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

Dear Colleague:

You have downloaded one of four newly-designed templates used to procure services. These templates, the Request for Proposals, the Invitation for Bids, the Multi-Step Invitation for Bids, and the Standard Services Contract (used for Sole Source and some Emergency procurement) have been developed by the Office of Procurement and Support Services (OPASS) and are based on a Department of Budget and Management 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 template first created 15 years ago.

There are some things you need to know when using the templates:

First, this is just a template. Only some, not all, of the language used in the template is required by Maryland's procurement regulations COMAR Title 21. Much of the language may be changed and, in fact, some should be deleted if not appropriate to your purchase or funding source. Check with the OPASS member of your Contract Fulfillment Team (CFT) to determine if language is required or not. If something is included as a SAMPLE it is just that; adapt it to your needs, use whatever parts work for you, change some or all or discard it.

Second, there is a substantial amount of information and text you will need to add to the document. You will notice throughout the document reddish orange 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 instructions. 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 insure a professional look.

Finally, although efforts have been made to insure accuracy of attachment and section citations throughout the document, as you add and delete text, changes will occur affecting such accuracy. You will notice, however, that widows/orphans exist. No effort was made to address widows or orphans because the addition and deletion of text, sometimes large amounts, will alter their existence in the document. 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.

Any questions regarding these templates may be made to the Department's Procurement Officer in OPASS.

Rev. 2/12

MULTI-STEP INVITATION FOR BIDS

SOLICITATION NO. DHMH OPASS – (nn-nnnnn)

Issue Date: (month day year)

(TITLE)

(Rev. 2/12 – Delete prior to issuing solicitation. Do not delete prior to CFT or prior to finalizing in order to ensure the correct template has been used.)

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

STATE OF MARYLAND
NOTICE TO BIDDERS/CONTRACTORS

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 the enclosed solicitation. Please return your comments with your bids. If you have chosen not to bid on this Contract, please fax this completed form to: (410) 333-5958 to the attention of the Procurement Officer.

Title: (Title of IFB from cover)
Solicitation No: DHMH OPASS – (nn-nnnnn)

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

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

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

REMARKS:
_____

_____

Bidder Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE

KEY INFORMATION SUMMARY SHEET

Multi-Step Invitation for Bids:	**(Enter Title of IFB)**
Solicitation Number:	**DHMH OPASS – (**nn-nnnnn**)**
IFB Issue Date:	**(enter date of issuance)**
IFB Issuing Office:	**Maryland Department of Health and Mental Hygiene** **(enter name of Issuing Office or Facility)**
Procurement Officer:	**Sharon R. Gambrill, CPPB** **201 W. Preston St., Room 416B** **Baltimore, MD 21201** **Phone: (410) 767-5816 Fax: (410) 333-5958** **e-mail: gambrills@dhmh.state.md.us**
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:	**(month, day, year, time a.m./p.m.) Local Time** **(street address, room number)** **(city, state, zip code)**
Closing Date and Time:	**(month, day, year, time a.m./p.m.) Local Time**
MBE Subcontracting Goal:	**(enter amount of goal) %**

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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), (insert Administration Name), is issuing this Invitation for Bids (IFB) to provide (enter discription of services to be performed).

1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the successful Bidder and the State.

1.1.3 The Department intends to make (enter one of the following – "a single award" or "multiple awards up to [enter maximum number of awards]") as a result of this IFB.

1.1.4 Bidders, either directly or through their subcontractors, must be able to provide all services and meet all of the requirements requested in this solicitation.

1.2 Abbreviations and Definitions

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

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

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

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

d. **Contract Monitor (CM)** – The State representative for this project who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval , monitoring this project to ensure compliance with the terms and conditions of the Contract, monitoring MBE compliance, and achieving on budget, on time, and within scope completion of the project.

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

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

g. **Invitation for Bids (IFB)** – This Invitation for Bids issued by the Maryland Department of Health and Mental Hygiene, (enter name of office, administration or facility), Solicitation Number OPASS-(enter OPASS assigned IFB number) dated (enter month day and year), including any addenda.

h. **LAN** – Local Area Network.

i. **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.

j. **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.

k. **Multi-step Sealed Bidding** – A two (2) phase process in which bidders submit un-priced technical offers or samples, or both, to be reviewed by the State and a second phase in which those bidders whose technical offers or samples, or both, have been found to be acceptable during the first phase have their price bids considered.

l. **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.

m. **Notice to Proceed** – Letter from the Contract Monitor to the Contractor stating the date the Contractor can begin work subject to the conditions of the Contract.

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

o. **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.

p. **State** – The State of Maryland.

1.3 Contract Type

The Contract(s) resulting from this IFB shall be a(n) (enter type of contract, e.g., firm fixed price, fixed price with cost adjustment, labor hour, indefinite quantity with fixed unit cost, etc.) as defined in COMAR 21.06.03.(enter COMAR citation number for the contract type).

1.4 Contract Duration

The Contract resulting from this IFB shall be for a period of (enter number of years) year(s) beginning on or about (month, day, year) and ending (month, day,year). (Include a reference to option years, if any). The Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Monitor.

1.5 Procurement Officer

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

Sharon R. Gambrill, CPPB
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street, Room 416B
Baltimore, Maryland 21201
Phone Number: (410) 767-5816
Fax Number: (410) 333-5958
E-mail: gambrills@dhmh.state.md.us

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

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:

(DHMH Procurement Coordinator's name)
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: (enter Procurement Coordinator user name)@dhmh.state.md.us

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

1.6 Contract Monitor

The Contract Monitor is:

(DHMH Contract Monitor's name)
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: (enter Contract Monitor user name)@dhmh.state.md.us

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

1.7 Pre-Bid Conference

A Pre-Bid Conference (Conference) will be held on (month, day, year), beginning at (time a.m./p.m.) Local Time, at (full address with building name and room number). Attendance at the Conference is not mandatory, but all interested 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.

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax at (410) (facsimile number) the Pre-Bid Conference Response Form to the attention of the Procurement Coordinator no later than 4:00 p.m. Local Time on (month, day, year). 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 Procurement Officer no later than (month, day, year). DHMH will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

Each Bidder must 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/, click on "Registration" 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 may be submitted by mail, facsimile, or preferably, by e-mail to the (enter either "Procurement Officer with a copy to the Contract Monitor" or "Procurement Coordinator"). 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 (enter either "Procurement Officer with a copy to the Contract Monitor" or "Procurement Coordinator") 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. 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.

1.10 Bids Due (Closing) – Date and Time

The bids must be received by the (enter either "Procurement Officer" or "Procurement Coordinator") at the address listed on the Key Information Summary Sheet no later than (enter time with a.m./p.m.) Local Time on (month, day, year) 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 Contract Monitor. 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.

Price bids from only those bidders whose Technical Offers have been found acceptable based on the criteria shown at section 3.3 "Bid Completion," shall be publicly opened at (location including room number) on (month, day, year) at (enter time with a.m./p.m.) Local Time.

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.

1.11 Duration of Offer

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.

1.12 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. Addenda made after the due date for bids will be sent only to those Bidders that submitted a timely bid.

Acknowledgment of the receipt of all addenda to this IFB issued before the bid due date must accompany the bid in the Transmittal Letter accompanying the bid. Acknowledgement of the receipt of addenda to the IFB issued after the bid due date shall be in the manner specified in the amendment notice. 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.

1.13 Cancellations

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

1.14 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 this solicitation.

1.15 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).

1.16 Bidder Responsibilities

The selected Bidder shall be responsible for all products and services required by this IFB. All subcontractors must be identified and a complete description of their role relative to the bid must be included in the bid. Additional information regarding MBE subcontractors is provided in section 1.20 "Minority Business Enterprise Goals." If a Bidder that seeks to perform or provide the services required by this IFB is a subsidiary of another entity, all information submitted by the Bidder, such as, but not limited to, references and financial reports, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder's bid must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.17 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 or Contract made by the Bidder shall result in bid rejection.**

1.18 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.

1.19 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, however, to expedite processing, it is suggested that this document be completed and submitted with the bid.

1.20 Minority Business Enterprise Goals

A minimum overall MBE subcontractor participation goal of (enter percentage)%, with subgoals of (enter percentage)% for African-American MBEs, (enter percentage)% for Asian MBEs, (enter percentage)% for Hispanic MBEs, and (enter percentage)% for women-owned MBEs, has been established for the services resulting from this Contract. (If zero, delete the following paragraphs)

1.20.1 **Attachment D** – Minority Business Enterprise participation, instructions, and forms are provided to assist Bidders. A bidder must include with its bid a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D1**) whereby:

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

(b) The Bidder 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 submission. The Bidder shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

If a bidder or offeror fails to submit a completed Attachment D1 with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive and consider the next lowest bid or the offeror shall be deemed not reasonably susceptible of being selected for contract award.

1.20.2 Bidders are responsible for verifying that each of the MBE(s) selected to meet the subcontracting goal and subsequently identified in **Attachment D1** is appropriately certified and has the correct NAICS codes allowing it to perform the intended work.

1.20.3 If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal, or of any subgoal, is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11 either with the bid or at the latest, within ten (10) days from notification that it is the apparent awardee.

1.20.4 Within ten (10) working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the Bidder must provide the following documentation to the Contract Monitor.

(a) Outreach Efforts Compliance Statement (**Attachment D2**).
(b) Subcontractor Project Participation Certification (**Attachment D3**).
(c) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it 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 or Offeror responsibility in connection with the certified MBE 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. If the Contract has already been awarded, the award is voidable.

1.20.5 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.**

1.20.6 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 D4** (MBE Participation Prime Contract Paid/Unpaid MBE Invoice Report).
(b) **Attachment D5** (MBE Participation Subcontractor/Contractor Unpaid MBE Invoice Report).

1.21 Arrearages

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.

1.22 Procurement Method

This Contract will be awarded in accordance with the Multi-step Sealed Bidding method at COMAR 21.05.02.17. All Bidders whose technical offers have been determined acceptable shall have their bids opened. Of these, the Bidder with the most favorable bid price will be recommended for award.

1.23 Verification of Registration and Tax Payment

Before a corporation 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/datanote.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.

1.24 False Statements

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

1.24.1 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.

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

1.24.3 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.

1.25 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Bidder agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for all contracts exceeding $100,000. The selected Bidder 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 may be downloaded from the Comptroller's website at: http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf.

1.26 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.

1.27 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 submitting bids of $100,000 or more must complete and submit the Maryland Living Wage Requirements Affidavit (**Attachment G-1**) with their bids. If a Bidder fails to complete and submit the required documentation, the State may determine a Bidder 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 must identify in its Bid the location(s) from which services will be provided.

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.

If the Contractor provides more than 50% of the services from an out-of-State location, then the Contract will be deemed to be a Tier 1 contract. The Bidder must identify in its Bid the location(s) from which 50% or more of the Contract services will be provided.

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

1.28 Federal Funding Acknowledgement

1.28.1 There ☐ are / ☐ are not programmatic conditions that apply to this Contract, regardless of the type of funding. If applicable, these conditions are contained in **Attachment** (use next Attachment letter if you are including programmatic forms, if there are none, delete second sentence).

1.28.2 The total amount of Federal funds allocated for the (enter name of administration or facility) is $(enter dollar amount) in Maryland State fiscal year (enter current fiscal year). This represents (divide Federal funds above / by total unit 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.

1.28.3 This Contract ☐ does / ☐ does not contain federal funds. If contained, the source of these federal funds is: (enter name of Federal program i.e., *Medicaid, Ryan White, Title X*, etc.). The CFDA number is: (enter the *Catalog of Federal Domestic Assistance* number). The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment J** (delete attachment J and all but the first sentence of this section if no Federal Funds are used). Any additional conditions that apply to this federally funded contract are contained in Federal Funds Attachment (use next Attachment letter if you are including additional conditions, if there are none, delete this sentence). Acceptance of this agreement indicates the Bidder's intent to comply with all conditions, which are part of this agreement.

1.29 Conflict of Interest Affidavit and Disclosure

(If applicable, include this paragraph. If not, delete entire section, renumber other sections as necessary, and update table of contents; or mark as Not Applicable (N/A)
..)

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as **Attachment H** 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. Bidders shall complete and sign the Conflict of Interest Affidavit and Disclosure and submit it with their bids.

1.30 Non-Disclosure Agreement

(If applicable, include this paragraph. If not, delete entire section, renumber other sections as necessary, and update table of contents; or mark as Not Applicable (N/A); or mark as Not Applicable (N/A).)

All Bidders 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 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.

1.31 HIPAA - Business Associate Agreement

(If applicable, include this paragraph. If not, delete entire section, renumber other sections as necessary, and update table of contents; or mark as Not Applicable (N/A).)

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 Bidder shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment I**. 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. Should the Business Associate Agreement not be submitted upon expiration of the five (5) 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 next lowest bidder.

1.32 American Recovery and Reinvestment Act

(This section is required only if ARRA funds are used. If applicable, include this paragraph. If not, delete entire section, renumber other sections as necessary, and update table of contents; or mark as Not Applicable (N/A).)

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the Contractor shall be bound by the ARRA clauses found in the Contract contained herein as **Attachment A**. The Monthly Employment Report and instructions for its completion of are contained as **Attachment M**.

1.33 Nonvisual Access

(This provision is only applicable to Information Technology solicitations. If this solicitation is for IT services, use the following language. If this solicitation is for non-IT services, delete this section and renumber, as necessary, and update the table of contents; or mark as Not Applicable (N/A).)

By submitting a bid, the Bidder warrants that the information technology offered under the bid: (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual 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 non-visual access. The Bidder further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual 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 non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

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.

1.34 Mercury and Products That Contain Mercury

(If applicable, include this paragraph. If not, delete entire section, renumber other sections as necessary, and update table of contents; or mark as Not Applicable (N/A).)

This solicitation and the resulting Contract require that all materials used in the performance of the Contract shall be mercury-free products. The Bidder shall submit with its proposal a Mercury Affidavit in the form of **Attachment L**.

1.35 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., eMarylandMarketplace.com), 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 RFP or IFB);
   (b) any amendments;
   (c) pre-proposal conference documents;
   (d) questions and responses;
   (e) communications regarding the solicitation or proposal to any Offeror or potential Offeror including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
   (f) notices of award selection or non-selection; and
   (g) the Procurement Officer's decision on any bid protest or Contract claim.

2. An Offeror or potential 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) request a debriefing; or
   (d) submit a "No Bid 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, Bidder or Offeror be provided in writing or hard copy.

F. Any facsimile or electronic 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.

1.36 Substitution of Personnel

Comment [LBH1]: Please bookmark this so it appears in the TOC.

If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel 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.

The remainder of this page is intentionally left blank.

SECTION 2 – SCOPE OF WORK

2.1 Purpose

2.1.1 The State is issuing this solicitation for the purposes outlined in section 1.1 of this IFB.

2.2 Bidder Minimum Qualifications

The Bidder must provide proof with its bid that the following minimum qualifications have been met.
(Insert a numbered list of all minimum requirements not stipulated as deliverables, e.g., licensures or certifications, years of experience, 501(c)(3), CBO, or other designations, response times, etc.).
2.2.1

2.2.2

2.2.3…

2.3 Scope of Work - Requirements

The Contractor shall:
(Insert Contract Specifications into Solicitation here. Any product or service deliverables, milestones, or deadlines must be identified here. The specifications must clearly articulate what the State needs to purchase via this solicitation. Readers should understand exactly what the State is buying. 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.)
2.3.1

2.3.2

2.3.3…

2.4 Security Requirements

2.4.1 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.

2.4.2 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.

2.4.3 Criminal Background Check

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

(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 criminal record unless prior written approval is obtained from the Department.

(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 Department reserves the right to reject any individual based upon the results of the background check.

2.5 MBE Reports

2.5.1 In the event that there is a MBE Goal, the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports:

(a) **Attachment D4**, 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 D5**, the MBE Participation Subcontractor Paid/Unpaid MBEs Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

2.6 Payment Type

Comment [LBH2]: Is this in here because of DBM? I don't understand what distinction we really make here.

Payments will be made as (enter either "partial" or "progress") payments as set forth herein. In no case will any payment be viewed as (enter opposite of what was entered in previous sentence) payments.

2.7 Invoicing

2.7.1 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 can not 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.

(c) Contractor shall have a process for resolving billing errors.

(d) Funds for any Contract(s) resulting from this IFB are dependent upon appropriations from the Maryland General Assembly.

2.7.2 Invoice Submission Schedule

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

(Enter the Contractor's payment schedule here. The schedule will depend on the type of contract, e.g., fixed price, indefinite quantity, etc. and service delivery. Payment should be based on performance for services/goods provided. OPASS can provide sample payment schedules.)

2.8 Insurance Requirements

2.8.1 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.

2.8.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of $3,000,000 per occurrence.

2.8.3 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.

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

2.8.(2-5) Upon execution of a Contract with the State, Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time, 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 2.8.1.

c. Errors and Omissions/Professional Liability as required in section 2.8.2.

d. Automobile and/or Commercial Truck Insurance as required in section 2.8.3.

e. Employee Theft Insurance as required in section 2.8.4.

2.8.(3-6) The State shall be named as an additional named insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. 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 sixty (60) 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 thirty (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.

2.8.(4-7) The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

Comment [LBH3]: The RFP has an additional section – "Problem Escalation Procedure." That could be in the IFB.

The remainder of this page is intentionally left blank.

SECTION 3 – BID FORMAT

3.1 Two Part Submission

3.1.1 Bids shall be submitted in the following manner and shall consist of: 1) an unpriced Technical Offer or sample(s); and 2) a Price Bid. Unpriced Technical Offers or samples and Price Bids shall be placed in separate sealed envelopes or other appropriate package, then placed together in a single sealed envelope or other appropriate package.

3.1.2 The Technical Offer shall contain all items listed in this section 3.3.1 "Technical Offer Requirements," and section 3.4 "Additional Required Submissions." MBE **Attachment D1**, if required, shall not be included with the Technical Offer, but shall be included in a separate sealed envelope.

3.1.3 The Price Bid envelope shall contain only the Bid Page and, if there is an MBE goal, MBE **Attachment D1**.

3.1.4 Bidders must submit three (3) originals of the Technical Offer or samples(s) and three (3) originals of the Price Bid, plus two (2) additional copies of each.

3.1.5 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 Price Bid opening, Technical Offers will be shown only to State employees and members of the Review Committee with a legitimate interest in them.

3.1.6 After Technical Offers have been reviewed, Price Bids from only those Bidders whose Technical Offers have been found acceptable based on the criteria set forth in section 3.3 "Bid Completion" shall be publicly opened at the date, time, and place specified in section 1.10 "Bids Due (Closing) – Date and Time." Price Bids from Bidders whose Technical Offers were not acceptable shall be returned unopened.

3.1.7 At the time of Price Bid opening, a register of bids will be prepared that identifies each qualifying Bidder. The register of bids shall be open to inspection.

3.2 Labeling

3.2.1 Bidders shall submit bids (see section 3.1 "Two Part Submission"), all minimum qualification documentation (see section 2 "Bidder Minimum Qualifications"), and all Additional Required Submissions (see section 3.4 "Additional Required Submissions") in a single sealed envelope, or other appropriate package, labeled with the IFB title and number, name and address of the Bidder, and the closing date and time for receipt of the bids.

3.2.2 Within the envelope/package described in section 3.1.1, Bidders shall submit separately sealed envelopes, or other appropriate packages, one labeled "Technical Offer" and the other labeled "Price Bid." Both envelopes/ packages are to be further labeled with the IFB title and number, name and address of the Bidder, and the closing date and time for receipt of the bids.

3.3 Bid Completion

3.3.1 Technical Offer Requirements

Bidders shall include the following technical description or samples of their services, equipment, staffing or products.

3.3.1.1 (Insert technical requirement needs or sample requests here)

3.3.1.2

3.3.1.3 …

3.3.2 Technical Criteria

The following criteria shall determine the acceptability of each item listed or provided under section 3.3.1 "Technical Offer Requirements." All criteria are pass/fail. Technical Offers are not ranked but determined to be acceptable or not acceptable.

3.3.2.1 (Insert acceptability standards here)

3.3.2.2

3.3.2.3 …

3.3.2 Price Bid

The price bid shall contain all price information in the format specified on the Bid Page (**Attachment F**). Complete the Bid Page only as provided in the Pricing Instructions. Do not amend, alter, or leave blank any items on the Bid Page. 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.

3.4 Additional Required Submissions

3.4.1 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. See section 1.16 "Bidder Responsibilities."

3.4.2 Completed Bid/Proposal Affidavit (**Attachment B**). Submit three (3) copies with original signatures.

3.4.3 Other Attachments (*when appropriate). (Delete any that are not required.) Submit three (3) copies with original signatures.

a. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D1**)
b. Completed Maryland Living Wage Requirements Affidavit (**Attachment G-1**)*
c. Signed Conflict of Interest Affidavit and Disclosure (**Attachment H**)*
d. Completed Mercury Affidavit (**Attachment L**)*
e. Completed Federal Funds Attachment (**Attachment J**)*

Please note that:

a. signed Contract (**Attachment A**),
b. a completed Contract Affidavit (**Attachment C**),
c. a signed Business Associate Agreement (**Attachment I**), and
d. a signed Non-Disclosure Agreement (**Attachment K**)

are not required to be submitted with the bid. These documents will be required to be completed and submitted by the successful Bidder within five (5) business days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee. (If not required by this solicitation, delete the reference to the Business Associate Agreement and the Non-Disclosure Agreement).

3.4.4 Other Required Documentation

3.4.4.1 Proof that minimum qualifications have been met (e.g., copy of licensure or certification, 501(c)(3) status, CBO, or other designations, etc.). See section 2.2 "Bidder Minimum Qualifications."

3.4.4.2 References

a. Three (3) current references for work of a similar scope and size. Each reference must include name of contact, address, telephone number, and, if possible, e-mail address.
The Department reserves the right to contact and consider references obtained through other means.

b. As part of its bid, each Bidder is to provide a list of all contracts with any entity of the State of Maryland for which it 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:

i. The State contracting entity;
ii. A brief description of the services/goods provided;
iii. The dollar value of the contract;
iv. The term of the contract;
v. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
vi. 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.

3.4.4.3 Financial Capability Statements

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

3.4.4.4 Certificate of Insurance

The Bidder shall provide a copy of the Bidder's current certificate of insurance with the prescribed limits set forth in section 2.8 "Insurance Requirements." The successful Bidder must provide a certificate of insurance 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.

3.4.4.5 Subcontractors

The Bidder shall provide a complete list of all subcontractors, other than those used to meet an MBE subcontracting goal, which are identified separately. This list shall include a full description of the duties each subcontractor will perform.

3.4.6.6 Legal Action Summary.

This summary shall include:

i. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
ii. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
iii. A description of any judgments against the Offeror 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 Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

3.4.5.6 Minimum Qualifications Documentation

The Bidder shall submit any minimum qualifications documentation that may be required, as set forth in section 2.2 "Bidder Minimum Qualifications."

3.5 Reciprocal Preference

Comment [LBH4]: Please bookmark/add to ToC

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 Bidders whose headquarters, principal base of operations, or principal site (that will primarily provide the services required under this RFP) is in another state.
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The 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.

3.6 Delivery

Comment [LBH5]: Please bookmark/add to ToC

Bidders may either mail or hand-deliver bids.

3.6.1 For U.S. Postal Service deliveries, any bid that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the IFB will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. 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.

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

The remainder of this page is intentionally left blank.

SECTION 4 - ATTACHMENTS

ATTACHMENT A – Contract
This is the Contract used by DHMH. It is provided with the IFB for informational purposes and is not required to be signed at bid submission time. Upon notification of recommendation for award, a completed contract will be sent to the selected Bidder for signature. The Bidder must return three (3) executed copies of the Contract within five (5) working days after receipt. Upon award, a fully-executed copy will be sent to the Contractor.

ATTACHMENT B – Bid/Proposal Affidavit
This document must be completed and submitted with the Bidder's bid.

ATTACHMENT C – Contract Affidavit
This document is not required at the time of bid submission, but may be submitted to expedite processing. If not received with the bid, it must be submitted by the selected Bidder to the Procurement Officer with the Contract (see Attachment A).

ATTACHMENT D – Minority Business Enterprise Forms
This attachment includes the MBE subcontracting goal statement, instructions, and MBE Attachments D1 through D6. Attachment D1 must be completed and submitted with the Bidder's bid or the bid will be deemed non-responsive and rejected. Attachments D2 and D3 are required to be submitted within ten (10) days of receiving notification of recommendation for award.

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

ATTACHMENT F – Bid Pricing Instructions and Bid Page
Bid forms must be completed and submitted with the bid.

ATTACHMENT G – Living Wage Requirements for Service Contracts
ATTACHMENT G-1 – Maryland Living Wage Requirements and Living Wage Affidavit
This document must be completed and submitted with the bid.

ATTACHMENT H – Conflict of Interest Affidavit and Disclosure
This document must be completed and submitted with the bid.

ATTACHMENT I – Business Associate Agreement
This document is not required at the time of bid submission, but may be submitted to expedite processing. If not received with the bid, it must be submitted by the selected Bidder to the Procurement Officer with the Contract (see Attachment A).

ATTACHMENT J – Federal Funds Attachment
Certifications and documents must be completed and submitted with the bid.

ATTACHMENT K (1) – Non-Disclosure Agreement (Solicitation)
This document must be submitted prior to receiving confidential information. (This document is not normally required).

ATTACHMENT K (2) – Non-Disclosure Agreement (Award)
This document is not required at the time of bid submission, but may be submitted to expedite processing. If not received with the bid, it must be submitted by the selected Bidder to the Procurement Officer with the Contract (see Attachment A).

ATTACHMENT L – Mercury Affidavit

This document must be completed and submitted with the bid.

ATTACHMENT M – ARRA Monthly Employment Report & Instructions
Submit according to instructions.

ATTACHMENT A – CONTRACT

(You may fill in the items. Do not change any of the standard contract terms.)

(CONTRACT TITLE)

THIS CONTRACT (the "Contract") is made this _(day)__ 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 __(date on bid)__.

1.2 "Contract Monitor" means the Department employee identified in the IFB as the Contract Monitor.

1.3 "Contractor" means __(contractor's name)__ whose principal business address is _(contractor's main address)___ and whose principal office in Maryland is _(contractor's local address)__.

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

1.5 "IFB" means the Invitation for Bids for _(title of IFB)__ Solicitation # DHMH OPASS __(OPASS assigned number)__, and any addenda thereto issued in writing by the State.

1.6 "Procurement Officer" means the Department employee identified in the IFB as the Procurement Officer.

1.7 "State" means the State of Maryland.

2. Scope of Contract

2.1 The Contractor shall provide all deliverables as defined in the IFB Section 2 "Scope of Work" These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB
Exhibit B – The Bid
Exhibit C – State Contract Affidavit, executed by the Contractor and dated _____

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the 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 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

3. Period of Performance.

3.1 The Contract resulting from this IFB shall be for a period of _____ years beginning __(month, day, year)__, and ending __(month, day, year)___. The Contractor shall begin provision of services upon receipt of official notification of award.

3.2 Further, this contract may be extended for _____ periods of one year each (or one period of one year) 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.)

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 Page (Attachment F). Unless properly modified (see above subsection 2.3), payment to the Contractor pursuant to this Contract shall not exceed $____. (The following language 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 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 when applicable; and (b) secure data bases, 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 Number which is _____. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, § 15-104 are prohibited. Invoices shall be submitted to the Contract 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 Contractor's eMarylandMarketplace vendor ID number is _____.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork,

computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works 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. Public Information

8.1 Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including, without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this

Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

8.2 Offerors should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6.

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

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

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

11. Non-Hiring of Employees

No official or employee of the State, as defined under 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.

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 sub-contracting 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 or offer.

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

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Department's Contract Monitor, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Department's Contract Monitor. 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 shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10 "Indemnification" of this Contract are included in this limitation of liability only if the State is immune from liability. 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 Parent Company] hereby guarantees absolutely the full, prompt, and complete performance by [Contractor name] of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. [Corporate name of Parent Company] may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. [Corporate name of Parent Company] further agrees that if the State brings any claim, action, suit or proceeding against [Contractor], [Corporate name of Parent Company] may be named as a party, in its capacity as Absolute Guarantor.

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 Maryland Human Relations Commission's request, 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

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 Contract Monitor 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: Sharon R. Gambrill, CPPB
Procurement Officer
Maryland Department of Health and Mental Hygiene
Office of Procurement and Support Services
201 West Preston Street, Room 416B
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.)

(This clause is mandatory whenever ARRA funding is used.)

34. ARRA Contract Clauses

34.1 General

This contract is governed by the provisions of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA), applicable federal regulations, and ARRA implementing guidance from the federal government as may be revised and updated from time to time (collectively "ARRA Requirements").

(a) Compliance. The Contractor agrees that it will comply with all ARRA Requirements applicable to this contract, including modifications or additional requirements that may be imposed by law, future guidance, and clarifications of ARRA requirements.

(b) Conflict of Laws. Contractor agrees that to the extent ARRA requirements conflict with State requirements, the ARRA requirements shall control.

(c) Enforceability. Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

34.2 DUNS Number

All Contractors are required to provide the State with their unique Dunn & Bradstreet Data Universal Numbering System (DUNS) number prior to award. Contractors can request a DUNS number or modification to an existing DUNS record by using the online webform process at http://fedgov.dnb.com/webform (for US and International locations) or they can call 866-705-5711, option 3. The toll free number is for US locations only. Registrants will be asked for their entity name, address, city, state, country, postal code, highest ranking individual's name and title, line of business, # of employees and legal structure (corporation, non profit, etc.) and socio-economic data (veteran owned, woman owned, etc.). If the webform is used, there are mailing address area, SIC code and annual revenue data lines, but these are optional.

34.3 Job Creation and Retention

The Contractor shall timely report to the State all of the data noted on the enclosed Monthly Employment Report, Attachment M, no later than 8th day of each month, for the previous month's reporting data. For any subcontracts of less than $25,000 or to individuals, the required information may be reported in the aggregate and requires the certification of an authorized officer of Contractor that the information contained in the report is accurate. Contractor agrees to provide any other information reasonably requested by the State or required by State or federal law or regulation.

Further instructions for reporting are provided.

Contractor's failure to provide complete, accurate and timely reports under this section shall constitute an event of default under the Contract.

Electronic reporting is preferred. The required information shall be submitted to:

(Name Of Contract Monitor)
(Address)
(E-mail)
(Phone Number)

34.4 Access to Project Records and Employees Clause

(a) U.S. Comptroller General Authority to Inspect

i.. Pursuant to § 902 of ARRA, the U.S. Comptroller General (CG) and the CG's representatives have the authority to:

a. Examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontracts; and

b. Interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

ii. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the CG.

(b) U.S. Inspector General Authority to Inspect

i. Pursuant to § 1515 of ARRA, the U.S. Inspector General (IG) and any of the IG's representatives have the authority to:

a. Examine any records of the contractor or grantee or any of its subcontractors, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract or subcontract; and

b. Interview any officer or employee of the contractor, or any of its subcontractors, or of any State or local government agency administering the contract or grant, regarding such transactions.

ii. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an IG.

(c) Requirements Extended to Subcontractors

Contractor shall include in all of the Contractor's agreements with its subcontractors, performing work funded in whole or in part with ARRA funds under this Contract, and shall require subcontractors to include with lower tier subcontractors, the language provided in parts (a), (b), and (c) of this subsection.

34.5 Whistleblower Protections Under ARRA

(a) Contractor agrees that both it and its subcontractors shall comply with § 1553 of the ARRA, which prohibits Contractor and its subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to a State contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

(b) The investigation of complaints, remedies and enforcement under this section shall be governed by §1553 of ARRA, applicable federal regulations, and federal law.

(c) The Contractor and its subcontractors shall post notice of the rights and remedies available to employees under § 1553 of Title XV of Division A of the ARRA.

(d) The Contractor and its subcontractors shall post notice of the rights and remedies available. The Contractor shall include the substance of these Whistleblower Protections under ARRA, including this paragraph (d) in its contracts with employees and subcontractors, and require its subcontractors to do the same.

More information related to ARRA Whistleblower Protection requirements, including a down-loadable poster, can be found at the following link: http://www.oig.dol.gov/recovery/arrawhistleblowers.htm

34.6 Construction Clauses

(a) Buy American Act – Not applicable.

(b) Davis-Bacon Act (Prevailing Wage Rates and Labor Standards) – Not applicable.

34.7 Use of Maryland Workforce Exchange

The contract that will result from this solicitation is fully or partially funded with federal ARRA monies. To as quickly as possible help achieve the hiring of individuals into jobs that are ARRA-funded in whole or in part, the contractor shall:

(a) Post all jobs which are to be newly filled, whether for an entirely new job or for an existing job that is currently vacant, on the Maryland Workforce Exchange website of the Maryland Department of Labor, Licensing and Regulation. Link: https://mwe.dllr.state.md.us/default.asp?SessionUID=a. The posting shall be done after contract award, as part of "start-up" procedures to fulfill the requirements of this contract.

(b) Continue to post for the duration of this contract, on the Maryland Workforce Exchange, new jobs that are created to perform under this contract and existing jobs that are filled as a result of turnover of existing employees that fully or substantially work under the contract.

(c) Stipulate the requirements for posting job openings with the Maryland Workforce Exchange, as per paragraphs (a) and (b) of this section, as requirements for any subcontractor(s) the contractor uses in the fulfillment of this contract.

The requirements to post ARRA-funded job openings on the Maryland Workforce Exchange, as per paragraphs (a), (b), and (c) of this section, are not meant to be the exclusive means for the contractor or subcontractors to hire employees. The contractor or subcontractors may use any other means of job advertising and recruitment, in addition to the use of the Maryland Workforce Exchange.

(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.)

35. 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 OOE 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.

Comment [LBH6]: Who is OEE?

(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 is not 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 State…")

36. 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.)

36. Compliance with HIPAA and State Confidentiality Law

36.1 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.

36.2 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.

36.3 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 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.

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

36. Compliance with Federal HIPAA and State Confidentiality Law

36.1 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.

36.2 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 offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and set forth in Attachment I. The fully-executed Business Associate Agreement must be submitted within five (5) working days after notification of selection, or within five (5) days after award, whichever is earlier. Upon expiration of the five (5) day submission period, if the Department determines that the selected offeror has not provided the HIPAA agreement 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 next qualified offeror.

36.3 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.

(This clause should be added to contracts were there is a strong possibility of unskilled or entry level employment. The actual DHR Agreement must be included in the solicitation as an Appendix item. Delete if not applicable.)

37. Hiring Agreement

The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) Hiring Agreement (Attachment ___). The Hiring Agreement is to be executed by the Bidder/Offeror and delivered to the Procurement Officer within ten (10) 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 entry-level Maryland Temporary Case Assistance customers to fill entry-level job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article § 13-224.

(This clause should be added to contracts when there is the probability of customers with limited ability in speaking English. Delete if not applicable.)

38. 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.

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

CONTRACTOR	STATE OF MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE
_____	_____
By:	By: Joshua M. Sharfstein, M.D., Secretary
_____	Or designee:
Date	
	_____
	_____
	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, _____ (print name), possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned bidder 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 or 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 or 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 or 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 submitted by the bidder on this project, and terminate any contract awarded based on the bid.

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 or proposals for a public or private contract;

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

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

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

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

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

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

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

I. 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. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

Revised August, 2011

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:
I, _____ (print name), possess the legal authority to make this Affidavit.

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 or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

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

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

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

(d) Not hire or assign to work on the contract anyone 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 _____ , 20___ , and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

Revised August, 2011

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE

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

DEFINITIONS

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

♦ "Certification" means a determination made by the Maryland Department of Transportation that a legal entity is a minority business enterprise.
♦ "MBE Liaison" is the employee designated to administer this Department's MBE program.
♦ "Minority Business Enterprise" or "MBE" means any legal entity, other than a joint venture, organized to engage in commercial transactions, that is:

(1) at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and
(2) managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

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

MINORITY BUSINESS ENTERPRISE INSTRUCTIONS AND FORMS D1 through D5

A. MBE Participation Goals and Subgoals

The Contractor shall achieve the MBE subcontracting goal and any subgoals established for this contract, by subcontracting to one or more MDOT-certified Minority Business Enterprises a sufficient portion of the contract's scope of work that results in total MBE payments that meet or exceed the MBE participation goal.

If awarded the Contract:

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

B. Solicitation and contract formation

1. Instructions for Submission of Bid or Proposal:

a. **The bidder or offeror must include the following affidavit with its bid or proposal**:

1) A completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit **(Attachment D1)** whereby the bidder or offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process. Pursuant to COMAR 21.11.03.09C(2), bidders or offerors, including bidders or offerors that are certified MBEs shall: (a) identify specific work categories within the scope of the procurement appropriate for subcontracting; (b) solicit certified MBEs in writing at least ten (10) days before bids or proposals

are due, describing the identified work categories and providing instructions on how to bid on the subcontracts; (c) attempt to make personal contact with the certified MBEs solicited and to document these attempts; (d) assist certified MBEs to fulfill, or to seek waiver of, bonding requirements; and (e) attend prebid or other meetings the procurement agency schedules to publicize contracting opportunities to certified MBEs.

Additionally, the bidder or offeror identifies the specific commitment of certified Minority Business Enterprises at the time of submission by listing each MBE subcontractor to be used on the contract and specifying the specific percentage of contract value (not range) associated with each subcontractor. **Attachment D1 shall become part of the final contract, therefore, any changes (additions and/or deletions) must be submitted to the Procurement Officer in writing for approval.**

NOTE: The failure of a bidder or offeror to complete and submit the MDOT Certified MBE Utilization and Fair Solicitation Affidavit shall result in a determination that the bid is non-responsive or that the offeror is not reasonably susceptible of being selected for contract award.

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

   a) Outreach Efforts Compliance Statement **(Attachment D2)**

   b) Subcontractor Project Participation Statement **(Attachment D3)**

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

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

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

C. Contract Administration Requirements:

Prime Contractor shall:

1. **Attachment D4:** Submit monthly to the Department's Contract Monitor or designee a report listing all unpaid invoices over 30 days old received from a certified MBE subcontractor working under the contract, the amount of each invoice and the reason payment has not been made. For informational purposes only, a sample prime contractor unpaid invoice report is attached**.**

2. **Attachment D5:** Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department's Contract Monitor or designee a report that identifies the prime contract and lists all payments received from the Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. For informational purposes only, a sample MBE Subcontractor Paid/Unpaid Invoice report is attached.

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

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

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

D. Minority Business Enterprise Participation Forms

The following forms are samples for your use in identifying and completing the MBE documentation requirements.

Revised February 2012

Attachment D1

MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with bid or offer)

This document **MUST BE** included with the bid or offer. If the Bidder or Offeror fails to complete and submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

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

1. ☐ 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):
_____ percent African American _____ percent Asian American
_____ percent Hispanic American _____ 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 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11.

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)
(c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or 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 quotations or offers, 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.

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

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:	_____%
Total *Asian American* MBE Participation:	_____%
Total *Hispanic American* MBE Participation:	_____%
Total *Woman-Owned* MBE Participation:	_____%
Total *Other* Participation:	_____%
Total *All MBE* 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: _____

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Attachment D2

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 or offer submitted in response to Solicitation No. _____, 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 bidding 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 D3

Subcontractor Project Participation Certification

Please complete and submit one form for each MDOT certified MBE listed on Attachment D1 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	MBE Certification Number
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 or 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 or proposal;

(2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or 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 or 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 D4

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 Officer 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:	Email:
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-5 forms.
****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
_____
_____
_____
_____

This form must be completed by
MBE subcontractor

ATTACHMENT D5

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:	Email:	
Address:		
City: Baltimore	State:	ZIP:
Phone:	FAX:	
Subcontractor Services Provided:		

List all payments received from Prime Contractor during reporting period indicated above.	**List dates and amounts of any unpaid invoices over 30 days old.**
Invoice Amt **Date**	**Invoice Amt** **Date**
1.	**1.**
2.	**2.**
3.	**3.**
Total Dollars Paid: $_____	**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 or 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 or 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 or 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 an MBE unavailability verification form signed by the certified MBE, or a statement from the apparent successful bidder or offeror that the certified MBE refused to give the written verification;

(5) The record of the apparent successful bidder's or 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 or 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 or 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 or offers and subcontract bids or offers 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.

MBE ATTACHMENT D6

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 bid 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 on reverse side.

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 (insert number xx-xxxxx)
(insert solicitation title)

A Pre-Bid Conference will be held at (enter time, a.m./p.m.), on (enter month, day and year), at (enter address, building name and room number). Please return this form by (enter month, day and year), advising whether or not you plan to attend.

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

(enter name)
(administration, office or facility)
Department of Health and Mental Hygiene
(enter address)
Email: (enter user name)@dhmh.state.md.us
Fax #: (enter facsimile machine number)

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 AND BID PAGE

BID PRICING INSTRUCTIONS

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 Page have been prepared. Bidders shall submit their bid on the form in accordance with the instructions on the form and as specified herein. Do not alter the forms or the bid form shall be rejected. The Bid Page 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 Page.

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

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 Page 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 Page by the Bidder prior to submission shall be initialed and dated.

F) Except as instructed on the form, nothing shall be entered on the Bid Page that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions shall render the bid non-responsive.

G) It is imperative that the prices included on the Bid Page have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Page. 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.

(add additional instructions as needed to assist Bidders in the completion of the Bid Page)

Bid Page

The bid shall contain all price information in the format specified on these pages. Complete the price sheets only as provided in the Bid Pricing Instructions. Do not amend, alter or leave blank any items on the Bid Page. 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 Page information)

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.

ATTACHMENT G-1 – MARYLAND LIVING WAGE REQUIREMENTS AFFIDAVIT

Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address_____

City_____ State_____ Zip Code_____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms 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 This Affidavit with Bid/Proposal

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

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

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder, 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 or offer is made.

C. The Bidder 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 agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder 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 has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

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

Date:_____ By:_____

(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID

ATTACHMENT I – 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 _____ (hereinafter known as "Business Associate"). Covered Entity and Business Associate shall collectively be known herein as the "Parties."

WHEREAS, Covered Entity have 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 regulations (45 C.F.R. Parts 160 and 64), 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. Code Ann., 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:

I. DEFINITIONS.

A. Individual. "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).

B. Breach. "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. § 164.402.

C. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. §164.501.

D. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

E. Protected Health Information or PHI. "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity

.

F. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 C.F.R. §164.501.

G. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.

H. Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.

A. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.

B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 C.F.R. §164.504(e).

C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.

B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

C. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this Agreement

D. In addition to its obligations in Section III.C, Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate's notification to Covered Entity hereunder shall:

1. Be made to Covered Entity without unreasonable delay and in no case later than fifty (50) 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 fifty (50) 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;

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

3. Be in substantially the same form as **Exhibit A** hereto; and

4. Include a draft letter for the Covered Entity to utilize to notify the 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:

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

b) 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);

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

d) 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

e) Contact procedures for 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. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

G. To the extent applicable, Business Associate shall provide access to PHI in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524.

H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual.

I. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.

K. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.

L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate.

M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. TERM AND TERMINATION.

A. Term. The Term of this Agreement shall be effective as of 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 created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section IV.

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;

2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination.

1. Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the PHI.

2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

3. 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.

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 (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

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 Privacy Rule and HIPAA.

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 records 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 protected health information, 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 Rule.

B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule 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, Privacy Officer
Department of Health & Mental Hygiene
Office of the Inspector General
201 W. Preston Street, 5th Floor
Baltimore, MD 21201
Phone: (410) 767-5411

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: _____

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 I)
EXHIBIT A

NOTIFICATION TO THE
MARYLAND DEPARTMENT OF HEALTH AND MENTAL HYGIENE
ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

This notification is made pursuant to Section IIID(3) of the Business Associate Agreement between the (enter 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: _____
E-mail Address:_____
Phone Number: _____

ATTACHMENT J - FEDERAL FUNDS ATTACHMENT

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 or (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) ~~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, 55Wade Avenue, Baltimore, MD 21228. ~~Audit Division, 605 S. Chapel Gate Lane, Old School Building, Baltimore, MD 21229.~~

   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

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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.

Rev. 3/2008

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
(See reverse for public burden disclosure.)

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 K (1) – NON-DISCLOSURE AGREEMENT (SOLICITATION)

Comment [LBH7]: Please correct bookmark/ToC reference for Attachment K(1) and K(2).

(This template is only used if the potential Bidder requires confidential information in order to prepare its response to the solicitation. If the Bidder requires this information, it must be submitted prior to the receipt of the information by the Bidder. This template is rarely required.)

THIS AGREEMENT ("Agreement"), made this _____ day of _____, 20_____, by and between the State of Maryland (the "State"), acting by and through its Department of Health & Mental Hygiene (the "Department"), and _____ _____, a corporation with its principal business offices located at _____ (hereinafter the "Bidder").

RECITALS

WHEREAS, Bidder intends to submit a bid in response to an Invitation for Bids numbered DHMH-OPASS (enter solicitation number) and titled (enter IFB title) (the "IFB"), and

WHEREAS, in order for the Bidder to submit such a proposal, it will be necessary for the State to provide the Bidder with access to certain confidential information regarding the State's (enter the type or nature of the information to be used by the Bidder in preparing a bid), collectively, the "Confidential Information."

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the Bidder's bid to the IFB (hereinafter referred to as the "Bid"), and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Recitals. The Recitals are not merely prefatory but are an integral part of this Agreement.

2. Bidder's Qualifications. Bidder represents and warrants that:

   A. It is qualified to do business in the State and that it will take such actions, from time to time hereafter, as may be necessary to remain so qualified during the period covered by this Agreement;

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

   C. It is in compliance with all federal, State and local laws, regulations, and ordinances applicable to its business and it is not aware of any actual or threatened actions, claims, suits, orders, or other matters that would prevent or limit its ability to satisfactorily and fully perform its obligations under this Agreement or under any subsequent agreement that it may enter into with the State in connection with its Bid; and

   D. It is the correctly named and identified entity that intends to submit the Bid and it is not controlling, controlled by, or under common control with the entity that intends to submit the Bid. If the Bid will be submitted by a joint venture or any other group of separate business entities, each entity comprising such group has been clearly identified in and has executed this Agreement.

3. Term of Agreement. The term of this Agreement shall commence on the date it is fully signed by both parties and shall continue thereafter until the earlier to occur of: (a) three (3) years following the return of the Confidential Information in accordance with Section 6 of this Agreement; (b) receipt of written notice given by the State to Bidder terminating this Agreement; or (c) the date upon which the terms of this Agreement are expressly superseded by the confidentiality provisions of any subsequent agreement which the parties may enter into in connection with the Bid. If all Confidential Information is not returned to the State in accordance

with Section 6 of this Agreement, then this Agreement shall continue in full force and effect until such time as all Confidential Information is returned to the State and the State acknowledges its receipt in writing.

4. What Constitutes "Confidential Information." Confidential Information means any and all information provided, or made available, by the State to Bidder in connection with the Bid, 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 Bidder 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 for Bidder to prepare and submit its Bid.

5. Use of Confidential Information. In consideration of the State's allowing Bidder access to the Confidential Information:

   A. Bidder hereby agrees to hold the Confidential Information in trust and in strictest confidence, and to take all measures necessary 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.

   B. Bidder 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 preparing its Bid. Bidder shall limit access to Confidential Information to its employees and agents ("Bidder's Personnel") who have a demonstrable need to know such Confidential Information in order to prepare the Bid and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of Bidder's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute and date Exhibit A next to their name and by doing so agrees to be subject to the terms and conditions of this Agreement to the same extent as Bidder. If Bidder intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the preparation of the Bid or who will otherwise have a role in performing any aspect of the Bid, Bidder 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.

6. Return of Confidential Information. Bidder shall return all Confidential Information to the Department within five (5) business days of the State's acceptance of Bidder's Bid. If Bidder does not submit a Bid, Bidder shall return the Confidential Information to the Department within 30 days of receiving the material. All Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of Bidder authorized to bind the Bidder.

7. Liability for Confidential Information. Bidder acknowledges that any failure by Bidder or Bidder'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, Bidder and each of Bidder's Personnel agree that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Bidder and each of Bidder's Personnel consent to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages from Bidder and/or each of Bidder's Personnel, as applicable, 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 Bidder or any of Bidder's Personnel to comply with the requirements of this Agreement, Bidder and such Bidder's Personnel shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.

8. Unauthorized Use. Bidder shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of Confidential Information by any of Bidder's Personnel or Bidder's former Personnel. Bidder shall, at Bidder's expense, cooperate with the State in seeking injunctive or other equitable relief against any such person.

9. Governing law. This Agreement shall be governed by the laws of the State of Maryland.

10. False and fraudulent statements. Bidder acknowledges that pursuant to the Md. Code Ann., State Finance and Procurement Article, § 11-205.1, a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than $20,000 and/or imprisonment not exceeding 5 years or both. Bidder further acknowledges that this Agreement is a statement made in connection with a procurement contract.

11. Signing Authority for Bidder. The individual signing below on behalf of Bidder warrants and represents that s/he is fully authorized to bind Bidder to the terms and conditions specified in this Agreement. The individual signing below acknowledges that a breach of this warranty and representation may result in personal liability.

12. Other Obligations. The parties further agree that, unless otherwise agreed in writing: (a) this Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by a written instrument signed by both parties; (b) the State may waive any rights under this Agreement only by written waiver duly signed by the State, and no failure by the State to exercise or delay in exercising a right under this Agreement shall constitute a waiver of such right; (c) the rights and obligations of Bidder may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State; (d) the State makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (e) the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (f) all notices under this Agreement must be in writing and shall be deemed to have been delivered to and received by a party, and will otherwise become effective, on the date of actual delivery thereof (by personal delivery, express delivery service or certified mail) to the Notice Address of such party set forth below; and (g) signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures.

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

If to the State: (name of Contract Monitor)
(name of facility, program or administration)
Department of Health and Mental Hygiene
(enter complete mailing address including building name and room number)

If to the Bidder: _____
_____
_____
_____

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 (SOLICITATION) – EXHIBIT A

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

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

NON-DISCLOSURE AGREEMENT (SOLICITATION) – EXHIBIT B

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 Agreement by and between the State of Maryland and _____ ("Offeror") 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 Offeror 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 OFFEROR: _____

BY:_____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT K (2) – NON-DISCLOSURE AGREEMENT (AWARD)

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") for the Invitation for Bids ("IFB") (enter solicitation title), Solicitation # DHMH OPASS (enter OPASS assigned 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 Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names (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 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 - EXHIBIT A

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 - EXHIBIT B

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 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 L – MERCURY AFFIDAVIT

MERCURY AFFIDAVIT

AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:

I am the _____ (Title) and the duly authorized representative of _____ (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.

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

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

_____ By _____

Date Signature

Print Name: _____

Authorized Representative and Affiant

ATTACHMENT M – ARRA MONTHLY EMPLOYMENT REPORT & INSTRUCTIONS

Monthly Employment Report

Part 1:

Report for the Month Ending:
Contract Number:
Name of Individual Completing Report:
Title of Individual Completing Report:
Phone Number:
Email of Individual Completing Report:
Date Report Completed:

Part 2:

Contractor Information:

Name:

Contractor Business Address/Location:

Type:

DUNS Number:

Part 3:

Five Most Highly Compensated Officers of the Entity:

	Name	Compensation
1.		
2.		
3.		
4.		
5.		

☐ Check if contractor does NOT meet reporting criteria (see instructions)

Part 4:

Jobs Created/Retained by Prime Contractor:

(a) Address/Location Where Work is Being Performed	(b) Description of Created/ Retained Jobs	(c) Total Hours Worked in Reporting Period	(d) Total Hours in Reporting Period for a Full Time Job	(e) No. of Full Time Equivalents (c) ÷ (d)

(Add additional lines if needed.)

Part 5:

Jobs Created/Retained by Subcontractors:

(a) Name of Subcontractor	(b) Description of Jobs Created/Retained	(c) Total Hours Worked in Reporting Period	(d) Total Hours in Reporting Period for a Full Time Job	(e) No. of Full Time Equivalents (c) ÷ (d)

Comment [LBH8]: Did this ARRA Monthly Report form come from somewhere? It appears to be missing Part 6 and Part 7 (which are in the directions).

Part 1:

Enter the last day of the Month being Reported (e.g., September 30, 2009), the Contract Number (to be provided by the State), and contact information for the individual completing the report.

Part 2:

Enter Prime Contractor information.
Type of Organization: Contractor should use one of the following types that represent the Contractor's organization:

- Nonprofit with 501(c)(3) IRS Status (Other than Institution of Higher Education)
- Nonprofit without 501(c)(3) IRS Status (Other than Institution of Higher Education)
- Individual
- For-Profit Organization (other than small business)
- Small Business
- State, County or Local Government
- Special District or Regional Government
- US Territory or Possession
- Independent School District
- Hispanic-serving Institution
- Alaska Native and Native Hawaiian Serving Institutions
- Public/State Controlled Institution of Higher Education
- Indian/Native American Tribal Government (Federally Recognized)
- Indian/Native American Tribally Designated Organization
- Public/Indian Housing Authority
- Tribally Controlled Colleges and Universities
- Historically Black Colleges and Universities (HBCUs)
- Private Institution of Higher Education
- Non-domestic (non-US) entity
- Other

Part 3:

Enter the names and total compensation of the five most highly compensated officers of the Contractor entity **if:**

1. The Contractor in its preceding fiscal year received:
   a. 80% or more of its annual gross revenues in Federal awards; **and**
   b. $25,000,000 or more in annual gross revenues from Federal awards; **and**

2. The public does not have access to information about the compensation of the senior executives of the contractor's entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986 (26 USC §6104).

Total Compensation means the cash and non-cash dollar value earned by the executive during the Contractor's past fiscal year for the following (for more information see 17 C.F.R. 229.402(c)(2)):

i. Salary and bonus.
ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.
iii. Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
v. Above-market earnings on deferred compensation which are not tax qualified.
vi. Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds $10,000.

Part 4:

Only jobs directly created or retained as a result of the contract activity should be reported. A **job created** is a new position created and filled or an existing unfilled position filled with ARRA funding. A **job retained** is an existing position that would not have continued to be filled without ARRA funding. A job cannot be both created and retained. Aggregate numbers for jobs created/retained are to be reported as noted below.

Column a: Enter the address or work location where the work, or majority of work, is being performed.

Column b: Enter a brief narrative description of the jobs created/retained by the Prime Contractor. For example: construction trades jobs, health care professionals, consultants.

Column c: Enter the cumulative number of hours worked for the month by individuals in jobs created/retained.

> ***Example #1***: if there were 3 individuals working in jobs that were created/retained, and two individuals worked 176 hours each and the third worked 40 hours, then enter 392 (176+176+40=392).
>
> ***Example #2:*** if during a reporting month that included 4.4 work weeks, there were 5 individuals that each worked 20 hours per week period, enter 440 (5 individuals x 20 hours x 4.4 weeks = 440).

Column d: Enter the total hours in the month that would be worked by an individual working full time.

> ***Example #1:*** If an individual in a full time job would have worked 40 hours per week and there were 4.4 work weeks in the reporting period, enter176 (40 hours x 4.4 work weeks = 176 hours).
>
> ***Example #2***: If an individual in a full time job would have worked 35 hours per week and there were 4.4 work weeks during the month being reported, enter 154 (35 hours x 4.4 work weeks = 154).

Column e: Do not enter anything in column e. This column will automatically calculate the number of full time equivalents in jobs created/retained based on the data entered in column c and column d.

> ***Example #1***: if there were 392 hours worked during the month being reported by individuals in jobs created/retained, and an individual working full time during the month being reported would have worked176 hours, then this column will calculate as 2.2 FTEs (392 total hours worked ÷ 176 hours in a full time work schedule = 2.2).
>
> ***Example #2***: if there were a total of 440 hours worked during the month being reported by individuals in jobs created/retained, and an individual working full time during the month being reported would have worked154

hours, then this will calculate as 2.9 FTEs (440 total hours worked ÷ 154 hours in a full time work schedule = 2.8)

Part 5:

For each subcontractor that is not an individual and receives a subcontract valued at $25,000 or more, report the name of the subcontractor in column a, and the same data in columns (b) through (e) as indicated in Part 4. Insert additional lines if needed.
For contractors who have more than 37 subcontractors that must be individually reported, additional data entry space has been provided after Part 7.

Part 6:

For subcontractors that are individuals or receive a subcontract valued under $25,000, jobs created/retained shall be reported in aggregate.

Column a: Enter the total number of subcontractors that have been reported in aggregate. For columns (b) through (e), follow the instructions in Part 4.

Part 7:

Contractor signature required.