2 "Contractor" means the entity first named above whose principal business address is (Contractor's primary address) and whose principal office in Maryland is (Contractor's local address), whose Federal Employer Identification Number or Social Security Number is (Contractor's FEIN), and whose eMaryland Marketplace vendor ID number is (eMM Number).

1.3 "Financial Proposal" means the Contractor's Financial Proposal dated _____(Financial Proposal date), as modified by any Best and Final Offer thereto.

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

1.5 "RFP" means the Request for Proposals for <<solicitationTitle>>, Solicitation # <<solicitationNumber>>, and any amendments, addenda, and attachments thereto issued in writing by the State.

1.6 "State" means the State of Maryland.

1.7 "Technical Proposal" means the Contractor's Technical Proposal dated. _____ (Technical Proposal date), as modified and supplemented by the Contractor's responses to requests clarifications and requests for cure, and by any Best and Final Offer.

1.8 "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.

1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

## 2. Scope of Contract

2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

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

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. 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 Without limiting the rights of the Procurement Officer under 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 <<typeofAgency>> following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until _____ ("Initial Term").

3.2 In its sole discretion, the <<typeofAgency>> shall have the unilateral right to extend the Contract for <<enter the number of periods >>, successive <<enter the length of the period>> - <<select either year(s), month(s), or day(s)>> renewal options (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s). [[Delete this section if there are no Option Years, and change the numbering of the next section to 3.]]

3.3. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.

3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, 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 <<typeofAgency>> 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), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

[[Use this paragraph for a fixed price contract or a contract that has a fixed price component.]]The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

[[Use this paragraph for a contract with a time and materials component or has an indefinite quantity (IDIQ) component.]]For time and materials Contracts, IDIQ Contracts, or Contracts which include either or both a time and materials or IDIQ element(s), total payments to the Contractor pursuant to this Contract for the time and materials and IDIQ portion(s) may not exceed $_____ (the "NTE Amount"), which includes $_____ for the Initial Term[[If one or more option periods exist, then include:]] and $_____ for the Renewal Term(s).

[[Use this paragraph for a contract with a time and materials component, labor hour component, or has an indefinite quantity (IDIQ) component]] Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the NTE 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 and work in good faith with the <<typeofAgency>> to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete State-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the <<typeofAgency>>'s receipt of a proper invoice from the Contractor as required by RFP section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

(1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and

(2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

(1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or

(2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

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

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

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Payment of an invoice by the <<typeofAgency>> is not evidence that services were rendered as required under this Contract.

**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 (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

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

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

5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

**6. Exclusive Use**

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

6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the <<typeofAgency>> or developed by Contractor relating to the Contract, except as provided for in **Section 8**. **Confidential or Proprietary Information and Documentation**.

**7. Patents, Copyrights, and Intellectual Property**

7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights

immediately prior to the Effective Date ("Pre-Existing Intellectual Property"). If any design, device, material, process, or other item provided by Contractor is covered by a patent 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 pursuant to its rights granted under the Contract.

7.2 Except for (1) information created or otherwise owned by the <<typeofAgency>> or licensed by the <<typeofAgency>> from third parties, including all information provided by the <<typeofAgency>> to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract ("Deliverables"), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the <<typeofAgency>> will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

7.4 Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.

7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.

7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on http://www.opensource.org/licenses/alphabetical) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

7.7 The Contractor shall report to the <<typeofAgency>>, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.

7.8 The Contractor shall not affix (or permit any third party to affix), without the <<typeofAgency>>'s consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the <<typeofAgency>> shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## 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 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 or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract..

8.2 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 rightfully 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

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

9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.7**.

9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.7**.

**10. Indemnification and Notification of Legal Requests**

10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

10.2. The State has no obligation: (i) 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 against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.

10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

**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 Prevails**

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 (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.

13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

**14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**15. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure the Contract, and that the Contractor 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 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 Default**

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. 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**

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

19.2 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 Section13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business 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 State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

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

**24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested 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. All records related in any way to the Contract are to be retained for the entire time provided under this section.

**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 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 services performed pursuant to the Contract.

25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The <<typeofAgency>> 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 <<typeofAgency>>'s election. The <<typeofAgency>> may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the <<typeofAgency>> has the right to audit such subcontractor(s).

**26. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

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

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.

**27. Cost and Price Certification**

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

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

**28. Subcontracting; Assignment**

The Contractor may not subcontract any of its obligations 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, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written 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. Limitations of Liability**

29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:

(a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 5 "Patents, Copyrights, Intellectual Property"** 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, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall not exceed <<two (2) >>times the total value of the Contract or $1,000,000, whichever is greater. Section 6 ("Indemnification") of this The above limitation of liability is per incident. [[Include for IT contracts.]]

[[OR]]

(c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited. [[Include for non-IT contracts.]]

(d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.

29.2 Contractor's indemnification obligations for Third party claims arising under Section 6 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.

29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

**30. Commercial Nondiscrimination**

30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described 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, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

30.3 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 Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, 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 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 Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the <<typeofAgency>>, in all subcontracts.

**31. Prompt Pay Requirements**

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the <<typeofAgency>>, 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 to the Contractor;

(d) Place a payment for an undisputed amount in an interest-bearing escrow account; or

(e) Take other or further actions as appropriate to resolve the withheld payment.

31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the <<typeofAgency>> concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, 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 <<typeofAgency>> and the Contractor in any other proceeding; or

(c) Result in liability against or prejudice the rights of the <<typeofAgency>>.

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 MBE program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the <<typeofAgency>>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. This verification may include, as appropriate:

i. Inspecting any relevant records of the Contractor;

ii. Inspecting the jobsite; and

iii. Interviewing subcontractors and workers.

Verification shall include a review of:

i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and

ii. 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.

(b) If the <<typeofAgency>> determines that the Contractor is not in compliance with certified MBE participation goals, then the <<typeofAgency>> 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.

(c) If the <<typeofAgency>> determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the <<typeofAgency>> requires, then the <<typeofAgency>> 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.

(d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

**32. Living Wage**

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

**33. Use of Estimated Quantities**

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

**34. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

**35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be

entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

**36. Miscellaneous**

36.1 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.

36.2 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.

36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.

36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e,g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**37. Contract Monitor and Procurement Officer**

37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The <<typeofAgency>> may change the Contract Monitor at any time by written notice to the Contractor.

37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The <<typeofAgency>> may change the Procurement Officer at any time by written notice to the Contractor.

**38. 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:

<<contractMonitorName>>

<<contractManagerAddress>>

Phone Number: <<contractManagerPhoneNumber>>

E-Mail: <<contractManagere-mail>>

With a copy to:

<<procurementOfficerName>>

<<issuingAgencyName>> (<<ISSUINGAGENCYACRONYM>>)

<<procurementOfficerAddress>>

Phone Number: <<procurementOfficerPhoneNumber>>

E-Mail: <<procurementOfficerE-mail>>

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: _____

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: _____

Attn: _____

**<<39.>> Liquidated Damages for MBE**

[[If there is no MBE goal for the Contract delete this section and its heading, renumbering any subsequent sections.]]

<<39.>>1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and 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 to ascertain with precision.

<<39.>>2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off 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 such violation.

(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): $<<insert value>> per day until the monthly report is submitted as required.

(b) 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): $<<insert value>> per MBE subcontractor.

(c) 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 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.

(d) 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.

(e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: $<<insert appropriate rate following calculation instructions from GOSBA>> per day until the undisputed amount due to the MBE subcontractor is paid. [[Remove this sub-clause if this Contract is subject to section 15-226 of the State Finance and Procurement Article – Construction Contracts – Prompt Payment of subcontractors.]]

<<39.>>2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

**<<40.>> Parent Company Guarantee (If applicable)**

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a 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, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

**<<41.>> Federal Department of Health and Human Services (DHHS) Exclusion Requirements**

[[Keep this section if this Contract is for a federally-funded contracts involving healthcare entities or individuals, the employment of healthcare entities or individuals, or subcontracting with healthcare entities or individuals that may be named on the DHHS List of Excluded Individuals/Entities. Otherwise, delete this section and its heading, renumbering any subsequent sections.]]

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this Contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this Contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the <<typeofAgency>> immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

**<<42.>> Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law**

[[If this Contract falls within the mandates of HIPAA, choose only 1 of the following options, otherwise, insert the following language and delete the remaining subsections.]]

HIPAA clauses do not apply to this Contract.

[[Medical Option 1 of 3 – Use this section when the Agency is not a covered entity. The blank at the beginning would reference any statutory requirement unique to the <<typeofAgency>> unit/program, or, if there is none, the first two sentences are combined to reference "any applicable law or regulation "as follows: "The Contractor agrees to keep information obtained in the course of this Contract confidential in compliance with any applicable State and federal regulation."]]

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

[[OR –Option 2 of 3 – Use this confidentiality clause when the <<typeofAgency>> unit is a covered entity and the Contractor is not a business associate.]]

<<42.>>1 The Contractor acknowledges its duty to become familiar 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.

<<42.>>2 If in connection with the procurement or at any time during the Term, the <<typeofAgency>> determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form required by the <<typeofAgency>>.

<<42.>>3 "Protected Health Information" as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is: individually identifiable; created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and related to the past,

present, or future physical or mental health or condition of an individual, the provision of healthcare to an individual, or 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.

[[OR –Option 3 of 3 – Use this confidentiality clause when the <<typeofAgency>> unit is a covered entity and the Contractor is a business associate.]]

<<42.>>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.

<<42.>>2 Based on the determination by the <<typeofAgency>> 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 Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.504 and in the form as required by the <<typeofAgency>>.

<<42.>>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.

**<<43.>> Hiring Agreement**

[[Keep this section if this Contract might include employment by current and former Family Investment Program ("FIP") recipients, their children, foster youth, and child support obligors ("Candidates"). The actual DHS Agreement must be included in the solicitation as Attachment O (see Section 1.43) Delete this clause if inapplicable, and revise the numbering of the clauses in this Contract accordingly. Otherwise, delete this section and its heading, renumbering any subsequent sections.]]

<<43.>>1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Services (DHS) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Offeror and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Offeror that it is being recommended for Contract award. The Hiring Agreement will become effective concurrently with the award of the Contract.

<<43.>>2 The Hiring Agreement provides that the Contractor and DHS will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

**<<44.>> Limited English Proficiency**

[[Keep this section when there is the probability of customers with limited ability in speaking English. Delete this clause if inapplicable, and revise the numbering of the clauses in this Contract accordingly. Otherwise, delete this section and its heading, renumbering any subsequent sections.]]

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

SIGNATURES ON NEXT PAGE

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

| | |
|---|---|
| Contractor | State of Maryland<br><<ISSUINGAGENCYNAME>><br>(<<ISSUINGAGENCYACRONYM>>) |
| By: | By: <<agencyContractSigner>>,<br><<agencyContractSignerTitle>> |
| Date | |
| PARENT COMPANY (GUARANTOR) (if applicable)<br>_____ | By:<br>_____ |
| By:<br>_____ | Date |
| Date | |

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

_____
Assistant Attorney General

[[If this solicitation requires BPW approval keep the text below, otherwise delete it.]]

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

## Attachment N. Contract Affidavit

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf.

# Attachment O. DHS Hiring Agreement

[[If this solicitation does not require a DHS Hiring Agreement (see RFP Section 4.36), enter only the following sentence for this Attachment and delete the rest.]]

This solicitation does not require a DHS Hiring Agreement.

[[If this solicitation **does** require a DHS Hiring Agreement, (see Section 4.36), enter the following language for this Attachment.]]

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf.

# Appendix 1. – Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below: [[Add to this Abbreviations and Definitions section any acronym or term unique to this solicitation and not in common use or for which there is not a single, consistent interpretation.]]

A. Acceptable Use Policy (AUP) - A written policy documenting constraints and practices that a user must agree to in order to access a private network or the Internet.

B. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.

C. Application Program Interface (API) – Code that allows two software programs to communicate with each other.

D. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of "Normal State Business Hours" below).

E. COMAR – Code of Maryland Regulations available on-line at http://www.dsd.state.md.us/COMAR/ComarHome.html.

F. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.

G. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The <<typeofAgency>> may change the Contract Monitor at any time by written notice to the Contractor.

H. Contractor – The selected Offeror that is awarded a Contract by the State.

I. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.

J. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.

K. <<issuingAgencyName>>or (<<ISSUINGAGENCYACRONYM>>or the "<<typeofAgency>>"). [[Alphabetize as needed.]]

L. eMM – eMaryland Marketplace (see RFP **Section 4.2**).

M. Enterprise License Agreement (ELA) – An agreement to license the entire population of an entity (employees, on-site contractors, off-site contractors) accessing a software or service for a specified period of time for a specified value.

N. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

O. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.

P. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Sections 3.10**.

Q. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.

R. 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.

S. 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.

T. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.

U. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.

V. Offeror – An entity that submits a Proposal in response to this RFP.

W. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

X. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The <<typeofAgency>> may change the Procurement Officer at any time by written notice to the Contractor.

Y. Proposal – As appropriate, either or both of the Offeror's Technical or Financial Proposal.

Z. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

AA. Request for Proposals (RFP) – This Request for Proposals issued by the <<issuingAgencyName>> (<<typeofAgency>>), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.

BB. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. "Imminent threat of violation" is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.

CC. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.

DD. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to "personal information" under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and 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; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.

EE. Service Level Agreement (SLA) - Commitment by the Contractor to the <<typeOfAgency>> that defines the performance standards the Contractor is obligated to meet.

FF. SLA Activation Date [[Make sure this is applicable to this RFP; delete if inapplicable.]] - The date on which SLA charges commence under this Contract, which may include, but to, the date of (a) completion of Transition in, (b) a delivery, or (c) releases of work.

GG. Software - The object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. Software also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.

HH. Software as a Service (SaaS) - A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of this RFP, the terms SaaS and PaaS are considered synonymous and the term SaaS will be used throughout this document.

II. Solution - All Software, deliverables, services and activities necessary to fully provide and support the RFP scope of work. This definition of Solution includes all System Documentation developed as a result of this Contract. Also included are all Upgrades, patches, break/fix activities, enhancements and general maintenance and support of the Solution and its infrastructure. [[Remove if there is no IT component.]]

JJ. State – The State of Maryland.

KK. Source Code – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.

LL. System Availability – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.

MM. System Documentation – Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:

1) Source Code: This includes source code created by the Contractor or subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract;

2) All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;

3) All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;

4) All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer's notes and other documentation;

5) A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software);

6) All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides; and

7) Operating procedures.

NN. Task Order[[Remove if Task Orders not used.]]– A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Task Order.

OO. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.

PP. Third Party Software – Software and supporting documentation that:

1) are owned by a third party, not by the State, the Contractor, or a subcontractor;

2) are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and

3) are specifically identified and listed as Third Party Software in the Proposal.

QQ. Total Proposal Price - The Offeror's total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.

RR. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.

SS. Veteran-owned Small Business Enterprise (VSBE) – 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.

TT. Work Order[[Remove if Work Orders not used]]– A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Work Order.

# Appendix <<#>>. – <<Title of Appendix>>

[[Most will want to have Appendix 2. Shown as an example on how to set-up additional Appendices below. The first line would be in the Section title.]]

**Appendix 2. Offeror Information Sheet [[This line would be in the Header above.]]**

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf.

[[Repeat this Section and number for additional Appendices for any Agency specific information. Several available options are listed in Section 7 "RFP Attachments and Appendices" with links in the table to:

(1) the pdf forms for you to copy the link here for the vendors to pull and complete forms; and/or

(2) the template documents for you to edit and attach separately with its own link or add to the RFP in its own Section. (Remember to remove the template link in the Section 7 Table.)]]