MARYLAND
DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
201 W. Preston Street • Baltimore, Maryland 21201

Dear Colleague:

You have downloaded one of four newly-revised templates used to procure services. These templates, the Request for Proposals (RFP), the Invitation for Bids (IFB), the Multi-Step Invitation for Bids (MS-IFB), and the Sole Source/Emergency Contract (SS/EM) template have been developed by the Office of Procurement and Support Services (OPASS) in conjunction with the Department of Budget and Management (DBM) and are based on a DBM procurement model. They are formatted in MS Word using Office Professional 2003. It is our hope that you will find them easier to use than the previous templates created years ago. There are some things you need to know when using the templates:

First, this is just a template, and not all possible procurement circumstances may be covered by this template. However, this template is designed to include language for the majority of solicitations for services within the respective procurement type (ex. Competitive Sealed Bidding – CSB; Competitive Sealed Proposals - CSP). Only some, not all, of the language used in the template is required by Maryland's procurement regulations, COMAR Title 21. While some language may be changed, it is STRONGLY RECOMMENDED that you utilize the standardized language included in this template, as review and approval of your solicitation by DBM will be SIGNIFICANTLY FASTER if "boilerplate" language, section numbering, references to Attachments, and Attachment order remain unchanged, so that your assigned Procurement Analyst can focus more on reviewing the Minimum Qualifications, Scope of Work, and Bid/Financial Proposal Form of your solicitation. Please check with the OPASS member of your Contract Fulfillment Team (CFT) if you wish to revise the language included in this template.

Second, there is a substantial amount of information and text you will need to add to the document. You will notice throughout the document **(red)** colored text in parentheses. These are instructions to you. DO NOT LEAVE THE INSTRUCTIONS OR PARENTHESES IN THE DOCUMENT! Insert the requested name, date, address, information, title, number, etc. and delete the **(red)** instructions (be sure to review the entire template for these instructions, including the Attachments). Make certain the inserted text does not remain in the **color** of the instructions. Also, when you download, copy, or paste, text and tables may move around on the page. Please clean up text and tables to ensure a professional look (e.g., check for font type and size consistency, review formatting, use spell check, use grammar check, etc.), remove these instructions pages, and remove the template date from the footer pages (or change the footer date to the actual publication date). Your proper completion of this template will result in faster review and approval by your assigned Procurement Analyst.

You, the author of the solicitation, are responsible for the ultimate content and appearance of the document. You must ensure the accuracy of the content and convey a professional appearance and style. Remember, this document will become a part of a public record. It is your first contact with the vendor community from which you wish to solicit. It represents the Department. See that it is a quality publication.

Note that this template will need to be carefully reviewed by the Procurement Officer and the agency Assistant Attorney General for each project to determine what should be included, revised, or omitted for the particular procurement. Any questions regarding this template may be submitted to the Department's Procurement Officer in OPASS or to your assigned Procurement Analyst at DBM.

Rev. 11/01/2013

Changes from original 03/25/2013 version:

04/09/2013
-Section 1.2: Definition for "Notice to Proceed;" capitalized the word "Commencement" and added reference to Section 1.4.1.
-Section 1.7: Removed statement that attendance is not mandatory from first paragraph.

04/25/2013
-Section 4.4.8: Revised wording regarding the Bidder's Certificate of Insurance requirements.

07/01/2013
-Added bolded note at bottom of instructions page.
-Added optional language on solicitation Title page for Small Business Reserve Procurements.
-Section 1.2 Definitions: added definition for "Contract Commencement" and minor revisions to definitions of "Business Day(s)," "Go-Live Date," and "Working Day(s)."
-Section 1.26 Contract Affidavit: added statement that a Contract Affidavit will be required for renewal options and mods that extend the Contract.
-Section 1.33 Minority Business Enterprise Goal and Subgoals: revised wording and added language for MBE liquidated damages (1.33.9).
-Section 1.34 Living Wage Requirements: revised wording regarding determination of wage tier.
-Added Section 3.9: SOC 2 Type II Audit Report.
-Updated Contract (Attachment A): added Section 4.6 regarding MBE liquidated damages.
-Updated Bid/Proposal Affidavit (Attachment B): added Certification Regarding Investments in Iran and Conflict Minerals clauses.
-Updated DHR Hiring Agreement (Attachment P): added field for Agency Control Number.

07/10/2013
-Section 1.33 Minority Business Enterprise Goal and Subgoals: revised wording for MBE liquidated damages (1.33.9).
-Updated Contract (Attachment A): moved MBE liquidated damages language from Section 4.6 to Section 39 and made revisions.

08/01/2013
-Instructions Page: added language regarding removing instructions page and footer date.
-Sections 1.1.2, 1.2, 1.4, and Contract (Attachment A) Section 3.1 and 3.2: revised language regarding duration of Contract, Contract Commencement, Go-Live Date, and Notice to Proceed.
-Section 1.40: added language that price preference is not to exceed 5% and COMAR reference.
-Section 3.4: revised language regarding when certificate of insurance is to be provided.
-Attachment K HIPAA Business Associate Agreement: updated Agreement to comply with new HIPAA rules.
-Corrected several spelling and typographical errors and made minor revisions to language throughout document.

11/01/2013
-Section 1.4.3: removed ", or a later date as."
-Section 1.7: added optional language regarding site visits.
-Section 1.33.1 and Attachment D-1: added language regarding MBE subgoals.
-Removed Sections 1.42 - Conflict Minerals and 1.43 - Investment Activities in Iran (both now incorporated in Bid/Proposal Affidavit); following Sections and references to sections updated.
-Section 3.4.6: removed "named."
-Attachment D-3: added fields for subcontractor's address and FEIN.
-Attachment M-2: added fields for subcontractor's address and FEIN.
-Removed Attachment N – Investment Activities in Iran (now incorporated in Bid/Proposal Affidavit).

MULTI-STEP INVITATION FOR BIDS (MS-IFB)

SOLICITATION NO. DHMH OPASS – (solicitation number)

Issue Date: (date of issuance)

(SOLICITATION TITLE)

(If your procurement is designated as a Small Business Reserve Procurement, include the following notice in black font:)

NOTICE TO BIDDERS/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 Department of General Services Small Business Reserve Program are eligible for award of a contract.

NOTICE

A Prospective Bidder that has received this document from the Department of Health and Mental Hygiene's website or https://emaryland.buyspeed.com/bso/, or that has received this document from a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide the Prospective Bidder's name and mailing address so that addenda to the IFB or other communications can be sent to the Prospective Bidder.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

STATE OF MARYLAND
NOTICE TO VENDORS

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

Title: (SOLICITATION TITLE)
Solicitation No: DHMH OPASS – (solicitation number)

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

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

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

REMARKS:
_____

_____

Vendor Name:_____ Date:_____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address:_____

(If your procurement is designated as a Small Business Reserve Procurement, include the following notice in black font:)

NOTICE TO BIDDERS/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 Department of General Services Small Business Reserve Program are eligible for award of a contract.

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

D. Either:

(1) With respect to employees:

(a) Its wholesale operations did not employ more than 50 persons in its most recently completed 3 fiscal years;

(b) Its retail operations did not employ more than 25 persons in its most recently completed 3 fiscal years;

(c) Its manufacturing operations did not employ more than 100 persons in its most recently completed 3 fiscal years;

(d) Its service operations did not employ more than 100 persons in its most recently completed 3 fiscal years;

(e) Its construction operations did not employ more than 50 persons in its most recently completed 3 fiscal years; and

(f) The architectural and engineering services of the business did not employ more than 100 persons in its most recently completed 3 fiscal years; or

(2) With respect to gross sales:

(a) The gross sales of its wholesale operations did not exceed an average of $4,000,000 in its most recently completed 3 fiscal years;

(b) The gross sales of its retail operations did not exceed an average of $3,000,000 in its most recently completed 3 fiscal years;

(c) The gross sales of its manufacturing operations did not exceed an average of $2,000,000 in its most recently completed 3 fiscal years;

(d) The gross sales of its service operations did not exceed an average of $10,000,000 in its most recently completed 3 fiscal years;

(e) The gross sales of its construction operations did not exceed an average of $7,000,000 in its most recently completed 3 fiscal years; and

(f) The gross sales of its architectural and engineering operations did not exceed an average of $4,500,000 in its most recently completed 3 fiscal years.

Note: If a business has not existed for 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.

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

IFB KEY INFORMATION SUMMARY SHEET

Invitation for Bids:	**(SOLICITATION TITLE)**
Solicitation Number:	**DHMH OPASS – (solicitation number)**
IFB Issue Date:	**(date of issuance)**
IFB Issuing Office:	**Maryland Department of Health and Mental Hygiene** **(name of Issuing Office or Facility)**
Procurement Officer:	**(name of Procurement Officer)** **(contact information of Procurement Officer)** **(address)** **Phone:** **Fax:** **e-mail: _____**
Contract Officer:	**(name of Contract Officer)** **(contact information of Contract Officer)**
Contract Monitor:	**(name of Contract Monitor)** **(administration or facility name)** **(street address and room number)(city, state, zipcode)** **(office phone)** **(fax number)** **(e-mail address)**
Bids are to be sent to:	**Maryland Department of Health and Mental Hygiene** **(administration or facility)** **(street address and room number), (city, state, zip code)** **Attention: (name of individual receiving Bids)** (This should be the information of the Procurement Officer, unless the Procurement Officer allows Bids to be sent to the administration/facility. If the Bids are to be sent to the administration/facility, the information should include the information of the individual with the title, "Procurement Coordinator.")
Pre-Bid Conference:	**(date and time of Conference) Local Time** **(street address, room number), (city, state, zip code)**
Closing Date and Time:	**(Bid due date and time) Local Time**
Public Bid Opening:	**(date, time, and location of Bid opening)**
MBE Subcontracting Goal:	**(MBE goal percentage) %**
VSBE Subcontracting Goal:	**(VSBE goal percentage) %**

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

1.1.1 The Maryland Department of Health and Mental Hygiene (DHMH or the Department), (name of DHMH Office, Administration or Facility), is issuing this Multi-Step Invitation for Bids (IFB) to provide (enter a brief description of the services to be performed – i.e., a brief summary of Section 3.1 of the Scope of Work).

1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the selected Bidder and the State. The anticipated duration of services to be provided under this Contract is (enter number of years, and option years if any). See Section 1.4 for more information.

1.1.3 The Department intends to make (enter one of the following – "a single award" or "up to X awards" if there is the possibility for multiple awards, with "X" being the maximum number of awards") as a result of this IFB.

1.1.4 Bidders, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work. (If there is the possibility for multiple awards, state how multiple Contractors will provide the required services. Ex. "For multiple contract awards, the Contractor with the lowest Total Bid Price will be given the right of first refusal to provide the requested services. If that Contractor is unwilling or unable to perform the requested services, the Contractor with the next lowest Total Bid Price will be asked to provide the requested services, and so forth. Each Contractor will have 48 hours to respond to a service request before a request is made to the next subsequent Contractor.")

1.2 Abbreviations and Definitions

For purposes of this IFB, 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. **Bid** – A statement of price offered by a Bidder in response to an IFB.

b. **Bidder** – An entity that submits a Bid in response to this IFB.

c. **Business Day(s)** – The official Working Days of the week to include Monday through Friday. Official Working Days exclude State Holidays (see definition of "Normal State Business Hours" below).

d. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.

e. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment A**.

f. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.

g. **Contract Monitor (CM)** – 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.

h. **Contract Officer (CO)** – The Office of Procurement and Support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer.

i. **Contractor** – The selected Bidder that is awarded a Contract by the State.

j. **Department or DHMH** – Maryland Department of Health and Mental Hygiene.

k. **eMM** – eMaryland Marketplace (see IFB Section 1.8).

l. **Go-Live Date** – The date when the Contractor must begin providing all services required by this solicitation. See Section 1.4.

m. **Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the Maryland Department of Health and Mental Hygiene, (name of DHMH Office, Administration or Facility), Solicitation Number OPASS-(solicitation number) dated (date of issuance), including any addenda.

n. **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.

o. **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.

p. **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.

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

r. **Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation which are expressly set forth herein.

s. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.

t. **State** – The State of Maryland.

u. **Technical Offer** – A Bidder's response to the Scope of Work requirements of this IFB. A Bidder's Technical Offer will be determined to be acceptable or not acceptable prior to any opening of a Bidder's Bid Price Form. See IFB Section 4.2 for more information.

v. **Total Bid Price** - The Bidder's total price for services in response to this solicitation, included in the Bid in Attachment F – Bid Form, and used in determining the recommended awardee (see IFB Section 1.15).

w. **Veteran-owned Small Business Enterprise (VSBE) –** a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

x. **Working Day(s)** – Same as "Business Day(s)."

1.3 Contract Type

The Contract resulting from this solicitation shall be a (enter type of contract or combination of more than one type, e.g., firm fixed price, fixed price with cost adjustment, labor hour, indefinite quantity with fixed unit price, etc.) as defined in COMAR 21.06.03.(enter COMAR citation number for the contract type for combinations of contract types, state which contract section(s) fall under each contract type).

1.4 Contract Duration

1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required ("Contract Commencement").

1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2 definition and Section 1.4.3) will be the Contract "Start-up Period." During the Start-up Period the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the Go Live Date. No compensation will be paid to the Contractor for any activities it performs during the Start-up Period. (amend this section if there will be payment for start-up activities.)

1.4.3 As of the Go-Live Date contained in a Notice to Proceed (see Section 1.2 definition), the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, for the compensation described in its Bid.

1.4.4 The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live Date (the Start-Up Period as described in Section 1.4.2) plus ("x" number of years/months/etc.) from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation. (If the Contract contains the possibility for Option years, detail here. Ex. "This contract may be extended for 'X' periods of one year each at the sole discretion of the Department and at the prices quoted in the Financial Proposal Form for Option Years.").

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

1.5 Procurement Officer

1.5.1 (If your procurement includes a Procurement Coordinator and/or a Contract Officer, include the following revised language here, as applicable: "Except for the Procurement Coordinator and Contract Officer identified below, the sole point of contact . . .") The sole point of contact in the State for purposes of this solicitation prior to the award of any Contract is the Procurement Officer at the address listed below:

(name and contact information of Procurement Officer)
Procurement Officer
Phone Number:
Fax Number:
E-mail:

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

(If your procurement includes a Procurement Coordinator, include the following:)

1.5.2 The Procurement Officer designates the following individual as the Procurement Coordinator, who is authorized to act on behalf of the Procurement Officer only as expressly set forth in this solicitation:

(name and contact information of Procurement Coordinator)
Procurement Coordinator
Phone Number:
Fax Number:
E-mail:

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

(If your procurement includes a Contract Officer, include the following:)

1.5.3 The Procurement Officer designates the following individual as the Contract Officer, who is authorized to act on behalf of the Procurement Officer:

(name and contact information of Contract Officer)
Contract Officer
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street
Baltimore, MD 21201
Phone Number: (410) 767-
Fax Number: (410) 333-5958
E-mail:

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

1.6 Contract Monitor

The Contract Monitor is:

(name of Contract Monitor)
Maryland Department of Health and Mental Hygiene
(name of Administration or facility)
(street address and room number)
(city, state and zip code)
Phone Number: ( ) -
Fax Number: ( ) -
E-mail: (Contract Monitor's email address)

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

1.7 Pre-Bid Conference

A Pre-Bid Conference (the Conference) will be held on (date of Conference), beginning at (start time of Conference) Local Time, at (full address of Conference with building name and room number). All prospective Bidders are encouraged to attend in order to facilitate better preparation of their Bids.

The Conference will be summarized. As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Bidders known to

have received a copy of this IFB. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See IFB Section 1.8.

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to (fax number) the Pre-Bid Conference Response Form to the attention of the ("Contract Officer" or "Procurement Coordinator") no later than 4:00 p.m. Local Time on (final date for submission of Attachment E). The Pre-Bid Conference Response Form is included as **Attachment E** to this IFB. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the ("Contract Officer" or "Procurement Coordinator") no later than (final date for request for special accomodations). The Department will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DHMH website (http://www.dhmh.maryland.gov/procumnt/SitePages/procopps.aspx) and possibly other means for transmitting the IFB and associated materials, the solicitation and summary of the Pre-Bid Conference, Bidder questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

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

1.9 Questions

Written questions from prospective Bidders will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: (enter email address for vendors to submit questions). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Bidders attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer (**see above email address**) in a timely manner prior to the Bid due date. Questions are requested to be submitted at least five (5) days prior to the Bid due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Bid due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the IFB in sufficient time for the answer to be taken into consideration in the Bid.

1.10 Procurement Method

This Contract will be awarded in accordance with the Multi-Step Competitive Sealed Bidding method under COMAR 21.05.02.17.

1.11 Bids Due (Closing) Date and Time

Bids, in the number and form set forth in Section 4.4 "Required Bid Submissions," must be received by the ("Procurement Officer" or "Procurement Coordinator"), at the address listed on the Key Information Summary Sheet, no later than (Bid due time) Local Time on (Bid due date) in order to be considered.

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

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

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

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

1.12 Multiple or Alternate Bids

Multiple and/or alternate Bids will not be accepted. (If you wish to consider accepting Multiple or Alternate Bids, discuss with your procurement supervisor and DBM analyst).

1.13 Receipt, Opening and Recording of Bids

1.13.1 Receipt. Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.

1.13.2 Opening and Recording. Technical Offers from each Bidder will not be opened publicly, but will be opened in the presence of at least two (2) State employees. After review of the Technical Offers, a determination will be made as to whether each Bidder's Technical Offer is acceptable or not acceptable (see IFB Section 4.2). Afterwards, Bid Forms and timely modifications to Bid Forms from only those Bidders whose Technical Offers have been determined to be acceptable shall be opened publicly, at the time, date, and place designated in the IFB. The name of each such Bidder, their Total Bid Price, and such other information as is deemed appropriate shall be read aloud or otherwise made available. Bid Forms from Bidders whose Technical Offers have been found unacceptable shall be returned unopened. At the time of Bid Form opening, a Register of Bids will be prepared that identifies each Bidder, including Bidders whose Technical Offers were not found to be acceptable. The Register of Bids shall be open to inspection immediately after the public Bid opening

1.13.3 The Bid Opening shall be (Bid opening date and time) at (Bid opening location).

1.14 Confidentiality of Bids

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

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

1.15 Award Basis

The Contract shall be awarded to the responsible Bidder ("Bidder(s)" if more than multiple awards possible) submitting a responsive Bid with the most favorable Total Bid Price, after that Bidder's Technical Offer has been found to be acceptable (see COMAR 21.05.02.17 and IFB Section 4.2), for providing the goods and services as specified in this IFB. The most favorable Total Bid Price will be the lowest price total on **Attachment F** - Bid Form. (if multiple awards are possible, describe how subsequent awards will be made. Ex: "Up to "X" additional awards will be made to the next lowest, responsible, acceptable Bids in order of lowest Total Bid Price. ")

1.16 Tie Bids

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

1.17 Duration of Bid

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

1.18 Revisions to the IFB

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

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

1.19 Cancellations

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

1.20 Incurred Expenses

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

1.21 Protest/Disputes

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

1.22 Bidder Responsibilities

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

If a Bidder that seeks to perform or provide the services required by this IFB is the subsidiary of another entity, all information submitted by the Bidder, such as but not limited to, references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder's Bid shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.23 Substitution of Personnel

If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel after the Contract has commenced must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the Contract may be terminated for default which shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

1.24 Mandatory Contractual Terms

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as **Attachment A**. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. **Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.**

1.25 Bid/Proposal Affidavit

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

1.26 Contract Affidavit

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

1.27 Compliance with Laws/Arrearages

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

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

1.28 Verification of Registration and Tax Payment

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

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

1.29 False Statements

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

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

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

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

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

1.30 Payments by Electronic Funds Transfer

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

1.31 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Payment" (see **Attachment A**).

Additional information is available on GOMA's website at:
http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf.

1.32 Electronic Procurements Authorized

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

B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.

C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., https://emaryland.buyspeed.com/bso/), and electronic data interchange.

D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:

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

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

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

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

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

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

1. submission of initial Bids or Proposals;
2. filing of Bid Protests;
3. filing of Contract Claims;

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

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

1.33 Minority Business Enterprise Goals

(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:)

1.33.1 **Establishment of Goal and Subgoals**.

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

In addition, the following subgoals have been established for this procurement:

- (African-American subgoal percentage)% for African-American MBEs,
- (Asian-American subgoal percentage)% for Asian-American MBEs,
- (Hispanic-American subgoal percentage)% for Hispanic-American MBEs, and
- (Woman-Owned subgoal percentage)% for Woman-Owned MBEs.

Notwithstanding any subgoals established above, 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.

(After completing the MBE Subgoal Worksheet pursuant to the MBE Subgoal Guidance, (i) insert the subgoal amounts for the applicable subgoals above, and (ii) delete any of the above subgoals that do not apply to this solicitation. If after the completion of the MBE Subgoal Worksheet no subgoals are established, then the following sentence should be included instead, in black font:)

There are no MBE subcontractor participation subgoals for this procurement.

1.33.2 **Attachment D** – Minority Business Enterprise participation, instructions, and forms are provided to assist Bidders/Offerors. A Bidder/Offeror must include with its Bid/Proposal a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) whereby:

(a) The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and

(b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE participation schedule.

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

1.33.3 Bidders/Offerors are responsible for verifying that each of the MBE(s) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1** is appropriately certified and has the correct NAICS codes allowing it to perform the intended work.

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

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

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

1.33.5 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://www.mdot.state.md.us. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

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

(a) **Attachment D-4** (MBE Participation Prime Contract Paid/Unpaid MBE Invoice Report).
(b) **Attachment D-5** (MBE Participation Subcontractor/Contractor Unpaid MBE Invoice Report).

1.33.7 A Bidder/Offeror requesting a waiver of the goal or any of the applicable subgoals will be responsible for submitting the following form if applicable within ten (10) Working Days of recommendation for award and all documentation as required in **COMAR 21.11.03.11 - Waiver**:

(a) **Attachment D-6** (MBE Minority Contractor Unavailability Certificate).

1.33.8 All documents, including **Attachment D**, completed and submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered to be a part of the resulting Contract and are hereby expressly incorporated into reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see **Attachment A**, § 2.1).

1.33.9 The Bidder/Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the provisions of the MBE program and pertinent Contract provisions. (See **Attachment A**, §39).

1.34 Living Wage Requirements

A solicitation for services under a State contract valued at $100,000 or more may be subject to Md. Code Ann., State Finance and Procurement Article, Title18. Additional information regarding the State's living wage requirement is contained in **Attachment G**. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Bid/Proposal. If a Bidder/Offeror fails to complete and submit the required documentation, the State may determine a Bidder/Offeror to be not responsible under State law.

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

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

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

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

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

1.35 Federal Funding Acknowledgement

(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:)

1.35.1 There are programmatic conditions that apply to this Contract due to Federal funding. (see **Attachment H**).

1.35.2 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.

1.35.3 This Contract contains federal funds. The source of these federal funds is: (name of Federal program for funds source i.e., *Medicaid, Ryan White, Title X,* etc.). The CFDA number is: (*Catalog of Federal Domestic Assistance* number). The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment H**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment H** and Bidders/Offerors are to complete and submit these Attachments with their Bid/Proposal as instructed in the Attachments. Acceptance of this agreement indicates the Bidder/Offeror's intent to comply with all conditions, which are part of this Contract.

1.36 Conflict of Interest Affidavit and Disclosure

(If a Conflict of Interest Affidavit **is not** required for this solicitation, enter only the following sentence for this section and delete the rest:)

A Conflict of Interest Affidavit is not required for this procurement.

(If a Conflict of Interest Affidavit **is** required for this solicitation, enter the following language for this section:)

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

1.37 Non-Disclosure Agreement

(If a Non-Disclosure Agreement **is not** required for this solicitation, enter only the following sentence for this section and delete the rest:)

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

(If a Non-Disclosure Agreement **is** required for this solicitation, enter the following language for this section:)

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

1.38 HIPAA - Business Associate Agreement

(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:)

Based on the determination by DHMH that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall execute a Business

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

1.39 Nonvisual Access

(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:)

By submitting a Bid/Proposal, the Bidder/Offeror warrants that the information technology offered under the Bid/Proposal: (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The Bidder/Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than five percent (5%). For purposes of this solicitation and resulting Contract, the phrase "equivalent access" means the ability to receive, use, and manipulate information and to operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Nonvisual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations. See www.doit.maryland.gov, keyword: NVA.

1.40 Mercury and Products That Contain Mercury

(If this solicitation **does not** include the procurement of products known to likely include mercury as a component (ex. thermometers, thermostats, fluorescents, some batteries), 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:)

(Option 1. This clause provides a price preference to only those products that are mercury-free. Enter the percentage preference as "X.")
DHMH shall give a price preference of X percent (X%) (not to exceed 5%; see COMAR 21.05.08.09) to Bids/Proposals for products or equipment that are mercury-free. The Bidder/Offeror must submit a Mercury Affidavit in the form of **Attachment L** with its Bid/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 as "X.")

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

1.41 Veteran-Owned Small Business Enterprise Goals

(If there is **no** VSBE goal for this solicitation, enter only the following sentence for this section, and delete the rest:)

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

(If there **is** a VSBE goal for this solicitation, enter and complete the following language for this section:)

1.41.1 NOTICE TO BIDDERS/OFERORS

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

1.41.2 PURPOSE

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the VSBE subcontractor participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment M**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment M**.

1.41.3 VSBE GOALS

A VSBE subcontract participation goal of (VSBE goal percentage)% of the total Contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the Bidder or Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

1.41.4 SOLICITATION AND CONTRACT FORMATION

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

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

If a Bidder/Offeror fails to submit Attachment M-1 with the Bid/Proposal as required, the Procurement Officer may determine that the Bid is non-responsive or that the Proposal is not reasonably susceptible of being selected for award.

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

(1) VSBE Project Participation Statement (**Attachment M-2**);

(2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and

(3) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the VSBE subcontractor participation goal.

If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not responsible and therefore not eligible for contract award.

1.41.5 CONTRACT ADMINISTRATION REQUIREMENTS

The Contractor, once awarded the Contract shall:

1. Submit monthly to the Department a report listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice, and the reason payment has not been made. **(Attachment M-3)**

2. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. **(Attachment M-4)**

3. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.

4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.

5. At the option of the procurement agency, upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

1.42 Location of the Performance of Services Disclosure

(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, enter the following language for this section:)

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

1.43 Department of Human Resources (DHR) Hiring Agreement

(If this solicitation **does not** require a DHR Hiring Agreement, enter only the following sentence for this section and delete the rest:)

This solicitation does not require a DHR Hiring Agreement.

(If this solicitation **does** require a DHR Hiring Agreement, enter the following language for this section:)

All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder/Offeror will be required to complete a DHR Hiring Agreement. A copy of this Affidavit is included as **Attachment O**. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award.

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SECTION 2 – MINIMUM QUALIFICATIONS

2.1 Bidder Minimum Qualifications

(If there are **no** Bidder Minimum Qualifications for this solicitation, enter only the following sentence for this section and delete the rest:)

There are no Bidder Minimum Qualifications for this procurement.

(If there **are** Bidder Minimum Qualifications for this solicitation, enter the following language as applicable for this section and insert a numbered list of all Bidder Minimum Qualifications. These Minimum Qualifications are requirements that must be met by a vendor in order to submit a Bid, including any licensures or certifications, years of experience, 501(c)(3) status, CBO, other designations, etc. These are not to be service requirements or deliverables under the Contract (those are detailed in Section 3). Include requirements of proof that must be included with a Bidder's bid (ex. copies of licenses, certificates, etc.). It is not mandatory to have Minimum Qualifications, and having them can sometimes inhibit competition, but if a bottom-line requirement must be met, using Minimum Qualifications is a good way to set the bar.)

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

2.1.1 The Bidder shall have . . . (ex. three (3) years of experience providing . . .). As proof of meeting this requirement, the Bidder shall provide with its Bid . . . (ex. three (3) references from the past five years able to attest to the Bidder's experience in providing . . .).

2.1.2 The Bidder shall be certified . . . (ex. by the Maryland Insurance Administration as a . . .). As proof of meeting this requirement, the Bidder shall provide with its Bid . . . (ex. a current certificate issued by the Maryland Insurance Administration evidencing the Bidder's certification as a . . .")

2.1.3…

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SECTION 3 – SCOPE OF WORK

3.1 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 summary of this section should be included in Section 1.1 of this solicitation).

The State is issuing this solicitation for the purposes of . . .

3.2 Scope of Work - Requirements

The Contractor shall:

(Insert Contract Specifications into the Solicitation here. This is the most important section of the solicitation, and the "meat" of the procurement. Any product or service deliverables, milestones, or deadlines must be identified here, including reports specific to the Scope of Work requirements. The specifications must clearly articulate what the State's requirements are and readers should understand exactly what the State intends to procure. The specifications need to be clearly written so that payment can be made appropriately, work (un)performed can be identified, and the contractual rights of the State can be enforced. Use the term "Contractor," not "Bidder/Offeror," throughout this Section as these are Contractual requirements. State your requirements in an outline format that is organized logically with proper headings for each main section (ex. Staffing; Reports; etc.), using proper outline formatting with tabs to differentiate subsections. See formatting example below:)

3.2.1 General Requirements

3.2.1.1
- A.
- B.
  - 1.
  - 2.
- C.

3.2.1.2
- A.
  - 1.
  - 2.
  - 3.
- B.

3.2.2 Staffing

3.2.2.1

3.2.2.2
- A.
- B.

3.2.2.3

3.2.3 Reports . . .

3.3 Security Requirements

3.3.1 Employee Identification

(a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.

(b) At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visual location at all times.

3.3.2 Information Technology

(a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

(b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. 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.

3.3.3 Criminal Background Check

(Use **only one** of the paragraphs below; delete all others. If no background check is required, delete this section 3.3.3.)

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

(Temporary Personnel Contracts)
The Contractor shall obtain criminal background checks on candidates it sends for employment at DHMH. At a minimum, these checks must contain convictions and probation before judgment (PBJ) pleadings within the State of Maryland. These checks may be performed by public or private entities. Prior to placement of a temporary employee, the Contract Monitor must review the background check to determine if the candidate is acceptable based on the specific duties that need to be fulfilled and the circumstances surrounding the conviction or PBJ pleading. Being convicted is not in itself a bar to placement. Decisions of the Contract Monitor as to acceptability of a candidate are final.

(Administration/Facility Is Responsible for Background Check)
The Contractor shall obtain from each individual assigned to work on the Contract a statement permitting a criminal background check. The Department will obtain a criminal background check for each individual using a source of its choosing. The Contract Monitor reserves the right to reject any individual based upon the results of the background check.

3.4 Insurance Requirements

(The insurance requirements and minimums stated below are general examples, and may not reflect the necessary requirements and minimums for your Scope of Work. Some of the insurance requirements and minimums below may place an undue burden on the Contractor and its subcontractors, or may not be necessary for the types of services to be provided. Research sample insurance requirements for the relevant service industry in order to fine-tune these requirements and minimums for your particular Scope of Work requirements.)

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

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

3.4.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

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

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

a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.

b. Commercial General Liability as required in Section 3.4.1.

c. Errors and Omissions/Professional Liability as required in Section 3.4.2.

d. Automobile and/or Commercial Truck Insurance as required in Section 3.4.3.

e. Employee Theft Insurance as required in Section 3.4.4.

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

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

3.5 Problem Escalation Procedure

3.5.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur

during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

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

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

- The process for establishing the existence of a problem;
- The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;
- Circumstances in which the escalation will occur in less than the normal timeframe;
- The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- A process for updating and notifying the Contract Monitor of any changes to the PEP.

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.

3.6 Invoicing

3.6.1 General

(a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:

- Contractor name;
- Remittance address;
- Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- Invoice period;
- Invoice date;
- Invoice number
- State assigned Contract number;
- State assigned (Blanket) Purchase Order number(s);
- Goods or services provided; and
- Amount due.

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

(b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the

Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Any action on the part of the Department, 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 21.10.02.

3.6.2 Invoice Submission Schedule

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

(Enter the Contractor's invoice submission schedule here; this can be a table with dates for required deliverables, or a more simple statement such as "Invoices are due by the 15th of the month following the month in which services were performed." The invoice submission schedule will depend on the type of contract, e.g., fixed price, indefinite quantity, etc. and service delivery. Invoices and resulting payment should generally be based on performance for services/goods provided. OPASS can provide sample invoice submission schedules.)

3.7 MBE Reports

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

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

3.8 VSBE Reports

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

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

3.9 SOC 2 Type II Audit Report

(If you determine that a Contractor SOC 2 Type II Report **is not** required for this Contract, enter only the following sentence for this section and delete the rest:)

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

Include the following SOC 2 Type II Report clause when the Contractor will collect, process, transmit, store, organize, maintain, or dispose of critical or sensitive information on behalf of the Department as part of its Contract responsibilities. Examples of critical or sensitive information processes may include but are not limited to the following:

- Account Receivable or Fee Payment Processing Services
- Call Center or Help Desk Services

- Collection Agency Services
- Information System Hosting or System Services
- Management or Cloud Computing Services
- Medical or Insurance Claims Processing Services
- Payroll Processing Services
- Printing and Mailing Processing Services
- Records Retention Services

The Contractor shall have an annual audit performed by an independent audit firm of its handling of the Department's critical functions and/or sensitive information, which is identified as [Department to identify specific "critical functions and/or sensitive information"] (collectively referred to as the "Information Functions and/or 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 Department, to assess the security of outsourced client functions or data (collectively, the "Guidance") as follows:

i. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type II Report. The SOC 2 Report shall be completed annually at the following intervals: [Department to enter desired intervals. Ex. "Report to be submitted by March 1 for the preceding calendar year."].

ii. The SOC 2 Report shall report on a description of the Contractor's system and the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes relevant to the following trust principles: [Processing Integrity, Security, Availability, Confidentiality, and/or Privacy – Department to choose which apply] as defined in the Guidance. (Suggest consulting with your Chief Information Officer or a director of internal audits to determine which trust principles are applicable for your Contract).

iii. The SOC 2 Report shall include work performed by subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Department under the Contract. The Contractor shall ensure the performance of the SOC 2 Audits includes its subcontractor(s).

iv. All SOC 2 Audits, including the SOC 2 Audits of Contractor's subcontractors, shall be performed at the Contractor's expense.

v. The Contractor shall promptly provide a complete copy of the final SOC 2 Report to the Department's Contract Manager upon completion of each SOC 2 Audit engagement.

vi. The Contractor shall provide to the Department's Contract Manager, within 30 calendar days of the issuance of the final SOC 2 Report, a documented corrective action plan which addresses 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.

vii. If the Contractor currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes services being provided by the Contractor to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current audits are acceptable in lieu of the SOC 2 Report(s).

viii. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by [Department to enter date. Ex. "March 1 for the preceding calendar year."], the Department shall have the right to retain an independent audit firm to perform an audit engagement to issue a SOC 2 Report of the Information Functions and/or Processes being hosted by the Contractor. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and provide reasonable support to the independent audit firm in the performance of the engagement. The Department will invoice the Contractor for the expense of the SOC 2 Audit(s), or deduct the cost from future payments to the Contractor.

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SECTION 4 – BID FORMAT

4.1 Two Part Submission

Bids shall be submitted in the following manner:

a. A Technical Offer, including any sample(s) if appropriate, but not including any Bid pricing/cost information (see Section 4.2); and
b. A Bid Price Form including all Bid pricing/cost information (see Section 4.3)

One original and three (3) copies of each, the Technical Offer and the Bid Price Form, shall be placed in separate, sealed envelopes or other appropriate packaging, with labels indicating "Technical Offer" or "Bid Price Form" as appropriate. These two separate envelopes/packages should then be placed in a singled sealed envelope or other appropriate package along with any Minimum Qualification documentation that may be required (see Section 2) and all other Required Bid Submissions (see Section 4.4). This single envelope/package shall bear the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the Bids.

4.2 Technical Offer

(The Technical Offer Submission language below is a generic sample, modeled after the language in the RFP template for Technical Proposal submissions. If this language does not apply to your Multi-Step IFB solicitation, or you are simply requesting a sample or demonstration for your pass/fail review of the Technical Offer, revise this language as appropriate).

4.2.1 Technical Offer Requirements

a. The Bidder shall address each Scope of Work requirement (Section 3.2) in its Technical Offer and describe how its proposed services will meet or exceed the requirement(s). If the State is seeking Bidder agreement to any requirement(s), the Bidder shall state its agreement or disagreement. Any paragraph in the Technical Offer that responds to a Scope of Work (Section 3.2) requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Bid classified as not responsive or the Bidder deemed not responsible, and the Technical Offer determined not acceptable.

   Responses in the Bidder's Technical Offer should reference the organization and numbering of Sections in the IFB (ex. "Section 3.2.1 Response . . .; "Section 3.2.2 Response . . .," etc.). This Technical Offer organization will allow State officials to "map" Bidder responses directly to IFB requirements by Section number and will aid in the review process.

b. The Bidder shall give a definitive description of the proposed plan to meet the requirements of the IFB, i.e., a Work Plan. It shall include the specific methodology and techniques to be used by the Bidder in providing the required services as outlined in IFB Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Bidder and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

c. The Bidder must provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department's Contract Monitor should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures must be submitted as indicated in IFB Section 3.5.

d. The Bidder shall identify the location(s) in which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this IFB.

e. (add any additional items for Bidders to address or include with their Technical Offers that are specific to your IFB's Scope of Work, such as samples or requests for demonstrations.)

4.2.2 Technical Offers will not be opened publicly, but will be opened in the presence of at least two (2) State employees. Technical Offers will then be reviewed. Prior to the Bid Price Form opening, Technical Offers will be shown only to State employees and members of the review committee with a legitimate interest in them.

4.2.3 Technical Criteria

The following criteria shall determine the acceptability of each item listed or provided under Section 4.2.1 "Technical Offer Requirements." All criteria are pass/fail. Technical Offers are not ranked but determined to be acceptable or not acceptable.

(these are generic samples based on the sample Section 4.2.3 above. Revise as appropriate for your solicitation.)

a. The Bidder's comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done (i.e., response to IFB Section 3.2 requirements). (see Section 4.2.1.a.)
b. The Bidder's Work Plan. (see Section 4.2.1.b.)
c. The Bidder's Problem Escalation Procedure. (see Section 4.2.1.c.)

4.2.4 After Technical Offers have been reviewed, Bidders whose Technical Offers are determined not to be acceptable, based upon the technical criteria as set forth in Section 4.2.3, will be notified in writing that their Bids are not acceptable and being rejected. Included with the rejection notice, the unopened Bid Form will also be returned. Bid Forms from only those Bidders whose Technical Offers have been found acceptable shall be publicly opened at the date, time, and place specified in the Key Information Summary Sheet and IFB Section 1.13.3.

4.3 Bid Price Form

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

4.4 Required Bid Submissions

Bidders shall include the following with their Bid:

4.4.1 **Transmittal Letter:**

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

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

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

4.4.2 **Minimum Qualifications Documentation:**

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

4.4.3 **Completed Required Attachments:** Submit three (3) copies of each with original signatures:

a. Completed Bid/Proposal Affidavit (**Attachment B**).
b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).

4.4.4 **Additional Attachments *<u>If Required</u>**: Submit three (3) copies of each with original signatures, if required. ***** See appropriate IFB Section to determine whether the Attachment is required for this procurement:

a. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) ***see Section 1.33**. This attachment must be provided in a separately sealed envelope within the main Bid package/envelope.
b. Completed Federal Funds Attachment (**Attachment H**) ***see Section 1.35.**
c. Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) ***see Section 1.36.**
d. Completed Mercury Affidavit (**Attachment L**) ***see Section 1.40**.
e. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule. (**Attachment M-1**) ***see Section 1.41**. This attachment must be provided in a separately sealed envelope within the main Bid package/envelope.
f. Completed Location of the Performance of Services Disclosure (**Attachment O**) ***see Section 1.44**.

4.4.5 **References:**

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

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

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

4.4.6 **List of Current or Prior State Contracts:**

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

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

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

4.4.7 **Financial Capabilities:**

The Bidder shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

4.4.8 **Certificate of Insurance:**

The Bidder shall provide a copy of the Bidder's current certificate of insurance. The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in Section 3.4 "Insurance Requirements," naming the State as an additional insured if required, within five (5) Business Days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

4.4.9 **Subcontractors:**

The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform.

4.4.10 **Legal Action Summary:**

This summary shall include:

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

4.5 Reciprocal Preference

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

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

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

4.6 Delivery

Bidders may either mail or hand-deliver Bids.

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

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

4.7 Documents Required upon Notice of Recommendation for Contract Award

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

a. signed Contract (**Attachment A**),
b. completed Contract Affidavit (**Attachment C**),
c. completed MBE **Attachments D-2 and D-3**, within ten (10) Working Days, if applicable; ***see Section 1.33**,
d. MBE Waiver Justification within ten (10) Working Days, usually including **Attachment D-6**, if a waiver has been requested (if applicable; ***see Section 1.33)**,
e. signed Non-Disclosure Agreement (**Attachment J**), if applicable; ***see Section 1.37**,
f. signed HIPAA Business Associate Agreement (**Attachment K**), if applicable; ***see Section 1.38**,
g. completed VSBE **Attachments M-2 and M-3**, if applicable ***see Section 1.41**,
h. completed DHR Hiring Agreement, **Attachment O**, if applicable ***see Section 1.43**, and
i. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 "Insurance Requirements," listing the State as an additional insured, if applicable; ***see Section 3.4.**

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IFB ATTACHMENTS

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

ATTACHMENT B – Bid/Proposal Affidavit
This Attachment must be completed and submitted with the Bid.

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

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

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

ATTACHMENT F – Bid Form Instructions and Bid Form
The Bid Form must be completed and submitted with the Bid.

ATTACHMENT G – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement
Attachment G-1 Living Wage Affidavit of Agreement must be completed and submitted with the Bid.

ATTACHMENT H – Federal Funds Attachment
If required (see Section 1.35), these Attachments must be completed and submitted with the Bid as instructed in the Attachments.

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure
If required (see Section 1.36), this Attachment must be completed and submitted with the Bid.

ATTACHMENT J – Non-Disclosure Agreement
If required (see Section 1.37), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Bid.

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

ATTACHMENT L – Mercury Affidavit
If required (see Section 1.40), this Attachment must be completed and submitted with the Bid.

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

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

ATTACHMENT N – Location of the Performance of Services Disclosure
If required (see Section 1.42), this Attachment must be completed and submitted with the Bid.

ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement
If required (see Section 1.43), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

(Insert any additional Attachments that are necessary for your solicitation and referenced in the Section 3.2, Scope of Work, starting with Attachment P.)

Rev. 08/01/2013

ATTACHMENT A – CONTRACT

(Do not change any of the standard contract terms.)

(CONTRACT TITLE)

THIS CONTRACT (the "Contract") is made this ("Xth") day of (month), (year) by and between (Contractor's name) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OFFICE OF PROCUREMENT AND SUPPORT SERVICES.

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

1. Definitions

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

1.1 "Bid" means the Contractor's Bid dated (Bid date).

1.2 "COMAR" means Code of Maryland Regulations.

1.3 "Contract Monitor" means the Department employee identified in Section 1.6 of the IFB as the Contract Monitor.

1.4 "Contractor" means (Contractor's name) whose principal business address is (Contractor's primary address) and whose principal office in Maryland is (Contractor's local address).

1.5 "Department" means the Maryland Department of Health and Mental Hygiene and any of its Agencies, Offices, Administrations, Facilities, or Commissions.

1.6 "IFB" means the Invitation for Bids for (solicitation title) Solicitation # DHMH OPASS (solicitation number), and any addenda thereto issued in writing by the State.

1.7 "Procurement Officer" means the Department employee identified in Section 1.5 of the IFB as the Procurement Officer.

1.8 "State" means the State of Maryland.

2. Scope of Contract

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

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

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the IFB. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting

forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

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

3. Period of Performance.

3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately (number of years of base term of Contract) years (change to months if necessary) beginning (anticipated Contract start date) and ending on (anticipated end date of base term of Contract).

3.2 Further, this Contract may be extended for (number of Option Years) periods of one year each at the sole discretion of the Department and at the prices quoted in the Bid for Option Years. (Delete this section if there are no Option Years, and change the numbering of the next section to 3.2).

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

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Bid Form (Attachment F). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed $ (Not-to-Exceed amount). (The following paragraph may be added to indefinite quantity, labor hour and time and materials contracts at the discretion of the Contract Monitor; otherwise delete it.):

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

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

4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

4.5 Contractor's eMarylandMarketplace vendor ID number is (Contractor's eMM number).

5. Rights to Records

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

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

5.3 The Contractor shall report to the Contract 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.

6. Exclusive Use

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

7. Patents, Copyrights, and Intellectual Property

7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

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

8. Confidentiality

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

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

9. Loss of Data

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

10. Indemnification

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

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

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

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

10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's

obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

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

12. Disputes

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

13. Maryland Law

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

13.2 The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.

13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

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

15. Contingent Fee Prohibition

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

16. Non-availability of Funding

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

17. Termination for Cause

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

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

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

24. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 24 shall survive expiration or termination of the Contract.

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements above,:

24.1 That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly-authorized representatives, shall be granted access to the Contractor's contract, books, documents, and records necessary to verify the cost of the services provided under this contract, until the expiration of four (4) years after the services are furnished under this contract; and

24.2 That similar access will be allowed to the books, documents, and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. 420.301) if that organization is subcontracting to provide services with a value of $10,000 or more in a twelve (12) month period to be reimbursed through funds provided by this contract.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

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

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

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

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

26. Cost and Price Certification

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

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

27. Subcontracting; Assignment

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

28. Liability

28.1 For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:

a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;

b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and

c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

29. Parent Company Guarantee (If Applicable)

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's

Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, suit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

30. Commercial Nondiscrimination

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

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

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

31. Prompt Pay Requirements

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

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

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

a. Retainage which had been withheld and is, by the terms of the agreement between the

Contractor and subcontractor, due to be distributed to the subcontractor; and

b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

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

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

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

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

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

32. Contract Monitor and Procurement Officer

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

33. 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: _____
Procurement Officer
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street, Room 416
Baltimore, Maryland 21201

If to the Contractor: _____
_____
_____
_____

(The following clauses may be required under certain funding or other conditions. Use these clauses only when appropriate. Delete any clauses not used and renumber as needed.)

(**Mandatory clause for 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.):

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

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

(**HIPAA Clauses.** One of the following three clauses should be used whenever the contract deals with medical information/records, third party clients or medical billing/payments. Delete any/all clauses if not applicable.)

(**Option 1 of 3** – Use this clause when the DHMH unit **<u>is not</u>** a covered entity. The blank at the beginning would reference any statutory requirement unique to the DHMH unit/program, or, if there is none, the first two sentences are combined to reference "any applicable law or regulation …") :

35. Confidentiality

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 confidentially requirements regarding collection, maintenance, and use of health 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 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 Department 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 and financial information.

(**OR – Option 2 of 3** – Use this confidentiality clause when the DHMH unit **is** a covered entity and the vendor **is not** a business associate.):

35. Compliance with HIPAA and State Confidentiality Law

35.1 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.

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

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

(**OR – Option 3 of** 3 – Use this confidentiality clause when the DHMH unit **is** a covered entity and the vendor **is** a business associate.):

35. Compliance with Federal HIPAA and State Confidentiality Law

35.1 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.

35.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected Bidder/Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.

35.3 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.

(The following clause should be added to contracts for which there is a strong possibility of employment by current and former Family Investment Program ("FIP") recipients, their children, foster youth, and child support obligors ("Candidates"). The actual DHR Agreement must be included in the solicitation as Attachment P (see Section 1.45) Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.):

36. Hiring Agreement

The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Bidder/Offeror and delivered to the Procurement Officer within ten (10) Working Days following receipt of notice by the Bidder/Offeror that it is being recommended for contract award. The Hiring Agreement will become effective concurrently with the award of the contract.

The Hiring Agreement provides that the Contractor and DHR 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.

(The following clause should be added to contracts when there is the probability of customers with limited ability in speaking English. Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.):

37. Limited English Proficiency

The contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and DHMH Policy 02.06.07.

38. Miscellaneous

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

38.2 If any term contained in this contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this contract, and the remaining terms

contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

(If there **is** a MBE goal for the Contract, enter and complete the following language for this section. This section must be completed pursuant to GOMA's Guidelines for Liquidated Damages Provisions for Contracts Containing Minority Business Enterprise Participation Goals. Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.)

39. Liquidated Damages

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

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

39.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): $ (dollar amount) per day until the monthly report is submitted as required.

39.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): $(dollar amount) per MBE subcontractor.

39.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.

39.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

39.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: $(dollar amount) per day until the undisputed amount due to the MBE subcontractor is paid.

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

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

CONTRACTOR

_____
By:

_____
Date

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND
MENTAL HYGIENE

_____
By: Joshua M. Sharfstein, M.D., Secretary

Or designee:

_____

_____
Date

Approved for form and legal sufficiency
this ____ day of _____, 20___.

_____
Assistant Attorney General

APPROVED BY BPW: _____
(Date) (BPW Item #)

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

(1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;

(2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/Proposal;

(3) Fail to use the certified minority business enterprise in the performance of the contract; or

(4) Pay the certified minority business enterprise solely for the use of its name in the Bid/Proposal.

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

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

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

(1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;

(2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran–owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;

(3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or

(6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

_____

_____

_____.

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

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

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

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

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

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

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

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

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

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

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

_____

_____

_____.

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment

or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

_____

_____

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

_____

_____

_____.

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

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

I FURTHER AFFIRM THAT:

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

M. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number:_____Address:_____

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

Name and Department ID Number:_____Address:_____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of

Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate $100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of $500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date:_____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS

(If this solicitation **does not** include a MBE goal (see Section 1.33), 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 a MBE goal (see Section 1.33), enter the following language for these Attachments:)

PURPOSE

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the Minority Business Enterprise (MBE) subcontractor participation goal stated in this solicitation. MBE performance shall be in accordance with this Attachment and as set forth in COMAR 21.11.03. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

In order to attempt to meet the MBE subcontractor participation goal using MBE subcontractors, all Bidders/Offerors shall comply with the requirements of COMAR 21.11.03.09 and shall:

- Identify specific work categories within the scope of the solicitation appropriate for subcontracting;
- Solicit certified MBEs in writing at least 10 days before Bids or Proposals are due, describing the identified work categories and providing instructions on how to provide a quote on the subcontracts;
- Attempt to make personal contact with the certified MBEs solicited and to document those attempts;
- Assist certified MBEs in fulfilling, or seeking a waiver of any bonding requirements; and
- Attend Pre-Bid/Proposal Conferences or other meetings that the Department schedules to publicize contracting opportunities for certified MBEs.

MBE GOAL AND SUB GOALS

An MBE subcontract participation goal of __% (enter MBE goal percentage and MBE subgoal percentages if any) of the total contract dollar amount has been established for this procurement, as set forth in RFP Section 1.33. The Contractor, including an MBE prime contractor, shall attempt to achieve the MBE subcontracting goal and any subgoals established for this Contract by subcontracting to one or more MDOT-certified MBEs a sufficient portion of the Bidder/Offeror's scope of work that results in total MBE payments that meet or exceed the MBE subcontractor participation goals and, if applicable, subgoals.

SOLICITATION AND CONTRACT FORMATION

- A Bidder/Offeror must include with its Bid/Proposal a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) whereby:

  (1) the Bidder/Offeror acknowledges the certified MBE subcontractor participation goal and any subgoals, and commits to make a good faith effort to achieve the goal and any subgoals or requests a full or partial waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and

  (2) the Bidder/Offeror responds to the expected degree of MBE subcontractor participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule (**Attachment D-1**).

If the Bidder/Offeror specifies a range for a proposed MBE subcontractor, only the lowest amount in the range can be considered for MBE commitment purposes. Ex: If a range of "5-15%" is proposed for a MBE subcontractor, only "5%" can be considered for purposes of totaling the actual MBE commitment for that particular MBE subcontractor. It is suggested that the Bidder/Offeror provide a specific percentage, and not a percentage range, for each MBE subcontractor proposed.

(IF THIS SOLICITATION CONTAINS MULTIPLE SERVICE CATEGORIES, ADD THE FOLLOWING SENTENCE AND CHANGE ITS FONT COLORING FROM RED TO BLACK:)

(3) SEPARATE FORMS (**ATTACHMENT D-1**) ARE REQUIRED FOR EACH SERVICE CATEGORY FOR WHICH A BID/PROPOSAL IS SUBMITTED.

- *If a Bidder/Offeror fails to submit a completed **Attachment D-1** with the Bid/Proposal, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.*

- Within 10 Working Days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee shall provide the following documentation to the Procurement Officer:

  a) Outreach Efforts Compliance Statement (**Attachment D-2**)

  b) Subcontractor Project Participation Certification (**Attachment D-3**)

  c) If the recommended awardee has requested a waiver (in whole or in part) of the overall MBE goal, it shall submit a fully documented waiver request that complies with COMAR 21.11.03.11, and usually the Minority Contractor Unavailability Certificate (**Attachment D-6**).

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

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

MBE REPORTING INSTRUCTIONS

The Contractor shall:

1. Submit by the 10th of each month to the Department's Contract Monitor or designee a Prime Contractor Paid/Unpaid MBE Invoice Report **(Attachment D-4)** listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice, and the reason payment has not been made.

2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors shall submit by the 10th of each month to the Department's Contract Monitor or a designee a Subcontractor Paid/Unpaid MBE Invoice Report **(Attachment D-5)** that identifies the Contract and lists all payments received from the Contractor under this Contract in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.

3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each subcontractor, and the actual dollar value of work performed. Subcontract agreements must be retained by the Contractor and furnished to the Procurement Officer upon request.

4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. The Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.

5. At the sole option of the Department, upon completion of the Contract and before final payment and/or release of any retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

ATTACHMENTS

A. MDOT Certified MBE Utilization and Fair Solicitation Affidavit – **Attachment D-1** (must be submitted with the Bid/Proposal)

B. Outreach Efforts Compliance Statement – **Attachment D-2** (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)

C. Subcontractor Project Participation Certification – **Attachment D-3** (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)

D. Prime Contractor Paid/Unpaid MBE Invoice Report – **Attachment D-4** (must be submitted by the 10th of each month by the Prime Contractor)

E. Subcontractor Paid/Unpaid MBE Invoice Report – **Attachment D-5** (must be submitted by the 10th of each month by the Subcontractor)

F. Minority Contractor Unavailability Certificate – **Attachment D-6** (if a waiver has been requested, Attachment D-6 usually must be submitted within 10 Working Days of notification of apparent award or actual award whichever is earlier)

MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with Bid/Proposal)

This document **MUST BE** included with the Bid/Proposal. If the Bidder/Offeror fails to complete and submit this form with the Bid/Proposal, the Procurement Officer shall deem the Bid non-responsive or shall determine that the Proposal is not reasonably susceptible of being selected for award.

In conjunction with the Bid/Proposal submitted in response to Solicitation No. (solicitation number) I affirm the following:

1. ☐ I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of ____ percent and, if specified in the solicitation, the following subgoals (complete for only those subgoals that apply): (enter MBE goal % above and any Subgoals % that may apply below)

   _____ percent African-American _____ percent Asian-American
   _____ percent Hispanic-American _____ percent Woman-Owned

   Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

OR

☐ I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver in whole or in part of the overall goal and/or subgoals. Within 10 Working Days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11. If this request is for a partial waiver, I have identified the portion of the MBE goal that I intend to meet in this Attachment D-1.

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

   (a) Outreach Efforts Compliance Statement (Attachment D2);
   (b) Subcontractor Project Participation Certification (Attachment D3); and
   (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE participation goal.

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

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

4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total Contract amount allocated to each MBE for this project and the work activity(ies) each MBE will provide under the Contract. I hereby affirm that the MBE firms are only providing those work activities for which they are MDOT certified.

MBE Subcontractor Participation Schedule

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Solicitation Number: (enter Solicitation #)	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name MBE Certification Number

FEIN

Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)

☐ African American ☐ Asian American ☐ Hispanic American ☐ Woman-Owned ☐ Other

Percentage of Total Contract Value to be provided by this MBE _____%

Description of Work to Be Performed:

Minority Firm Name MBE Certification Number

FEIN

Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)

☐ African American ☐ Asian American ☐ Hispanic American ☐ Woman-Owned ☐ Other

Percentage of Total Contract Value to be provided by this MBE _____%

Description of Work to Be Performed:

Minority Firm Name MBE Certification Number

FEIN

Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)

☐ African American ☐ Asian American ☐ Hispanic American ☐ Woman-Owned ☐ Other

Percentage of Total Contract Value to be provided by this MBE _____%

Description of Work to Be Performed:

Minority Firm Name MBE Certification Number

FEIN

Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)

☐ African American ☐ Asian American ☐ Hispanic American ☐ Woman-Owned ☐ Other

Percentage of Total Contract Value to be provided by this MBE _____%

Description of Work to Be Performed:

Continue on a separate page, if needed.

SUMMARY

Total *African-American* MBE Participation:	_____% of total Contract value
Total *Asian American* MBE Participation:	_____% of total Contract value
Total *Hispanic American* MBE Participation:	_____% of total Contract value
Total *Woman-Owned* MBE Participation:	_____% of total Contract value
Total *Other* Participation:	_____% of total Contract value
Total *All MBE* Participation:	_____% of total Contract value

Note: The percentages entered above must reflect the actual percentage of total Contract value committed to be paid to MBE subcontractor(s). (i.e., if the total MBE commitment is 25% of the total Contract value, the subgroup percentages listed above should total 25%).

Notwithstanding any subgoals established above, 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.

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

_____ _____

Bidder/Offeror Name Signature of Affiant

(PLEASE PRINT OR TYPE)

Name: _____

Title: _____

Date: _____

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Outreach Efforts Compliance Statement

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

In conjunction with the Bid/Proposal submitted in response to Solicitation No. _____, the Bidder/Offeror states the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.

2. Attached to this form are copies of written solicitations (with instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.

4. Select ONE of the following:
   a. ☐ This project does not involve bonding requirements.
   OR
   b. ☐ Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).

5. Select ONE of the following:
   a. ☐ Bidder/Offeror did/did not attend the Pre-Bid/Proposal Conference.
   OR
   b. ☐ No Pre-Bid/Proposal Conference was held.

_____ By: _____
Bidder/Offeror Printed Name Signature

Address: _____

_____

_____

Attachment D-3

Subcontractor Project Participation Certification

Please complete and submit one form for each MDOT certified MBE listed on Attachment D-1 within 10 Working Days of notification of apparent award.

_____ (*prime contractor*) has entered into a Contract with _____ (*subcontractor*) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount $
Minority Firm Name Address	MBE Certification Number FEIN
Work To Be Performed	
Percentage of Total Contract	
Total Subcontract Amount $	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

(1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;

(2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;

(3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or

(4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

PRIME CONTRACTOR SIGNATURE

By: _____
Name, Title
Date

SUBCONTRACTOR SIGNATURE

By: _____
Name, Title
Date

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

Attachment D-4

Maryland Department of Health and Mental Hygiene
Minority Business Enterprise Participation

Prime Contractor Paid/Unpaid MBE Invoice Report

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

Prime Contractor:	Contact Person:	
Address:		
City:	State:	ZIP:
Phone:	Fax:	E-mail:
Subcontractor Name:	Contact Person:	
Phone:	Fax:	
Subcontractor Services Provided:		

List all payments made to MBE subcontractor named above during this reporting period: **Invoice# Amount** **1.** **2.** **3.** **4.** **Total Dollars Paid: $_____**	**List dates and amounts of any outstanding invoices:** **Invoice # Amount** **1.** **2.** **3.** **4.** **Total Dollars Unpaid: $_____**

**If more than one MBE subcontractor is used for this contract, you must use separate D-4 forms for each subcontractor.
****Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

_____Contract Monitor
_____Contracting Unit
Department of Health and Mental Hygiene
_____
_____
_____
_____

Signature:_____ Date:_____
(Required)

This form must be completed
monthly by all MBE subcontractors.

ATTACHMENT D-5

Minority Business Enterprise Participation

Subcontractor Paid/Unpaid MBE Invoice Report

Report#: ____ Reporting Period (Month/Year): _____ **Report is due by the 10th of the month following the month the services were performed.**	Contract # Contracting Unit: MBE Subcontract Amount: Project Begin Date: Project End Date: Services Provided:

MBE Subcontractor Name:		
MDOT Certification #:		
Contact Person:	E-mail:	
Address:		
City:	State:	ZIP:
Phone:	Fax:	
Subcontractor Services Provided:		

List all payments received from Prime Contractor during reporting period indicated above. **Invoice Amt** **Date** **1.** **2.** **3.** **Total Dollars Paid: $_____**	**List dates and amounts of any unpaid invoices over 30 days old.** **Invoice Amt** **Date** **1.** **2.** **3.** **Total Dollars Unpaid: $_____**

Prime Contractor:	Contact Person:

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

_____Contract Monitor
_____Contracting Unit
Department of Health and Mental Hygiene
_____
_____
_____
_____

Signature:_____ Date:_____
(Required)

MARYLAND DEPARTMENT OF HEALTH & MENTAL HYGIENE

Code of Maryland Regulations (COMAR)

Title 21, State Procurement Regulations

(*regarding a waiver to a Minority Business Enterprise subcontracting goal*)

NOTE: Below is an excerpt only. Full text of COMAR Title 21 may be found at the website of the Secretary of State, Division of State Documents, at: http://www.dsd.state.md.us/comar/.

COMAR 21.11.03.11 - Waiver.

A. If, for any reason, the apparent successful Bidder/Offeror is unable to achieve the contract goal for each certified MBE classification specified as having a subcontract goal or the overall MBE contract goal, the Bidder/Offeror may request, in writing, a waiver to include the following:

(1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs, including the work to be performed by each MBE classification if an MBE subgoal has been specified, in order to increase the likelihood of achieving the stated goal;

(2) A detailed statement of the efforts made to contact and negotiate with certified MBEs, and if appropriate, by certified MBE classification, including:

(a) The names, addresses, dates, telephone numbers, and classification of certified MBEs contacted, and

(b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful Bidder/Offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;

(4) A list of certified MBEs including, if applicable, certified MBEs in each MBE classification, found to be unavailable, which shall be accompanied by the Minority Contractor Unavailablity Certificate (Attachment D-6) signed by the certified MBE, or a statement from the apparent successful Bidder/Offeror that the certified MBE refused to give the written verification;

(5) The record of the apparent successful Bidder/Offeror's compliance with the outreach efforts required under Regulation .09C(2)(a)—(e) of this chapter; and

(6) If the request for a waiver is for a certain MBE classification within an overall MBE goal, the Bidder/Offeror shall demonstrate reasonable efforts to meet the overall MBE goal with other MBE classification or classifications.

B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the Bidder/Offeror that certified MBE subcontract participation was unable to be obtained, or was unable to be obtained at a reasonable price or in the appropriate MBE classifications, and if the agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other Bids/Proposals and subcontract Bids/Proposal substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.

C. An agency head may waive any of the provisions of Regulations .09—.10 of this chapter for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.

D. When a waiver is granted, except waivers under §C of this regulation, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE liaison officer with another copy forwarded to the Office of Minority Affairs.

MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

Section I (to be completed by PRIME CONTRACTOR)

I hereby certify that the firm of_____
Name of Prime Contractor)

located at _____,
(Number) (Street) (City) (State) (Zip)

on _____ contacted certified minority business enterprise, _____
(Date) (Name of Minority Business)

_____ located at _____,
(Number) (Street) (City) (State) (Zip)

seeking to obtain a bid for work/service for project number_____, project name_____

_____

List below the type of work/ service requested:

Indicate the type of bid sought, _____. The minority business enterprise identified above is either unavailable for the work /service in relation to project number _____, or is unable to prepare a quote for the following reasons(s):

The statements contained above are, to the best of my knowledge and belief, true and accurate.

_____
(Name) (Title)

_____
(Number) (Street) (City) (State) (Zip)

_____
(Signature) (Date)

Note: Certified minority business enterprise must complete Section II below.

Section II (to be completed by CERTIFIED MINORITY BUSINESS ENTERPRISE)

I hereby certify that the firm of _____ MBE Cert.#_____
(Name of MBE Firm)

located at _____
(Number) (Street) (City) (State) (Zip)

was offered the opportunity to bid on project number_____, ON_____
(Date)

by _____
(Prime Contractor's Name) (Prime Contractor Official's Name) (Title)

The statements contained in Section I and Section II of this document are, to the best of my knowledge and belief, true and accurate.

_____ _____
(Name) (Title) (Phone)

_____ _____
(Signature) (Fax Number)

ATTACHMENT E – PRE-BID CONFERENCE RESPONSE FORM

Solicitation Number OPASS (solicitation number)
(SOLICITATION TITLE)

A Pre-Bid Conference will be held at (time of Conference), on (date of Conference), at (full address of Conference). Please return this form by (final date for submission of Attachment E), advising whether or not you plan to attend.

Return via e-mail or fax this form to the ("Contract Officer" or "Procurement Coordinator"):

(name of Contract Officer or Procurement Coordinator)
(administration, office or facility)
Department of Health and Mental Hygiene
(address of Contract Officer or Procurement Coordinator)
Email: (email address of Contract Officer or Procurement Coordinator)
Fax #: (fax number of Contract Officer or Procurement Coordinator)

Please indicate:

_____Yes, the following representatives will be in attendance:

1.

2.

3.

_____ No, we will not be in attendance.

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

_____
Signature Title

_____
Name of Firm (please print)

ATTACHMENT F – BID PRICING INSTRUCTIONS

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

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

A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., $24.15. Make your decimal points clear and distinct.

B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.

C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.

D) Any goods or services required through this IFB and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **$0.00**.

E) Every blank in every Bid Form shall be filled in. Any blanks may result in the Bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Form by the Bidder prior to submission shall be initialed and dated.

F) Except as instructed on the Bid Form, nothing shall be entered on or attached to the Bid Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions usually render the Bid non-responsive, which means it will be rejected.

G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Bid to be rejected.

H) If option years are included, Bidders must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the IFB at the prices entered in the Bid Form.

I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.

J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for bidding purposes only. The Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

K) Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

(Add additional instructions as needed to assist Bidders in the completion of the Bid Form. Also, validate that the instructions above are appropriate for the type of prices being solicited. If inappropriate, delete any conflicting instructions as necessary.)

BID FORM

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

(Enter Bid Form information. A generic sample is provided below. If the Bid Form is complex, you may use a separate document such as an Excel file, and reference that document here.)

YEAR 1

employee @ $_____per hour x 100 hours $_____+

widgets @ $ _____per unit x 100 units $_____

Year 1 Total $_____ **(a)**

YEAR 2

employee @ $_____per hour x 100 hours $_____+

widgets @ $ _____per unit x 100 units $_____

Year 2 Total $_____ **(b)**

YEAR 3

employee @ $_____per hour x 100 hours $_____+

widgets @ $ _____per unit x 100 units $_____

Year 3 Total $_____ **(c)**

OPTION YEAR 1

employee @ $_____per hour x 100 hours $_____+

widgets @ $ _____per unit x 100 units $_____

Option Year 1 Total $_____ **(d)**

OPTION YEAR 2

employee @ $_____per hour x 100 hours $_____+

widgets @ $ _____per unit x 100 units $_____

Option Year 2 Total $_____ **(e)**

TOTAL BID PRICE (a)+(b)+(c)+(d)+(e) = **$ _____**

(BASIS FOR AWARD)

Submitted By:

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

Company Name: _____

Company Address: _____

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

FEIN: _____

eMM #: _____

Telephone: (_____) _____-- _____
Fax: (_____) _____--_____
E-mail: _____

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at $100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.

B. The Living Wage Law does not apply to:

(1) A Contractor who:

(a) Has a State contract for services valued at less than $100,000, or

(b) Employs 10 or fewer employees and has a State contract for services valued at less than $500,000.

(2) A Subcontractor who:

(a) Performs work on a State contract for services valued at less than $100,000,

(b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than $500,000, or

(c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B(3) or C below.

(3) Service contracts for the following:

(a) Services with a Public Service Company;

(b) Services with a nonprofit organization;

(c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or

(d) Services between a Unit and a County or Baltimore City.

C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.

D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.

H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.

I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of $20 per day for each employee paid less than the Living Wage.

J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website http://www.dllr.state.md.us/labor/ and clicking on Living Wage for State Service Contracts.

Maryland Living Wage Requirements Affidavit of Agreement

(submit with Bid/Proposal)

Contract No. _____

Name of Contractor _____

Address_____

City_____ State_____ Zip Code_____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

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

☐ The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or

☐ The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

_____

Signature of Authorized Representative Date

_____

Title

_____

Witness Name (Typed or Printed)

_____

Witness Signature Date

(submit with Bid/Proposal)

ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

(If this solicitation **does not** include Federal funding (see Section 1.35), enter only the following sentence for this Attachment and delete the rest of these "H" Attachments:)

This solicitation does not include a Federal Funds Attachment.

(If this solicitation **does** include Federal funding (see Section 1.35), enter the following language for these Attachments:)

A Summary of Certain Federal Fund Requirements and Restrictions

[Details of particular laws, which may levy a penalty for noncompliance, are available from the Department of Health and Mental Hygiene.]

1. Form and rule enclosed: 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all *prospective* and present sub-grantees (this includes all levels of funding) who receive more than $100,000 in federal funds must submit the form "Certification Against Lobbying." It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.

2. Form and instructions enclosed: "Form LLL, Disclosure of Lobbying Activities" must be submitted by those receiving more than $100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts <u>or</u> (b) funded with nonfederal funds.

3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a "Certification Regarding Environmental Tobacco Smoke," required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education, or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.

4. In addition, federal law requires that:

   A) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and sub-recipients) which expend a total of $300,000 or more *($500,000 for fiscal years ending after December 31, 2003)* in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and the Office of Management and Budget (OBM) Circular A-133. All sub-grantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the DHMH, External Audit Division, Spring Grove Hospital-Tuerk Bldg., 55 Wade Avenue, Baltimore, MD 21228.

   B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).

   C) Recipients of $10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

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

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

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

b) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.

c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.

d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

f) The contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

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

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

D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.

E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level 1 per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)

F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.

G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.

H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]

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

ATTACHMENT H-1

U.S. Department of Health and Human Services

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

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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

DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service
Health Resources and
Service Administration
Rockville, MD 20857

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

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

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

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

_____

Signature of Authorized Certifying Individual

ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

(If this solicitation **does not** require a Conflict of Interest Affidavit and Disclosure (see Section 1.36), 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 Section 1.36), enter the following language for this Attachment:)

Reference COMAR 21.05.08.08

(submit with Bid/Proposal)

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

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

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

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

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

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

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

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

(If this solicitation **does not** require a Non-Disclosure Agreement (see Section 1.37), enter only the following sentence for this Attachment and delete the rest:)

This solicitation does not require a Non-Disclosure Agreement.

(If this solicitation **does** require a Non-Disclosure Agreement (see Section 1.37), enter the following language for this Attachment:)

THIS NON-DISCLOSURE AGREEMENT ("Agreement") is made by and between the State of Maryland (the "State"), acting by and through its Department of Health and Mental Hygiene (the "Department"), and _____ (the "Contractor").

RECITALS

WHEREAS, the Contractor has been awarded a contract (the "Contract") following the solicitation for (solicitation title) Solicitation # DHMH OPASS (solicitation number); and

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

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

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.

2. Contractor shall not, without the State's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor's Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor's Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor's personnel or a subcontractor's personnel) as needed, from time to time.

3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor's performance of the IFB or who will otherwise have a role in performing any aspect of the IFB, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect

the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.

7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.

8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.

9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.

10. The parties further agree that:
    a. This Agreement shall be governed by the laws of the State of Maryland;
    b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
    c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
    d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
    e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
    f. The Recitals are not merely prefatory but are an integral part hereof; and
    g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor:_____	Maryland Department of Health and Mental Hygiene
By: _____(SEAL)	By: _____
Printed Name: _____	Printed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1

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

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

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and _____ ("Contractor") dated _____, 20_____ ("Agreement") is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

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

DATE:_____

NAME OF CONTRACTOR: _____

BY:_____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT

(If this solicitation **does not** require a HIPAA Business Associate Agreement (see Section 1.38), 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 Section 1.38), enter the following language for this Attachment:)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made by and between the _____ (insert name of procuring unit), a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as "Covered Entity") and _____ (Insert Name of Contractor) (hereinafter known as "Business Associate"). Covered Entity and Business Associate shall collectively be known herein as the "Parties."

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

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

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

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

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

DEFINITIONS.

A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation,

Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific definitions:

1. Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (Insert Name of Contractor).

2. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean (Insert Name of Procuring Unit).

3. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.

4. Protected Health Information ("PHI"). Protected Health Information or "PHI" shall generally have the same meaning as the term "protected health information" at 45 C.F.R. § 160.103.

PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.

A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.

B. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's policies and procedures regarding minimum necessary use of PHI.

C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.

D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e)(2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e)(4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.

E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d)(1) and (2) of the HITECH Act. This prohibition does not apply to the State's payment of Business Associate for its performance pursuant to the Underlying Agreement.

G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;

B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.

C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;

D. 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI asrequired by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;

2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:

A. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;

B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;

C. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and

D. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:

i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);

iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;

iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and

v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.

E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;

F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;

G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;

H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;

I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);

J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.

K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

IV. TERM AND TERMINATION

A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for (enter solicitation title), Solicitation # DHMH OPASS (enter OPASS assigned solicitation number), and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.

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

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or

2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.

C. Effect of Termination.

1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.

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

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

V. CONSIDERATION

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

VI. REMEDIES IN EVENT OF BREACH

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

VII. MODIFICATION; AMENDMENT

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

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

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

IX. COMPLIANCE WITH STATE LAW

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

X. MISCELLANEOUS

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.

B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Ramiek James, Esq.
Privacy Officer and Compliance Analyst
Department of Health & Mental Hygiene
Office of the Inspector General
201 W. Preston Street, Floor 5
Baltimore, MD 21201-2301
Phone: (410) 767-5411

(Or insert the name and contact information of the HIPAA contact person within the appropriate DHMH covered health care entity)

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

Address: _____

_____

Attention: _____

Phone: _____

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

F. Severability. If any term contained in this Agreement is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

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

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

COVERED ENTITY:	**BUSINESS ASSOCIATE:**
By: _____	By: _____
Name: _____	Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

ATTACHMENT K-1

FORM OF NOTIFICATION TO COVERED ENTITY OF BREACH OF UNSECURED PHI

This notification is made pursuant to Section III.2.D(3) of the Business Associate Agreement between (enter the name of procuring unit), a unit of the Maryland Department of Health and Mental Hygiene (DHMH), and _____ (Business Associate).

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

Description of the breach: _____

_____

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

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

Number of individuals affected by the breach: _____

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

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

_____

_____

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

_____

_____

_____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

_____

Email Address: _____

Phone Number: _____

ATTACHMENT L – MERCURY AFFIDAVIT

(If this solicitation **does not** include the procurement of products known to likely include mercury as a component (see Section 1.40), enter only the following sentence for this Attachment 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 (see Section 1.40), enter the following language for this Attachment:)

MERCURY AFFIDAVIT

(submit with Bid/Proposal)

AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:

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

MERCURY CONTENT INFORMATION:

[ ] The product(s) offered do not contain mercury.

OR

[ ] The product(s) offered do contain mercury.

In an attachment to this Mercury Affidavit:

(1) Describe the product or product component that contains mercury.

(2) Provide the amount of mercury that is contained in the product or product component. Indicate the unit of measure being used.

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

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

_____ By: _____

Date Signature

Print Name: _____

Authorized Representative and Affiant

(If this solicitation **does not** include a VSBE goal (see Section 1.41), enter only the following sentence for this Attachment and delete the rest of these "M" Attachments:)

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

(If this solicitation **does** include a VSBE goal (see Section 1.41), enter the following language for these Attachments:)

ATTACHMENT M-1

VSBE Utilization Affidavit and Subcontractor Participation Schedule

(submit with Bid/Proposal)

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

In conjunction with the Bid/Proposal submitted in response to Solicitation No. (solicitation number) ,I affirm the following:

1. □ I acknowledge and intend to meet the overall verified VSBE participation goal of (VSBE goal percentage)%. Therefore, I will not be seeking a waiver.

OR

□. I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.

2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.

   (a) Subcontractor Project Participation Statement (**Attachment M-2**); and
   (b) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the VSBE participation goal.

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

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

4. Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those products and services for which they are verified.

ATTACHMENT M-1

VSBE Subcontractor Participation Schedule

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: DHMH OPASS ___ - _____	

List Information For Each Verified VSBE Subcontractor On This Project

Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:
Name of Veteran-Owned Firm:	DUNS Number:
Percentage of Total Contract:	Description of work to be performed:

Continue on a separate page, if needed.

SUMMARY

TOTAL VSBE Participation: _____%

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

_____ _____

Bidder/Offeror Name Signature of Affiant

(PLEASE PRINT OR TYPE)

Name:_____

Title:_____

Date:_____

VSBE Subcontractor Participation Statement

Please complete and submit one form for each verified VSBE listed on Attachment M-1 within 10 working days of notification of apparent award

_____ (prime contractor) has entered into a contract with _____ (subcontractor) to provide services in connection with the Solicitation described below.

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: _____	Total Contract Amount: $
Name of Veteran-Owned Firm: Address:	DUNS Number: FEIN:
Work to Be Performed:	
Percentage of Total Contract:	Total Subcontract Amount: $

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

PRIME CONTRACTOR SIGNATURE

By: _____
Name, Title
Date

SUBCONTRACTOR SIGNATURE

By: _____
Name, Title
Date

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

Attachment M-3

Maryland Department of Health and Mental Hygiene
Veterans Small Business Enterprise (VSBE) Participation
Prime Contractor Paid/Unpaid VSBE Invoice Report

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

Prime Contractor:	Contact Person:	
Address:		
City:	State:	ZIP:
Phone:	Fax:	E-mail:
Subcontractor Name:	Contact Person:	
Phone:	Fax:	
Subcontractor Services Provided:		

List all payments made to VSBE subcontractor named above during this reporting period: **Invoice#** **Amount** **1.** **2.** **3.** **4.** **Total Dollars Paid: $_____**	**List dates and amounts of any outstanding invoices:** **Invoice #** **Amount** **1.** **2.** **3.** **4.** **Total Dollars Unpaid: $_____**

**If more than one VSBE subcontractor is used for this contract, you must use separate M-3 forms for each subcontractor.
****Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

_____Contract Monitor
_____Contracting Unit
Department of Health and Mental Hygiene
_____
_____
_____
_____

Signature:_____ Date:_____

This form must be completed monthly
by all VSBE subcontractors.

ATTACHMENT M-4

Veterans Small Business Enterprise Participation
Subcontractor Paid/Unpaid VSBE Invoice Report

Report#: ____ Reporting Period (Month/Year): _____ **Report is due by the 10th of the month following the month the services were performed.**	Contract # Contracting Unit: VSBE Subcontract Amount: Project Begin Date: Project End Date: Services Provided:

VSBE Subcontractor Name:		
Department of Veterans Affairs Certification #:		
Contact Person:	E-mail:	
Address:		
City:	State:	ZIP:
Phone:	Fax:	
Subcontractor Services Provided:		

List all payments received from Prime Contractor during reporting period indicated above. **Invoice Amt** **Date** **1.** **2.** **3.** **Total Dollars Paid: $_____**	**List dates and amounts of any unpaid invoices over 30 days old.** **Invoice Amt** **Date** **1.** **2.** **3.** **Total Dollars Unpaid: $_____**
Prime Contractor:	Contact Person:

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

_____Contract Monitor
_____Contracting Unit
Department of Health and Mental Hygiene
_____
_____
_____
_____

Signature:_____ Date:_____
(Required)

ATTACHMENT N – 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 Section 1.42), 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 Section 1.42), enter the following language for this Attachment:)

(submit with Bid/Proposal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. _____, the following disclosures are hereby made:

1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:

___ have plans

___ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subcontractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):

a. Location(s) services will be performed:

_____
_____
_____

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

_____
_____
_____
_____
_____

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

Date: _____

Bidder/Offeror Name: _____

By: _____

Name: _____

Title: _____

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

ATTACHMENT O – DHR HIRING AGREEMENT

(If this solicitation **does not** require a DHR Hiring Agreement (see Section 1.43), enter only the following sentence for this Attachment and delete the rest:)

This solicitation does not require a DHR Hiring Agreement.

(If this solicitation **does** require a DHR Hiring Agreement (see Section 1.43), enter the following language for this Attachment:)

_____
Agency Control Number

MARYLAND DEPARTMENT OF HUMAN RESOURCES
HIRING AGREEMENT

This Hiring Agreement ("Agreement") is effective this _____ day of _____, _____ and is entered into by and between the Maryland Department of Human Resources ("Department") and _____(the "Contractor") pursuant to State Finance Procurement Article, § 13-224, Annotated Code of Maryland, arising out of a Contract for services between Contractor and _____ ("Entity"), contract number _____ ("Procurement Contract").

WITNESSETH:

WHEREAS, the Department has identified the Procurement Contract as eligible for execution of this Agreement; and,

WHEREAS, the Contractor and the Entity, have discussed and reviewed an inventory of job openings that exists or the Contractor is likely to fill during the term of the Procurement Contract in the State of Maryland; and

WHEREAS, the Contractor, Department and the Entity have discussed and reviewed the job descriptions, locations, and skill requirements for those positions; and

WHEREAS, the Department and the Entity have identified and discussed with the Contractor the workforce related benefits and support services available to the Contractor as a result of the Agreement including:

- Medicaid coverage for the employee and the employee's dependents for up to one year after placement in the job;
- Maryland Children's Health Program (MCHP) medical coverage for the employee's dependents after one year of employment for as long as eligibility is met;
- Food Stamps for the employee and the employee's dependents for as long as eligibility requirements are met;
- Child Care subsidies for the employee's dependents for up to one year after employment as long as eligibility requirements are met;
- Transportation subsidies for the employee for a period of time after employment;
- Other Retention services including counseling on an as needed basis; and

- Assistance with claiming tax credits for hiring Candidates.

WHEREAS, the Contractor and Department agree to work cooperatively to develop responses to the workforce development requirements faced by the Contractor and to promote the hiring of the Department's current and former Family Investment Program ("FIP") recipients, their children, foster youth, and child support obligors ("Candidates") by the Contractor.

NOW THEREFORE, upon valuable consideration received, the Contractor and the Department specifically agree as follows:

A. The CONTRACTOR shall:

1. Notify the Department of all job openings that exist or result from the Procurement Contract.

2. Declare the Department the "first source" in identifying and hiring Candidates for those openings.

3. Work with the Department to develop training programs that will enable Candidates to qualify for and secure employment with the Contractor.

4. Give first preference and first consideration, to the extent permitted by law and any existing labor agreements, to Candidates the Department refers.

5. Agree to give Candidates referred to the Contractor by the Department priority in the filling of a job opening so long as the Candidate meets the qualifications of the position and the Department refers qualified Candidates within three (3) working days.

6. Submit biannual reports (for the duration of the Contract) listing the number of all job openings and the total number of individuals interviewed and hired under the Procurement Contract. The report shall also include feedback regarding the disposition of referrals made, to include an explanation of why any such Candidate was not hired or considered qualified.

7. Designate this individual to be the specific contact person:

_____
Name
_____
Address
_____ _____ _____
Telephone # Fax # e-Mail

who will:

- provide additional information regarding 'first source" jobs and clarify their requirements;
- receive Department referrals, and
- provide feedback to a Department account representative upon request regarding the dispositions of those referrals as well as the progress/employment status of those Candidates hired by the Contractor.

B. The Department will designate an account representative who will:

1. Process all the Contractor's job notices in accordance with this "Agreement."

2. Refer screened and qualified Candidates to the Contractor's designated contact person.

3. Make referrals in a timely manner, that is, within three (3) working days after receiving the Contractor's job opening notices.

4. Assist in the development of any mutually agreed upon training and/or internship programs that will better prepare Candidates for employment with the Contractor.

5. Provide follow-up and post hire transitional/supportive services, (e.g. Medicaid, MCHP, Food Stamps, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate.

6. Insure that the Contractor is advised of available subsidies and provide any assistance to the Contractor to obtain those subsidies.

7. Report the Contractor to the procurement Entity if the Contractor does not fulfill its responsibilities in accordance with this Agreement.

8. Review and evaluate the effectiveness of this undertaking with the Contractor and make modifications as necessary and appropriate.

C. DISCLAIMERS

Nothing in this Agreement shall cause the Contractor, except as explicitly provided in Section A above, to alter existing hiring practices or to hire an individual into a position for which he/she is not qualified.

D. NON-DISCRIMINATION

The Contractor agrees that there shall be no discrimination against any employee or Candidate for employment because of race, color, sex, religion, national origin, age, sexual preference, disability or any other factor specified in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1983 and subsequent amendments and that they will comply with all other pertinent federal and State laws regarding discrimination.

E. MARYLAND LAW PREVAILS

The place of performance of this Agreement shall be the State of Maryland. This Agreement shall be construed, interpreted, and enforced according to the laws and regulations of the State of Maryland, including approval of the Board of Public Works where appropriate.

F. EFFECTIVE DATE

This Agreement shall take effect on the date of the aforementioned Procurement Contract, which is for the period _____ through _____, and it shall remain in effect for the duration of the Procurement Contract, including any option periods or extensions.

IN WITNESS, WHEREOF, the Contractor and the Department have affixed their signatures below:

FOR THE CONTRACTOR:	**FOR THE DEPARTMENT**
_____	_____
SIGNATURE	**SIGNATURE**

_____	**Hiring Agreement Coordinator**
TITLE	**TITLE**
_____	_____
DATE	**DATE**