



**MARYLAND DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE**

**MULTI-STEP INVITATION FOR BIDS (MS-IFB)**

**SOLICITATION NO. DHMH OPASS 17-15807**

**Issue Date: March 21, 2016**

**John L. Gildner Regional Institute for Children and  
Adolescents Dietary Services**

**NOTICE**

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

**Minority Business Enterprises Are Encouraged to Respond to this Solicitation**

**STATE OF MARYLAND  
NOTICE TO VENDORS**

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

**Title: Dietary Services**

**Solicitation No: DHMH/OPASS 17-15807**

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

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

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

REMARKS:

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Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
IFB KEY INFORMATION SUMMARY SHEET/ John L. Gildner Regional  
Institute for Children and Adolescents**

**Invitation for Bids:** John L. Gildner Regional Institute for Children and Adolescents Dietary Services

**Solicitation Number:** DHMH/OPASS 17-15807

**IFB Issue Date:** March 21, 2016

**IFB Issuing Office:** Maryland Department of Health and Mental Hygiene  
John L. Gildner Regional Institute for Children and Adolescents

**Procurement Officer:** Queen Davis, CPPB  
Chief of Procurement  
DHMH/OPASS  
201 W. Preston Street, Baltimore, MD 21201  
Phone: 410-767-5335 Fax: 410-333-5958  
E-mail: [dhmh.solicitationquestions@maryland.gov](mailto:dhmh.solicitationquestions@maryland.gov)

**Contract Officer** Anthony Gardner  
Office of Procurement and Support Services  
Office Phone: (410) 767-5190 Fax: (410) 333-5958  
E-mail: Anthony.Gardner@maryland.gov

**Contract Monitor:** Michelle Berman, Registered Dietitian  
Maryland Department of Health and Mental Hygiene  
John L. Gildner Regional Institute for Children and Adolescents

**Bids are to be sent to:** Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
Fourth Floor- Room 416B  
201 West Preston Street  
Baltimore, MD 21201  
Attention: Anthony Gardner

**Pre-Bid Conference:** Tuesday, March 29, 2016 at 1:00 p.m. Local Time  
Conference Room 535  
15000 Broschart Road  
Rockville, MD 20850

**Bid Due (Closing) Date and Time:** April 25, 2016 at 2:00 p.m. Local Time

**Public Bid Opening:** May 2, 2016 at 2:00 p.m. Local Time

**MBE Subcontracting Goal:** 5%

**VSBE Subcontracting Goal:            0%**

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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), John L. Gildner Regional Institute for Children and Adolescents (JLG-RICA), is issuing this Multi-Step Invitation for Bids (IFB) to provide for the total operation of the Dietetic Department of the facility.
- 1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the selected Bidder and the State. The anticipated duration of services to be provided under this Contract is one year with four additional, successive one-year option periods to be exercised at the sole discretion of the Department. See Section 1.4 for more information.

The Department intends to make a single award as a result of this IFB.

- 1.1.3 A Bidder, either directly or through its subContractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subContractor participation in the work

### **1.2 Abbreviations and Definitions**

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

1. **Bid** – A statement of price offered by a Bidder in response to an IFB.
2. **Bidder** – An entity that submits a Bid in response to this IFB.
3. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
4. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
5. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment A**.
6. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
7. **Contract Monitor (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities.
8. **Contract Officer (CO)** – The Office of Procurement and Support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer.

9. **Contractor** – The selected Bidder that is awarded a Contract by the State.
10. **Department or DHMH** – Maryland Department of Health and Mental Hygiene.
11. **DJS** – Maryland Department of Juvenile Services.
12. **eMM** – eMaryland Marketplace (see IFB Section 1.8).
13. **Facility(ies)** – JLG-RICA and/or Noyes Center
14. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation. See Section 1.4.
15. **Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the Maryland Department of Health and Mental Hygiene, John L. Gildner Regional Institute for Children and Adolescents, Solicitation Number 17-15807 dated March 21, 2016 including any addenda.
16. **JLG-RICA** – John L. Gildner Regional Institute for Children and Adolescents.
17. **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.
18. **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.
19. **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](http://www.dbm.maryland.gov) – keyword: State Holidays.
20. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the Department Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
21. **Noyes Center** – Alfred D. Noyes Children’s Center.
22. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), including being the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
23. **State** – The State of Maryland.
24. **Technical Offer** – A Bidder’s response to the Scope of Work requirements of this IFB. A Bidder’s Technical Offer will be determined to be acceptable or not acceptable prior to any opening of a Bidder’s Bid Price Form. See IFB Section 4.2 for more information.
25. **Total Bid Price** - The Bidder’s total price for services in response to this solicitation, included in the Bid in Attachment F – Bid Form, and used in determining the recommended awardee (see IFB Section 1.15).

26. **USDA CNPs** – The U.S. Department of Agriculture National School Lunch Program including afterschool snacks and School Breakfast Program.
27. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

**1.3 Contract Type**

The Contract resulting from this solicitation shall be an Indefinite Quantity Contract with firm fixed unit prices as defined in COMAR 21.06.03.02.A(1) and (2) (firm fixed price and fixed price, respectively) and COMAR 21.06.03.06.A(2) (indefinite quantity).

**1.4 Contract Duration**

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (“Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement through the Go-Live Date (see Section 1.2 definition and Section 1.4.3) will be the Contract “Start-up Period.” During the Start-up Period the Contractor shall perform start-up activities such as are necessary to enable the Contractor to begin the successful performance of Contract activities as of the Go Live Date. No compensation will be paid to the Contractor for any activities it performs during the Start-up Period.
- 1.4.3 As of the Go-Live Date contained in a Notice to Proceed, (see Section 1.2 definition), anticipated to be on or about July 1, 2016 the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation, for the compensation described in its Bid.
- 1.4.4 The duration of the Contract will be for the period of time from Contract Commencement to the Go-Live Date (the Start-Up Period as described in Section 1.4.2) plus one (1) year from the Go-Live Date for the provision of all services required by the Contract and the requirements of this solicitation. The Contract may be extended for up to four additional, successive one year option periods at the sole discretion of the Department.
- 1.4.5 The Contractor’s obligations to pay invoices to subContractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

**1.5 Procurement Officer**

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

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

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

1.5.2 The Procurement Officer designates the following individual as the Procurement Coordinator for JLG-RICA, who is authorized to act on behalf of the Procurement Officer to coordinate the Pre-Bid Conference among other assigned duties:

Kenneth Basler  
Procurement Coordinator  
Phone Number: 301-251-6824  
Fax Number: 301-309-9004  
E-mail: [kenneth.basler@maryland.gov](mailto:kenneth.basler@maryland.gov)

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

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

Anthony Gardner  
Contract Officer  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street  
Baltimore, MD 21201  
Phone Number: (410) 767-5190  
Fax Number: (410) 333-5958  
E-mail: [Anthony.Gardner@maryland.gov](mailto:Anthony.Gardner@maryland.gov)

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

## **1.6 Contract Monitor**

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

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

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

## **1.7 Pre-Bid Conference and Site Visit(s)**

A Pre-Bid Conference (the Conference) will be held at the date, time, and location indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). All prospective Bidders are encouraged to attend in order to facilitate better preparation of their Bids.

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Bid Conference Response Form (**Attachment E**) to the attention of the Procurement Officer at least five (5) Business

Days prior to the Pre-Bid Conference date. 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 at least five (5) Business Days prior to the Pre-Bid Conference date. The Department will make a reasonable effort to provide such special accommodation.

A site visit is suggested for prospective Bidders to assist in responding to this IFB. A site visit has been pre-scheduled for Tuesday, March 29, 2016, beginning at 1:30 p.m. Local Time, at JLG-RICA, 15000 Broschart Road, Rockville, MD 20850. All prospective Bidders are encouraged to attend in order to facilitate better preparation of their Bids. Note that questions asked by prospective Bidders during site visits should pertain to specifics of the site being toured; questions concerning the solicitation will not be answered during a site visit, and should be submitted in writing to the Procurement Officer. See Section 1.9 below.

## **1.8 eMarylandMarketplace**

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DHMH website <http://dhmh.maryland.gov/procumnt/Pages/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/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

## **1.9 Questions**

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

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

## **1.10 Procurement Method**

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

### **1.11 Bids Due (Closing) Date and Time**

Bids, in the number and form set forth in Section 4.4 “Required Bid Submissions,” must be received by the Procurement Officer at the Procurement Officer’s address and no later than the Bid Due date and time indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

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

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

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

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

### **1.12 Multiple or Alternate Bids**

Multiple and/or alternate Bids will not be accepted.

### **1.13 Receipt, Opening and Recording of Bids**

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

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

1.13.3 The Bid Opening shall be at the date, time, and location indicated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors)

### **1.14 Confidentiality of Bids**

The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but in any case before Contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as

confidential shall accompany the Bid and shall be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.

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

### **1.15 Award Basis**

The Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable Total Bid Price, after that Bidder's Technical Offer has been found to be acceptable (see COMAR 21.05.02.17 and IFB Section 4.2), for providing the goods and services as specified in this IFB. The most favorable Total Bid Price will be the lowest price total on **Attachment F** - Bid Form.

### **1.16 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

### **1.17 Duration of Bid**

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

### **1.18 Revisions to the IFB**

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

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

### **1.19 Cancellations**

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

### **1.20 Incurred Expenses**

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

### **1.21 Protest/Disputes**

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

### **1.22 Bidder Responsibilities**

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

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

### **1.23 Substitution of Personnel**

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

### **1.24 Mandatory Contractual Terms**

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

### **1.25 Bid/Proposal Affidavit**

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

### **1.26 Contract Affidavit**

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

(Certification of Registration or Qualification with the State Department of Assessments and Taxation), note that a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

### **1.27 Compliance with Laws/Arrearages**

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

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

### **1.28 Verification of Registration and Tax Payment**

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

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

### **1.29 False Statements**

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

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

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

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

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

### **1.30 Payments by Electronic Funds Transfer**

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

[http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf)

### **1.31 Prompt Payment Policy**

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

Additional information is available on GOMA's website at:

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

### **1.32 Electronic Procurements Authorized**

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
  2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
    - (a) ask questions regarding the solicitation;
    - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
    - (c) submit a "No Bid/Proposal Response" to the solicitation.

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

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

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

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

### **1.33 Minority Business Enterprise Goals**

#### **1.33.1 Establishment of Goal and Subgoals.**

An overall MBE subContractor participation goal of 5% of the total contract dollar amount as set forth in the Bidder's Bid Form (Attachment F), including all option years, if any, has been established for this procurement.

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

There are no MBE subContractor participation subgoals for this procurement.

1.33.2 Attachments D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Bidders/Offerors:

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

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

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

(b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subContractor identified on the MBE participation schedule, including any work performed by the MBE Prime (including a Prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

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

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

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

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

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

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

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

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

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

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

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

1.33.10 The Bidder/Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – Attachment A, “Liquidated Damages” clause).

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

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

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

1.33.12 With respect to Contract administration, the Contractor shall:

- (a) Submit to the Department’s designated representative by the 10th of the month following the reporting period:
  - i. A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subContractor, the amount of each invoice and the reason payment has not been made; and
  - ii. (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.

(b) Include in its agreements with its certified MBE subContractors a requirement that those subContractors submit to the Department's designated representative by the 10th of the month following the reporting period an MBE SubContractor Paid/Unpaid Invoice Report (Attachment D-5) that identifies the Contract and lists all payments to the MBE subContractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.

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

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

(e) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subContractors.

### **1.34 Living Wage Requirements**

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

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

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

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

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

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

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

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

### **1.35 Federal Funding Acknowledgement**

- 1.35.1 There are programmatic conditions that apply to this Contract due to Federal funding. (See **Attachment H**).
- 1.35.2 The total amount of Federal funds allocated for JLG-RICA is \$52,270 in Maryland State fiscal year 2016. This represents 0.45% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 1.35.3 This Contract contains federal funds. The source of these federal funds is: USDA CNPs. The CFDA number is: 10.555. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment H**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment H** and Bidders/Offerors are to complete and submit these Attachments with their Bid/Proposal as instructed in the Attachments. Acceptance of this agreement indicates the Bidder//Offeror's intent to comply with all conditions, which are part of this Contract.

### **1.36 Conflict of Interest Affidavit and Disclosure**

A Conflict of Interest Affidavit is not required pursuant to COMAR 21.05.08.08(F) for this procurement. A Bidder is required to disclose to the Procurement Officer any actual or potential conflict of interest as it arises, before or after award, in accordance with COMAR 21.05.08.08.

### **1.37 Non-Disclosure Agreement**

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

### **1.38 HIPAA - Business Associate Agreement**

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment K**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award; however, to expedite processing, it is suggested that this document be completed and submitted with the Bid/Proposal. Should the

Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Bidder/Offeror with the next lowest Bid or next highest overall-ranked Proposal.

**1.39 Nonvisual Access**

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

**1.40 Mercury and Products That Contain Mercury**

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

**1.41 Veteran-Owned Small Business Enterprise Goal**

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

**1.42 Location of the Performance of Services Disclosure**

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

**1.43 Department of Human Resources (DHR) Hiring Agreement**

This solicitation does not require a DHR Hiring Agreement.

**1.44 Small Business Reserve (SBR) Procurement**

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

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## **SECTION 2 – MINIMUM QUALIFICATIONS**

### **2.1 Bidder Minimum Qualifications**

Bidders bidding services for JLG-RICA must meet the qualifications listed in Section 2.1.1. The Bidder must provide proof with its Bid that the applicable Minimum Qualifications have been met.

#### **2.1.1 JLG-RICA**

- 2.1.1.1 The Bidder shall have a minimum of three (3) years of experience providing food services in each of the following facilities: a health care facility (nursing home, residential treatment center (RTC), or licensed hospital), a facility following the USDA CNPs (see definition in Section 1.2) guidelines, and a satellite location (a location serving meals prepared in an off-site kitchen).
- 2.1.1.2 As proof of meeting this requirement, the Bidder shall provide with its Bid three references from within the last (10) years that are cumulatively able to attest to the Bidder's experience in all three types of facilities listed in 2.1.1.1. For the purposes of meeting this experience requirement, experience in a particular facility and calendar year may be applied to more than facility category. For example, a residential treatment center with a day program during the school year following the USDA CNPs guidelines would count as experience in a health care facility and as experience in a facility following the USDA CNPs guidelines; if a Bidder provided services in such a facility for two years, the Bidder could count two years of experience for each type of facility toward the experience requirement. Likewise, if for a separate client, the Bidder provided food services for a client with a satellite location during the same two years, the Bidder could count those same two calendar years towards the satellite facility requirement. If for a third client, the Bidder provided one year of services four years ago for a client with a healthcare facility following the USDA CNPs guidelines that also had a satellite location, the Bidder would have satisfied the Minimum Qualifications because it showed three references from within the past 10 years evidencing it has three years of experience with each type of facility required.
- 2.1.1.3 The Bidder shall have the ability to create a menu following USDA CNPs guidelines. As proof of meeting this requirement, the Bidder shall provide with its Bid a menu meeting the requirements of the USDA CNPs covering twenty-one days.

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## **SECTION 3 – SCOPE OF WORK**

### **3.1 Background and Purpose**

The State is issuing this solicitation on behalf of JLG-RICA for the purposes outlined in Section 1.1.1.

#### **3.1.1 JLG-RICA**

John L. Gildner Regional Institute for Children and Adolescents (JLG-RICA) is a State of Maryland residential treatment facility, located in Rockville, Maryland, serving youth with severe emotional disorders under the Behavioral Health Administration of the Department of Health and Mental Hygiene. Though licensed for 54, we are currently operating 32 beds. JLG-RICA also operates a day program serving approximately 90 youth. Currently JLG-RICA provides dietary services using State employees.

The Alfred Noyes Center is a State of Maryland Department of Juvenile Services detention facility located on property adjoining JLG-RICA. The Noyes Center is a 24/7 facility with a rated license capacity of 57. Between 30 and 40 youths are detained in this location daily. Currently, Noyes Center dietary needs are supplied by JLG-RICA dietary staff.

The State is issuing this solicitation for the purposes of providing dietetic and food services to JLG-RICA students and the Noyes Center detainees. These are both juvenile programs partially funded through the USDA CNPs. Menus will need to meet the USDA CNP standards. Menus will be reviewed by JLG-RICA and DJS Dietitians to assure these standards are met. Meals for both JLG-RICA and the Noyes Center staff will be served. At JLG-RICA, staff choosing to eat at the facility pay for their meals individually. The Department of Juvenile Services pays the cost of meals for Noyes Center staff choosing to eat at the Noyes Center.

Populations have relatively large swings. At lunch on school days more than 100 meals, including staff meals, may be served and on Saturdays at dinner 45 meals or less may be served between the two facilities. All meals are prepared at the JLG-RICA kitchen. Meals at JLG-RICA are served in a cafeteria adjacent to the kitchen. The Noyes meals are transported to the facility in insulated containers and are served via serving line using steam table pans in the Noyes gym. JLG-RICA staff currently serve the meals at both locations, but, under the Contract, meals will be served by the Contractor at both locations.

Special events at both facilities are regularly done for the benefit and treatment of the youths both facilities serve and are done in the course of regular meal times. Other special events on premises may require special catering at the best possible price.

### **3.2 Scope of Work - Requirements**

#### **3.2.1 General Requirements**

3.2.1.1. The Contractor shall provide food services to the following populations:

- 3.2.1.1.1 Residential students of JLG-RICA;
- 3.2.1.1.2 Day Students of JLG-RICA;
- 3.2.1.1.3 Clients at Noyes Center;
- 3.2.1.1.4 Staff at JLG-RICA;
- 3.2.1.1.5 Staff at Noyes Center;
- 3.2.1.1.6 Official visitors and special events JLG-RICA; and
- 3.2.1.1.7 Official visitors and special events at Noyes Center.

3.2.1.2 The Contractor shall provide food services in accordance with the USDA CNPs as provided in Attachment P and as the regulations governing the programs are amended from time to time. Guidance on the program regulations is available at: <http://cfr.regstoday.com/7cfr.aspx>

### **3.2.1.2. Type and Location of Services**

#### **3.2.1.2.1 JLG-RICA**

- 3.2.1.2.1.1 The Contractor shall plan menus in accordance with the USDA CNPs and order appropriate supplies (food and sundries). The Contractor shall prepare and serve meals at JLG-RICA, and do appropriate clean-up and sanitation at JLG-RICA. The Contractor will be responsible for providing an evening snack to JLG-RICA residents every day. The Contractor shall provide bag lunches for JLG-RICA youth going on field trips.
- 3.2.1.2.1.2 The Contractor shall also operate a pay cafeteria at JLG-RICA during the meal hours (See 3.2.1.7) Sunday through Saturday for employees. This pay cafeteria offering can be the meal or parts thereof being served to the students (ala carte), or something of the Contractor's choice not offered to the students. USDA CNP Smart Snack standards apply. JLG-RICA employees are responsible for buying their own food, except during emergency situations when it is difficult for staff to get off grounds, i.e., snowstorms. During these times the JLG-RICA will pay for employees.

#### **3.2.1.2.2 Noyes Center**

- 3.2.1.2.2.1 The Contractor shall plan menus in accordance with the USDA CNPs and order appropriate supplies (food and sundries). The Contractor shall provide a bag lunch for Noyes Center clients going to court. The Contractor shall prepare the meals at JLG-RICA and serve the meals at the Noyes Center. The Contractor shall do appropriate clean-up and sanitation at Noyes Center. The Contractor will also be responsible for providing an afternoon snack. This snack must meet the standards set forth in the USDA CNPs. An evening snack shall also be provided to Noyes Center clients. The evening snack should be the same snack as given at JLG-RICA. The Contractor shall bill the Noyes Center directly for clients' meals and snacks. (See Section 3.6.2.)
- 3.2.1.2.2.2 At the Noyes Center the Contractor shall offer the meal, or parts thereof, served to students, to staff. The Contractor shall bill the Noyes Center directly for meals served to Noyes Center employees. (See Section 3.6.2.)

#### **3.2.1.2.3 Official Guests and Special Events**

- 3.2.1.2.3.1 The Contractor shall receive at least 2 weeks' notice for catering services for special events and official guests at JLG-RICA and Noyes Center. (See section 3.2.1.4 for more information and a comprehensive list of special events.)

### **3.2.1.3. Meal Service Statistics**

3.2.1.3.1 Total and average (average number per school day in parentheses) number of meals served on regular school days (176 days, exclusive of summer school days, in Fiscal Year 2015) by meal, facility, and staff. Bag lunch breakfast and lunches are included in these numbers as well as carry outs described in 3.2.1.7.3.

| Group              | Breakfast    | Lunch         | Dinner       | Afternoon Snack | Evening Snack |
|--------------------|--------------|---------------|--------------|-----------------|---------------|
| JLG-RICA           | 9,405 (53.5) | 13,517 (76.8) | 4,276 (24.3) | 0               | 4,276 (24.3)  |
| JLG-RICA Staff     | 6 ( 0.0)     | 867 (4.9)     | 154 (0.9)    | 0               | 0             |
| Noyes Center       | 5,368 (30.5) | 5,255 (29.9)  | 5,202 (29.6) | 5,603 (31.8)    | 5,700 (32.4)  |
| Noyes Center Staff | 1,451 ( 8.2) | 2,158 (12.3)  | 1,909 (10.8) | 0               | 0             |

3.2.1.3.2 Total and (average) number of meals served a day school is out of session. These days are normally either weekends (Saturday and Sunday), part of a 3 day weekend or an extended period of time, such as Christmas break. These days totaled 163 days in Fiscal Year 2015.

| Group              | Breakfast    | Lunch        | Dinner       | Afternoon Snack | Evening Snack |
|--------------------|--------------|--------------|--------------|-----------------|---------------|
| JLG-RICA           | 2,150 (12.9) | 2,014 (12.4) | 2,174 (13.3) | 0               | 2,174 (13.3)  |
| JLG-RICA Staff     | 3 ( 0.0)     | 78 ( 0.5)    | 77 ( 0.5)    | 0               | 0             |
| Noyes Center       | 4,792 (29.4) | 4,772 (29.3) | 4,803 (29.5) | 1,825 (11.2)    | 5,200 (31.9)  |
| Noyes Center Staff | 1,298 ( 8.0) | 1,543 ( 9.5) | 1,537 ( 9.4) | 0               | 0             |

3.2.1.3.3 Total and (average) number of meals served during a day of summer school. A form of summer school is provided for all residential youth and a handful of day students. There were 26 of these days in Fiscal Year 2015.

| Group              | Breakfast  | Lunch      | Dinner     | PM snack   | Evening Snack |
|--------------------|------------|------------|------------|------------|---------------|
| JLG-RICA           | 693 (26.7) | 698 (26.8) | 597 (23.0) | 0          | 597 (23.0)    |
| JLG-RICA Staff     | 2 ( 0.1)   | 84 ( 8.9)  | 16 ( 0.6)  | 0          | 0             |
| Noyes Center       | 719 (27.7) | 729 (28.0) | 714 (27.5) | 743 (28.6) | 753 (29.0)    |
| Noyes Center Staff | 249 ( 9.6) | 358 (13.8) | 296 (11.4) | 0          | 0             |

3.2.1.3.4 Total and (average) number of meals per day served during any month by location and meal.

| Month         | RICA Break.     | Noyes Break.    | Staff Break.  | RICA Lunch      | Noyes Lunch     | Staff Lunch    | RICA Dinner    | Noyes Dinner    | Staff Dinner   | Total Meals      | Noyes Snacks    | RICA Snacks    | Total Snacks    |
|---------------|-----------------|-----------------|---------------|-----------------|-----------------|----------------|----------------|-----------------|----------------|------------------|-----------------|----------------|-----------------|
| July          | 705<br>(22.7)   | 881<br>(28.4)   | 292<br>(9.4)  | 720<br>(23.2)   | 915<br>(29.5)   | 385<br>(12.4)  | 632<br>(20.4)  | 899<br>(29.0)   | 326<br>(10.9)  | 5755<br>(185.6)  | 1588<br>(51.2)  | 632<br>(20.4)  | 2220<br>(71.6)  |
| Aug.          | 679<br>(21.9)   | 757<br>(24.4)   | 289<br>(9.3)  | 767<br>(24.7)   | 746<br>(24.1)   | 368<br>(11.9)  | 587<br>(19.3)  | 759<br>(24.5)   | 317<br>(10.2)  | 5269<br>(170.0)  | 1437<br>(46.4)  | 587<br>(19.3)  | 2024<br>(65.3)  |
| Sept.         | 1138<br>(37.9)  | 1085<br>(36.2)  | 302<br>(10.1) | 1589<br>(53.0)  | 1085<br>(36.2)  | 412<br>(13.7)  | 600<br>(20.0)  | 1082<br>(36.1)  | 361<br>(12.0)  | 7654<br>(255.1)  | 2010<br>(67.0)  | 600<br>(20.0)  | 2610<br>(87.00) |
| Oct.          | 1432<br>(46.2)  | 917<br>(29.6)   | 272<br>(8.8)  | 1927<br>(62.2)  | 914<br>(29.5)   | 346<br>(11.2)  | 623<br>(20.1)  | 906<br>(29.2)   | 337<br>(10.9)  | 7674<br>(247.5)  | 1725<br>(55.6)  | 623<br>(20.1)  | 2348<br>(75.7)  |
| Nov.          | 1224<br>(40.8)  | 862<br>(27.8)   | 131<br>(4.4)  | 1506<br>(50.2)  | 851<br>(28.4)   | 204<br>(6.8)   | 581<br>(19.4)  | 848<br>(28.3)   | 230<br>(7.7)   | 6437<br>(214.7)  | 1479<br>(49.3)  | 581<br>(19.4)  | 2060<br>(68.7)  |
| Dec.          | 1024<br>(33.0)  | 856<br>(26.6)   | 202<br>(6.5)  | 1564<br>(50.5)  | 859<br>(27.7)   | 301<br>(9.7)   | 516<br>(16.6)  | 836<br>(27.0)   | 318<br>(10.3)  | 6479<br>(209.0)  | 1643<br>(53.0)  | 516<br>(16.6)  | 2159<br>(68.7)  |
| Jan.          | 867<br>(28.0)   | 1013<br>(32.7)  | 274<br>(8.8)  | 1334<br>(43.0)  | 968<br>(31.2)   | 376<br>(12.1)  | 589<br>(19.0)  | 962<br>(31.0)   | 342<br>(11.0)  | 6725<br>(216.9)  | 1787<br>(57.6)  | 589<br>(19.0)  | 2376<br>(76.6)  |
| Feb.          | 971<br>(34.7)   | 919<br>(32.8)   | 229<br>(8.2)  | 1572<br>(56.1)  | 908<br>(32.4)   | 299<br>(10.7)  | 643<br>(23.0)  | 921<br>(32.9)   | 274<br>(9.8)   | 6736<br>(240.6)  | 1621<br>(57.9)  | 643<br>(23.0)  | 2264<br>(80.9)  |
| Mar.          | 1155<br>(37.3)  | 957<br>(30.9)   | 238<br>(7.8)  | 1488<br>(48.0)  | 911<br>(29.4)   | 330<br>(10.6)  | 615<br>(19.8)  | 900<br>(29.0)   | 308<br>(9.9)   | 6902<br>(222.6)  | 1707<br>(55.1)  | 615<br>(19.8)  | 2322<br>(74.9)  |
| Apr.          | 1006<br>(33.5)  | 758<br>(25.3)   | 216<br>(7.2)  | 1262<br>(42.1)  | 756<br>(25.2)   | 302<br>(10.1)  | 548<br>(18.3)  | 739<br>(24.6)   | 281<br>(9.4)   | 5868<br>(195.6)  | 1505<br>(50.2)  | 548<br>(18.3)  | 2053<br>(68.4)  |
| May           | 1214<br>(39.2)  | 915<br>(29.5)   | 284<br>(9.2)  | 1580<br>(51.0)  | 899<br>(29.0)   | 358<br>(11.5)  | 598<br>(19.3)  | 913<br>(29.5)   | 299<br>(9.6)   | 7060<br>(227.7)  | 1636<br>(52.8)  | 598<br>(19.3)  | 2234<br>(72.1)  |
| Jun.          | 788<br>(26.3)   | 959<br>(32.0)   | 269 (.0)      | 920<br>(30.7)   | 944<br>(31.5)   | 378<br>(12.6)  | 515<br>(17.2)  | 954<br>(31.8)   | 349<br>(11.6)  | 6076<br>(202.5)  | 1686<br>(56.2)  | 515<br>(17.2)  | 2201<br>(73.4)  |
| Total FY 2015 | 12203<br>(33.4) | 10879<br>(29.8) | 2998<br>(8.2) | 16229<br>(44.5) | 10756<br>(29.5) | 4059<br>(11.1) | 7047<br>(19.3) | 10719<br>(29.4) | 3742<br>(10.3) | 78632<br>(215.4) | 19824<br>(54.3) | 7047<br>(19.3) | 26870<br>(73.6) |

3.2.1.3.5 Total meals served fiscal year 2015 and projected for fiscal year 2017 for both facilities.

| Fiscal Year       | JLG-RICA | Noyes Center | Staff both Facilities | Total  |
|-------------------|----------|--------------|-----------------------|--------|
| 2015              | 35,479   | 32,354       | 12,086                | 79,919 |
| Projected FY 2017 | 36,450   | 32,850       | 12,159                | 81,459 |

These are the number of meals served based on the requirements of the USDA CNPs. If a child does not take enough elements of the meal, the meal is not counted as a meal served. Payment for this Contract will be based on any child (or any adult as authorized by the Contract Monitor) taking any part of a meal. The Contractor must keep a separate count of youths taking the appropriate number of elements of the meal for the USDA CNPs. The Contractor shall plate an entire meal for staff at Noyes where the facility pays for the meal. At JLG-RICA, the Contractor may provide an ala carte menu. USDA CNP Smart Snack standards apply.

### 3.2.1.4. Special Events

- 3.2.1.4.1 The Contractor shall provide special menus and dietary requests for seven special events for the JLG-RICA students annually. The meal counts provided for reference in Section 3.2.1.3 take into account the student meals for special events and snacks, but not the special event meals and snacks of parents, staff, and guests.
  - 3.2.1.4.1.1 The End of Summer Enrichment Luau. This event is for students and staff featuring a menu of foods traditional to Hawaii. The Contractor shall invoice for all attendees at the per meal price for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.1.2 A Family Fun Night when parents, students and staff come together. The Contractor will bill for all attendees at the per meal rate on the bid page for the Contract Year for which the Contractor is invoicing. Historically, a spaghetti dinner has been provided to all attendees.
  - 3.2.1.4.1.3 The student Holiday Party with staff and guests. This is during the evening meal and would be billed for all attendees at the per meal rate on the Bid Form for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.1.4 During Nutrition Week in March the Contractor shall provide a breakfast when parents can come in and eat with their child during the breakfast meal. The facility would be billed for all attendees at its per meal price as specified on the Bid Form for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.1.5 An awards banquet is held annually celebrating achievements of the youth JLG-RICA serves. This is during the evening meal and would be billed at the per meal rate for all attendees for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.1.6 Reception during High School Graduation exercises. This is an extra event and would be billed as a catering service (see Section 3.2.1.20). The Contractor shall provide cake, cookies, fruit, and punch, or as otherwise directed, for this event.
  - 3.2.1.4.1.7 Reception during Middle School Promotion exercises. This is an extra event and would be billed as a catering service (see Section 3.2.1.20). The Contractor shall provide cookies and punch, or foods as directed, for this meal.
- 3.2.1.4.2 The Contractor shall provide food services at the Noyes Center for at least two special functions during the year with the possibility of smaller requests/functions throughout the year. Smaller requests would be considered a catering service (see Section 3.2.1.20).
  - 3.2.1.4.2.1 A cookout for youths, families and staff normally in late summer or early fall. This event would be counted as the lunch meal for the day, for which the Contractor would invoice for all attendees its per meal price for the Contract Year for which the Contractor is invoicing
  - 3.2.1.4.2.2 A holiday party. This would be counted as the evening meal for the day, and the Contractor shall bill for all attendees its per meal price for the Contract Year for which the Contractor is invoicing.

- 3.2.1.4.3 Meals for outside guests and visitors. These would be billed at the per meal rate as bid on the Bid Form for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.3.1 Three or four times a year a meal is provided for the JLG-RICA Citizens Advisory Board. This would be 9 extra dinner meals per meeting, for which the Contractor would invoice its per meal price for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.3.2 Eight times a year a meal is provided for the RICA Association. This would be 8 extra dinner meals per meeting, for which the Contractor would invoice its per meal price for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.3.3 Various guests and visitors normally not exceeding two to three times a year. This would mean between one and three extra meals per occasion, for which at the direction of the Contract Monitor the Contractor would invoice its per meal price for the Contract Year for which the Contractor is invoicing.
  - 3.2.1.4.3.4 Four times a year a meal is provided for the Noyes Community Advisory Board.
  - 3.2.1.4.3.5 An annual Volunteer Luncheon will be provided at Noyes.
- 3.2.1.4.4 Several times a year JLG-RICA students will be provided a meal through residence.
  - 3.2.1.4.4.1 The Contractor will be given one week advance notice on these occasions for planning purposes.
  - 3.2.1.4.4.2 Residence will do several cookouts during the summer, for which the Contractor will provide the food. Staff will cook outdoors on a grill.
  - 3.2.1.4.4.3 Youths are occasionally rewarded with a meal catered from outside the facility.
  - 3.2.1.4.4.4 Complete meals would still need to be provided to the Noyes Center on these occasions.

### **3.2.1.5. Policies and Procedures**

- 3.2.1.5.1 The Contractor shall develop a comprehensive Policy and Procedure Manual specific to the needs of the JLG-RICA Dietary Department that includes policies on the below required subject areas.
- 3.2.1.5.2 Personnel Policies
  - 3.2.1.5.2.1 The Policy and Procedure Manual shall include all personnel policies for the Dietary Department. The following policies shall be included at a minimum: employment process, orientation procedures, employee classifications, salary scales, employee benefits, performance review procedures, disciplinary process, grievance process, promotions, work hours, employee health (including physical, illness, and injury), dress code, and timekeeping.
  - 3.2.1.5.3 The Policy and Procedure Manual shall clearly define all operational principles and methodologies to be utilized to ensure fulfillment of all of the requirements of the Contract in a consistent and satisfactory manner and ensure compliance with all requirements. The Manual shall include policies to ensure compliance with the standards and regulations of

the Joint Commission (formerly JCAHO) and all Federal, State and local agencies having authority over the Facilities with respect to licensing and accreditation, as well as compliance with regulations of the USDA CNPs and the Dietary Reference Intake (DRI) values established by the Food and Nutrition Board of the National Academy of Sciences. Other standards and regulations requiring compliance include the Health Insurance Portability and Accountability Act (HIPAA), the American with Disabilities Act, and USDA CNPs. Policies and procedures related to, but not limited to, the following topics must be included within the manual:

1. Hazard Analysis and Critical Control Point (HACCP) Standard Operating Procedures (SOPs) consistent with the National Food Service Management Institute Manual [http://sop.nfsmi.org/sop\\_list.php](http://sop.nfsmi.org/sop_list.php)
2. menu preparation,
3. food purchasing,
4. storage,
5. inventory,
6. food production and service,
7. modified diet orders,
8. use of and adherence to protocols of nutritional care,
9. nutritional assessment,
10. nutritional counseling and diet instruction,
11. identification system for youths,
12. personal health and hygiene of employees,
13. infection control,
14. emergency/disaster menus and supplies,
15. pertinent safety practices,
16. protection of food supply,
17. sanitation including handling of cutting boards, dish, utensil and ware washing techniques,
18. disposal of single use containers,
19. disposal of damaged/unusable service ware,
20. traffic control within the Department,
21. personnel policies,
22. record keeping,
23. cost accounting,
24. Department organization,
25. employee orientation and training,
26. ongoing training and continuing education,
27. quality assessment and improvement,
28. quality control and risk management,
29. interdepartmental relations,
30. consistent ongoing communications,
31. service requirements of the Noyes Center, and
32. Compliance with the Department of Juvenile Services Wellness Policy.
33. Compliance with DHMH Wellness Policy.

The Contractor shall also keep detailed records on compliance with the USDA CNPs which shall be made available to the Contract Monitor upon request.

- 3.2.1.5.4 The Policy and procedure Manual shall be submitted to the JLG-RICA Contract Monitor no less than (2) weeks prior to the Go Live date for review and approval. This review will be accomplished within one week. The Contractor shall modify this Manual, as required by the Facility, within seven (7) days of written notice of any necessary changes.

3.2.1.5.5 The Contractor shall review and revise the Policy and Procedure Manual annually no less than two (2) weeks before the anniversary date of the Contract and submit it to the JLG-RICA Contract Monitor for approval.

### **3.2.1.6 Reporting Requirements**

3.2.1.6.1 The Contractor will meet in person with the Contract Monitor monthly, providing an update on kitchen operations and to discuss issues which may arise so problems can be either acted upon proactively or reacted to quickly. The Contractor will also provide the daily point of service meal count numbers, by type, to all youths going through the meal line receiving the appropriate number of elements for the meal to meet the USDA CNPs requirements. This report will be given to the Contract Monitor no later than the 5<sup>th</sup> calendar day of each month.

3.2.1.6.2 By January 31 of each year, the Contractor shall provide JLG-RICA with information for the preceding calendar year about improvements and changes made, meals served, training and continuing education provided, and any quality improvement statistics kept as outlined in the Policy and Procedures manual.

3.2.1.6.3 The Noyes Center will receive a report on the number of meals served to both residence and staff. This report will be given to Noyes and the DJS Director of Food and Nutrition Services by the 5<sup>th</sup> calendar day of the new month. Also, a report will be provided quarterly to Noyes on activities, hires, resignations and other changes in service and personnel.

### **3.2.1.7 Patient/Client Food Service**

3.2.1.7.1 The Contractor shall provide patients/clients at JLG-RICA and Noyes with three (3) meals per day, seven (7) days per week at the following hours:

|           |                |
|-----------|----------------|
| Breakfast | 6:45AM-9:45 AM |
| Lunch     | 10:45AM-1:30PM |
| Dinner    | 4:45PM-5:45PM  |

3.2.1.7.1.1 Service times are approximate for purposes of this IFB. The actual operational hours are based on patient activity scheduling and will be set by the Contract Monitor.

3.2.1.7.2 Noyes Center meals shall be delivered in steam table pans transported in Cambro-insolated containers to the Noyes Center gymnasium area. The meals shall be served cafeteria style from the hot holding unit provided by Noyes Center. Water shall be available on the service line for breakfast, lunch and dinner daily. Historically, bottled water dispensed through a water cooler has been provided. The Contractor shall provide two food service employees to serve the food at Noyes Center. The Contractor will provide all paper supplies and disposable ware needed for meal service.

3.2.1.7.3 JLG-RICA students will receive meals in the cafeteria adjacent to the JLG-RICA kitchen. Meals will be served on dishware and utensils provided by the facility until replacements are needed. Replacements shall be the responsibility of the Contractor. Approximately 10 to 12 meals a day at lunch, during school days, will need to be served in carryout containers. JLG-RICA school staff will be responsible for pickup and distribution. A small number of meals, during other meal times, may need to be provided in carryout containers.

RICA staff will be responsible for requesting and distributing these meals. Carryout containers will be picked up during normal meal hours.

3.2.1.7.4 The Contractor shall provide the following food and supplements seven (7) days per week for the residents/clients residing at JLG-RICA and Noyes in addition to the meals.

3.2.1.7.4.1 The Contractor shall provide Noyes clients with two (2) snacks, one afternoon delivered at lunchtime and one evening delivered with the dinner meal. JLG-RICA residents will be provided with one evening snack to be picked up by residential staff at the evening meal.

3.2.1.7.4.2 All commercial nutritional supplements required by a physician's medical prescription or identified by the clinical Dietitian as required as a part of a resident/client nutrition care plan, shall be provided by the Contractor. The Contractor shall invoice the facility for its actual acquisition cost for these supplements and be reimbursed accordingly. See Sections 3.6.1 and 3.6.2.

3.2.1.7.4.3 The Contractor shall be responsible for special diets and food substitutions ordered by the medical authority at Noyes or JLG-RICA. This shall include consistency modifications, diabetic diets planned by a Registered Dietitian, and other special dietary needs as ordered. The Contractor shall be responsible for supplying special beverages ordered for hydration and administering medications.

3.2.1.7.4.4 The Contractor shall ensure that all potentially hazardous food, beverages, supplements, etc., packaged on premises and sent to the resident/client units are labeled as to the contents and that a "use by" date is indicated. Purchased commercially prepared items shall contain similar information. Dating shall not be based upon the Julian calendar.

### **3.2.1.8 Employee/Visitor Food Service**

3.2.1.8.1 The Contractor shall provide three (3) meals a day, seven (7) days per week for employees and/or visitors in the cafeteria at JLG-RICA and the gymnasium of Noyes Center during the following hours.

|           |                |
|-----------|----------------|
| Breakfast | 6:45AM-9:45 AM |
| Lunch     | 10:45AM-1:30PM |
| Dinner    | 4:45PM-5:45PM  |

3.2.1.8.1.1 Service times are approximate for purposes of this IFB. The actual operational hours are based on patient activity scheduling and will be set by the Contract Monitor.

3.2.1.8.2 A selective type menu shall be available to RICA employees and visitors. The Contractor shall develop a cycle menu based on the patient menu with the addition of soup, sandwiches, salads and desserts. All menus will list portion sizes of each menu item.

3.2.1.8.3 The Contractor shall submit the menus, with portion sizes, raw food cost and selling price of all items to be sold in the cafeteria, to the JLG-RICA Contract Monitor no less than two (2) weeks prior to the commencement of the Contract for review and approval. The Contractor shall submit simultaneously, in a written policy, a schedule for periodic price

review and revision. Any price revision shall be submitted to JLG-RICA's Contract Monitor no less than two (2) weeks prior to the effective date.

- 3.2.1.8.4 The Contractor shall post menus in the employees' cafeteria no less than one (1) week in advance of scheduled service. Each department head at JLG-RIGA and Noyes shall also receive a copy of the menus via e-mail.
- 3.2.1.8.5 The Contractor shall ensure that sufficient employees are available in the cafeteria at all times to serve to RICA staff members and visitors.
- 3.2.1.8.6 The Contractor shall be responsible for the collection of money from sales in the employee's cafeteria at JLG-RICA. The Contractor shall bill the Noyes Center for the cost of their employee meals.
- 3.2.1.8.7 The security of all monies associated with the employee cafeteria will be the responsibility of the Contractor.

### **3.2.1.9 Special Food Requests**

- 3.2.1.9.1 All special food requests by both JLG-RICA and the Noyes Center shall be submitted by the individual or group for review and approval by the Center's Contract Monitor two (2) weeks prior to the required date.
  - 3.2.1.9.1.1 Food and/or beverage requests for meetings, luncheons, dinners, employee related functions, etc., which have been approved are to be provided by the Contractor. The total cost of food, beverage, supplies and services is to be billed to the Center with the notation as to the requesting department and/or person.
  - 3.2.1.9.1.2 Request for service for special functions (dedications, graduations, open house, etc.) by the Facility's Administration shall be provided within a pre-established budget. The Facility, in consultation with the Contractor, shall determine a menu for which the Contractor shall quote an estimated cost. Charges for these functions shall be itemized and billed separately to the Facility.
  - 3.2.1.9.1.3 Request for special activities (bag lunches, picnics, etc.) for residents/clients which have been approved by the Contract Monitor, shall be in lieu of the meal closest to that time. Bag lunches for a mid-day trip will replace the lunch meal.

### **3.2.1.10 Nutritional/Operational Requirements**

- 3.2.1.10.1 All menus for residents/clients population shall be planned as to be nutritionally adequate. Breakfast and lunch meals shall comply with all nutrition standards of the USDA CNPs. In addition the total daily meals shall meet the energy and calories needs of the male adolescent population, ages 13-18, according to the Dietary Reference Intake (DRI) values established by the Food and Nutrition Board of the National Academy of Sciences.
- 3.2.1.10.2 A non-selective, seasonally appropriate, five (5) week cycle menu shall be used. The Contractor shall prepare and utilize a minimum of two (2) menu cycles (Spring/Summer, Fall/Winter) for all diet types.
  - 3.2.1.10.2.1 Regular menus shall be modified for the clients as required to comply with physician's diet orders. All modified menus and diet plans shall be developed by the Contractor's Registered Dietitian and analyzed and approved by the

Contract Monitor to ensure compliance with the Facility's approved Dietary policies.

- 3.2.1.10.2.2 A current copy of the residents/clients menu will be posted in each serving area at JLG-RICA and Noyes, in RICA's mailroom and through electronic mail. The Contractor shall determine an appropriate procedure to achieve this with the Center's Administration.
- 3.2.1.10.2.3 Afternoon snacks at Noyes shall meet the requirements of the USDA CNPs.
- 3.2.1.10.2.4 Evening snacks provided shall be planned to enhance the nutritional content of the daily menu for all patients/clients and not constitute a portion of their daily requirement, except where counter-indicated by dietary orders. A cycle menu for the evening snacks, with a minimum of five (5) weeks in length will be developed by the Contractor's Registered Dietitian to correspond to the two (2) regular menu cycles (Spring/Summer, Fall/Winter).
- 3.2.1.10.2.5 The initial menu cycle with analyses shall be submitted to the Facility's Contract Monitor and DJS Director of Food and Nutrition Services at least two (2) weeks prior to the commencement of the contract for review and approval. Subsequently, each year, no later than January 15<sup>th</sup>, the Contractor shall submit for review and approval the Spring/Summer menu cycle and no later than July 15<sup>th</sup> the Fall/Winter menu cycle to be utilized. Requests for any menu cycle revisions by the Facility shall be accomplished within seven (7) days.
- 3.2.1.10.3 Bag lunches, picnics, etc., for residents/clients, requested and approved by the Facility's Contract Monitor, which are in lieu of a regularly planned meal, shall provide the same nutritional value and at the same price as the meal for which they are substituted.
- 3.2.1.10.4 Food requests for resident/client activities, not in lieu of a meal, require the approval of the Facility's Administration who shall also approve the Contractor's quoted price. Charges for these activities shall be itemized and billed separately at the pre-established price to the facility requesting services.
- 3.2.1.10.5 The Contractor shall be responsible for planning special diets and food substitutions ordered by the medical authority at JLG-RICA and Noyes including consistency modifications, diabetic diets planned by a Registered Dietitian, and other special dietary needs as ordered. The Contractor shall be responsible for supplying special beverages ordered for hydration and administering medications.
- 3.2.1.10.5.1 The Contractor's Clinical Dietitian will include, and maintain current, in the Facility's approved Diet Manual all appropriate nutritional information for the products in use at the Facility.
- 3.2.1.10.6 Standardized recipes shall be developed and utilized for the preparation of all menu items. The recipes shall be developed in a standard format which shall include State Hazard Analysis Critical Control Point elements. Recipes shall comply with State Hazard Analysis Critical Control Point requirements of COMAR 10.15.03.
- 3.2.1.10.6.1 Standardized recipes for consistency modified menu items will be formulated to:
  - 3.2.1.10.6.1.1 Identify the method of manipulation.

- 3.2.1.10.6.1.2 Define the type and quantity of fluids and/or food products added to achieve desired consistency.
  - 3.2.1.10.6.1.3 Adjust the portion size for the manipulated food to equal the nutrient value of the regular diet portion.
  - 3.2.1.10.6.1.4 Be consistent with standardized recipe format.
- 3.2.1.10.6.2 All standardized recipes shall indicate the nutritional analysis for the stated portion size.
- 3.2.1.10.7 The Contractor's Registered Dietitian shall perform a nutritional analysis for each cycle of menus to be used at the Facility. The analysis shall be based on the nutritional composition of the Contractor's standardized recipes and the nutritional composition provided by the manufacturer for any purchased commercially prepared ready to use or any heat/cook serve products used to determine the menu adequacy for each reference group. A copy of the approved menus with the corresponding analyses and documentation of adequacy for the Facility's population shall be maintained on file by the Contractor for review by licensing and accreditation surveyors upon request.
- 3.2.1.10.8 The Contractor shall develop an Emergency Menu Plan that includes the provision of meals for no less than three (3) days, based upon service of three (3) meals per day. Menus shall be developed and posted, and employees trained to ensure adequate and continued service during emergencies related to weather, floods, lack of steam, water, electricity, fire, labor strike, etc. The Plan shall detail instructions for food preparation, distribution, transportation, and all associated supplies required to implement the Plan (i.e. disposable ware, can openers, trash bags, serving utensils, etc.). The Contractor shall maintain the corresponding food inventory on the premises for feeding residents/clients and employees. A similar inventory of the required emergency supplies (i.e. disposable ware, can openers, trash bags, service utensils, etc.) shall also be maintained. The emergency food inventory and emergency supply inventory are to be maintained separate from the regular inventories and identified for emergency use only. The plan should identify the means of access to these items twenty-four (24) hours per day, seven (7) days per week. The Department policy related to the Emergency Menu Plan shall identify a food inventory rotation schedule. The Plan shall be submitted to the Facility's Contract Monitor at least two (2) weeks prior to the commencement of the contract for review and approval.
- 3.2.1.10.9 The Contractor will make any required adjustments within seven (7) days of written notice. The Contractor shall review and revise the plan annually no less the two (2) weeks prior to the contract anniversary date and submit it to the Facility's Contract Monitor and the DJS Director of Food and Nutrition Services for approval.
- 3.2.1.10.10 The Contractor shall develop a separate plan for responding to both an internal and an external disaster. It shall include the following as a minimum: evacuation plan for the Dietetic Department; location of firefighting equipment; a plan for the provision of food service following the loss of utilities; plan for contacting essential personnel; instructions for utilizing volunteers and a plan for providing a continuous source of uncontaminated food and supplies. Additionally, an integral part of the overall plan shall be a separately-defined plan that ensures the availability of an adequate supply of food (minimum seven (7) day supply) within each Facility in the event of a disaster (i.e. terrorist attack, etc.) and is of such a nature as to require an official declaration of a state of "Shelter in Place." Under this condition, in an effort to prevent contamination, no one will be permitted to enter or leave the Facilities. A defined rotation schedule will be developed by the Contractor for this food inventory. The plan shall be submitted to the Facility's Contract

Monitor and DJS Director of Food and Nutrition Services at least two (2) weeks prior to the Go-Live Date of the contract for review and approval. The Contractor will make any required adjustments within seven (7) days of written notice. The Contractor shall review and revise this annually no less than two (2) weeks prior to the Contract Commencement anniversary date and to submit it to the Facility's Contract Monitor for approval. A copy of these plans will be provided to JLG-RICA and Noyes Center for inclusion in their Emergency Preparedness Plan.

3.2.1.10.10.1 The Contractor shall also provide the Facility's Contract Monitor with a list of the Contractor's employees, including their phone numbers and who should be notified in emergency situations by the Facility's staff. The Contractor's Dietetic Department Director shall be responsible to assure the list is current.

3.2.1.10.11 The Contractor shall not change, by deletion or substitution, an item on any menu which has been approved except in such emergencies as:

3.2.1.10.11.1 An item cannot be served due to non-delivery or late delivery of the item itself and/or other items required for its correct preparation;

3.2.1.10.11.2 An item is not fit for human consumption due to spoilage;

3.2.1.10.11.3 An item does not meet the Contractor's purchasing specification or the standard of quality when delivered, and there is insufficient time available to allow for a redelivery;

3.2.1.10.11.4 An item is unavailable when scheduled for delivery due to a condition or conditions beyond the control of the vendor.

#### 3.2.1.11 Clinical Nutrition Services

3.2.1.11.1 The Contractor shall provide a Dietetic Department Director for JLG-RICA to oversee the dietetic operations at JLG-RICA and Noyes Center, perform administrative duties and coordinate the delivery of food services in conjunction with the Center's (JLG-RICA) Clinical Dietitian.

3.2.1.11.2 In the absence of the regular Dietetic Department Director, the Contractor shall provide a qualified individual to assume the administrative responsibility of the Dietetic Department.

3.2.1.11.3 The Contractor's Dietetic Department Director may not perform the clinical dietary requirements of this Contract unless the Dietetic Department Director is a Registered Dietitian (RD), licensed by the Board of Dietetic Practice, State of Maryland.

3.2.1.11.4 The Dietetic Department Director shall supervise and assume responsibility for the training of tray assembly employees and/or client cafeteria service employees with respect to modified diets.

3.2.1.11.5 The Clinical Dietitian who is an employee of the Facility (JLG-RICA) and the Dietetic Department Director shall work together to:

3.2.1.11.5.1 Provide alternative or substitute menu items, including items for modified diets and food allergies.

3.2.1.11.5.2 Prepare menus for special diets, including but not limited to vegetarian, no pork, etc.

- 3.2.1.11.5.3 Determine foods acceptable to residents/clients through the use of “food acceptance surveys.”
- 3.2.1.11.6 Jointly, the Clinical Dietitian and the Dietetic Department Director who is an Employee of the Contractor shall perform the following duties.
  - 3.2.1.11.6.1 Revise, whenever necessary, and completely review annually, the nutrition care policies and procedures to assure they are at all times in compliance with the current requirements, standards and regulations of all accreditation, licensing and any other Federal, State, or local agency having jurisdiction of the Center.
  - 3.2.1.11.6.2 Maintain a file of menus, as served, for all resident/clients of both Centers for period of no less than (3) years and until all audit requirements are met. Recordkeeping is 3 years plus the current year for USDA CNPs.
  - 3.2.1.11.6.3 Develop, implement and maintain a system of identification for each resident/client receiving a meal and identifying a mechanism for each resident/client who requires an alternative menu item or special diet.
  - 3.2.1.11.6.4 Prepare and provide the clinical nutrition education component of the department employee orientation and an on-going in-service education program. Sessions are to be identified as part of the Department’s overall orientation and in-service training education plan.
  - 3.2.1.11.6.5 Develop, implement, and monitor, the clinical nutrition care aspects of the performance improvement program for the Dietary Department. This shall be achieved through clinical nutrition care studies, outcome evaluations, problem identification, solution and follow-up. As part of the clinical aspects, at least semi-annually, the following studies/surveys shall be performed:
    - 3.2.1.11.6.5.1 A food acceptance study/survey shall be performed allowing for all residents/clients to participate.
    - 3.2.1.11.6.5.2 A meal/tray accuracy study representing a minimum of 95% of the meal/trays served in each facility at one meal. Meals studied shall not be consecutively the same but shall vary. The Dietetic Department Director shall combine all clinical nutrition care quality assessment and improvement elements above into the overall department plan.
  - 3.2.1.11.6.6 Annually, no less than two (2) weeks prior to the anniversary date of Contract Commencement, review and update as necessary the clinical nutrition care aspects of the overall Dietetic Department Performance Improvement Program. With the Dietetic Department Director, add new, revised, updated aspects to the overall program which will then be resubmitted to the Performance Improvement Committee for review and approval.

### 3.2.1.12 Food Quality

- 3.2.1.12.1 All food purchased by the Contractor shall comply minimally with the quality and grade standards identified in this section and shall be wholesome and free from spoilage and decay. All food sources shall be approved by the Contract Monitor. Purveyors and

distributors shall maintain all storage and distribution facilities in full compliance with the applicable State of Maryland sanitation regulation and those of their local jurisdiction.

- 3.2.1.12.1.1 Meats: All solid cut meats shall be at least USDA choice (poultry Grade A) and shall have been inspected and passed by the United States Department of Agriculture. Ground beef shall be purchased to include at a maximum 20% fat content. Grading certificate shall be provided where and when required. The latest revision of the USDA Institutional Meat Purchases (IMPS) shall be used. All deliveries of potentially hazardous foods shall conform to the Maryland Department of Health and regulations governing temperature maintenance during transportation.
- 3.2.1.12.1.2 Fresh Fruits and Vegetables: All fresh fruits and vegetables shall be top grade, depending on the specific fruit or vegetable and its use in preparation of finished products.
- 3.2.1.12.1.3 Frozen Foods: All frozen foods shall be USDA Grade AA or A food and shall have been packed under continuous inspection of the U. S. Department of Agriculture. All deliveries of frozen foods shall conform to the Maryland Department of Health and Mental Hygiene regulations governing transportation of frozen foods and temperature maintenance during transportation.
- 3.2.1.12.1.4 Fresh Eggs: Fresh eggs shall not be used except for hard cooked eggs and egg salad. All fresh liquid and frozen eggs shall be pasteurized and processed under continuous inspection of the USDA. All cans and packages shall bear the USDA seal showing the date of inspection. Frozen eggs, once thawed, shall be used promptly and may not be refrozen. All deliveries of potentially hazardous foods shall conform to the Maryland State Department of Health and Mental Hygiene regulations governing temperature maintenance during transportation.
- 3.2.1.12.1.5 Fresh Poultry: All poultry, fresh or frozen, shall have been inspected and passed for wholesomeness by the USDA, and shall be Grade A or better.
- 3.2.1.12.1.6 Canned Foods: All canned foods shall be USDA inspected and no less than Grade A, or extra standard; except that Grade B may be used for soups, stews, and similar items.
- 3.2.1.12.1.7 Dairy Products: All dairy products shall conform to Maryland State Department of Health and Mental Hygiene standards. Fluid milk shall contain a minimum of 400 IU of vitamin D and 2,000 IU of vitamin A per quart and shall be skim or 1% fat. All deliveries of potentially hazardous foods shall conform to the Maryland State Department of Health and Mental Hygiene regulations governing temperature maintenance during transportation.

### 3.2.1.13 Storage

- 3.2.1.13.1 Designated storage areas shall be provided to the Contractor by JLG-RICA. The Contractor shall be responsible for the security and cleanliness of these areas.
- 3.2.1.13.2 The Contractor is responsible for maintaining adequate inventory of all food items to serve residents /clients, employees and to provide for emergency menu requirements. Sufficient inventory of cleaning supplies, dishwashing compounds, tumblers, plates,

utensils, pots and pans, office supplies, sanitation supplies, trashcan liners and paper goods shall be maintained.

- 3.2.1.13.3 A bi-weekly (every two weeks) physical inventory of food and supplies shall be taken by the Contractor. A perpetual inventory may be substituted for the bi-weekly inventory.

#### 3.2.1.14 Sanitation

- 3.2.1.14.1 Operations under this Contract shall be conducted in conformance with regulations of any health department having jurisdiction, including those promulgated by the Maryland State Department of Health and Mental Hygiene entitled Food Service Facilities (COMAR 10.15.03), and in compliance with the requirements of Montgomery County. It shall be the Contractor's responsibility to be familiar with and to comply with these regulations provided that the Contractor shall not be held responsible for deficiencies related to building or the appropriate spaces within the building, which are the responsibility of the Facility. The Contractor shall alert the Contract Monitor to any such deficiencies as they become known.

- 3.2.1.14.2 The premises, furniture, fixtures and equipment are to be kept in a clean, sanitary and safe condition at all times according to all applicable regulations including HACCP-based SOP's (see [http://sop.nfsmi.org/sop\\_list.php](http://sop.nfsmi.org/sop_list.php)). The Contractor shall be responsible for the following areas:

- 3.2.1.14.2.1 Kitchen – Food preparation surfaces, equipment floor drains, floors, light fixtures, vents, fans, walls, small equipment, utility carts, cutting boards, etc. The Contractor shall be responsible for exhaust hoods and filters except that the Facility shall be responsible for the exhaust ducts above the ceiling.
- 3.2.1.14.2.2 Dishwashing and Utensil Washing Areas – Includes all equipment, floor drains, floor walls, etc.
- 3.2.1.14.2.3 Student Cafeteria – Walls, tables and chairs will be cleaned after each meal and floors will be swept after each meal. JLG-RICA staff will wet mop the floor at least once a day.
- 3.2.1.14.2.4 Noyes Center Clean Up – The Contractor shall be responsible for all clean up after the meal including cleaning of the hot holding unit. The Contractor shall also be responsible for cleaning the refrigerator in the back pantry area daily and removing any outdated bag meals or expired milk.
- 3.2.1.14.2.5 Receiving Dock – The area that is adjacent to the Kitchen/Prep Area will be maintained in a clean and orderly manner at all times and will include scrubbing and hosing as required.
- 3.2.1.14.2.6 Storage Areas – Those under control of the Contractor including walk-in refrigerators and freezers and warehouse storage area will be maintained in a clean and orderly manner at all times.
- 3.2.1.14.2.7 Employees Lounge - Walls, tables and chairs will be cleaned after each meal and floors will be swept after each meal. JLG-RICA staffs will wet mop the floor at least once a day.

- 3.2.1.14.3 The Contractor shall budget for and purchase all cleaning agents and chemicals, and be responsible for the storage and controlled usage of these products. All such compounds shall be non-phosphorous and of a type approved for use within food service areas.
- 3.2.1.14.4 The Contractor shall comply with all requirements of the “Access to Information about Hazardous and Toxic Substances Law and Regulation” as established by the State of Maryland Department of Labor, Licensing and Regulation, Division of Labor and Industry. A copy of this document is available from the Division of Labor and Industry, at the Division of Labor and Industry website at <https://www.dllr.state.md.us/labor/rtkhaztox/wordrtkbrochure.pdf> .
- 3.2.1.14.5 The Contractor is responsible for moving all refuse to a designated location for pick-up and removal. The Contractor will not be responsible for the removal of refuse from the Facility’s property. Bins will also be available for recycling of cardboard.
- 3.2.1.14.6 The Contractor shall regularly include Hazard Analysis and Critical Control Point food safety and sanitation standards as part of the on-going in-service training program for employees at all levels. This training shall be supplemented as necessary to reinforce specific sanitation problem areas. As a minimum, the Dietetic Department Director shall have completed a formal sanitation certification course acceptable to the Montgomery County Health Department. It is recommended that all Supervisory level personnel have similar training. At all times someone in the kitchen must be ServSafe certified to meet the regulations of the Montgomery County Health Department.
- 3.2.1.14.7 The Contractor shall develop a sanitation manual to include procedures for the cleaning and sanitizing of all food service equipment for which it is responsible. Procedures shall identify as a minimum the cleaning equipment to be used, method of cleaning and sanitizing equipment, including instructions regarding dilutions and/or cleaning agents as well as necessary safety precautions. The manual shall be submitted to the Facility’s Contract Monitor for approval no less than two (2) weeks prior to the Go-Live Date. Any changes required shall be made within seven (7) days of notification to the Contractor.
- 3.2.1.14.8 The Contractor shall develop, implement and monitor a daily cleaning and sanitation schedule for the Dietetic Department. The schedule shall be submitted to the Facility’s Contract Monitor for approval no less than two (2) weeks prior to the Go-Live Date. Any changes required shall be made within seven (7) days of notification to the Contractor.
- 3.2.1.14.9 The Facility will maintain a separate contract for pest control. The Contractor shall ensure that the Dietetic Department Director or a supervisory level designee is on duty when service is provided.
- 3.2.1.14.10 The Contractor shall log and monitor the temperature of all refrigerators, freezers and the dish machine at least three times a day to assure appropriate temperatures are maintained.
- 3.2.1.14.11 The Contractor shall create, implement, and enforce guidelines and procedures in regard to making sure that all kitchen equipment not necessary for the maintenance and/or storage of food are shut down at the end of the Contractor’s work day.
- 3.2.1.14.12 The Contractor shall forward all manuals, schedules, and documents indicated to be submitted to the Facility’s Contract Monitor for approval prior to the commencement of the Contract no less than two (2) weeks prior unless otherwise specified. Review and approval or requests for changes will be made to Contractor within seven (7) days after

materials are received. All requests for changes shall then be performed within one (1) week of notice to the Contractor.

#### 3.2.1.15 Security

- 3.2.1.15.1 Keys will be provided to the Contractor by the Facility for all storage and Dietetic Department areas assigned to the Contractor's use. The only Facility personnel to have access to keys to these areas will be the Director of Maintenance, the Chief Operating Officer and Chief Executive Office.
- 3.2.1.15.2 The Contractor will be responsible for issuing keys to their employees for the areas assigned for fulfillment of the Contract.
- 3.2.1.15.3 Any loss of keys shall be reported immediately to the Center's Contract Monitor. At the Facility's option the Contractor may be charged for replacement keys and/or for lock changes resulting because keys were lost.
- 3.2.1.15.4 Duplication of these keys or their possession by unauthorized personnel is a criminal offense. (See Annotated Code of Maryland, Criminal Law Article 7-204.)

#### 3.2.1.16 Vehicles

- 3.2.1.16.1 The Contract shall be responsible for the provision of all vehicles and drivers required for the performance of this Contract. Insurance, maintenance, service and/or replacement of vehicles shall be the responsibility of the Contractor. Employees of the Contractor may not drive State owned vehicles.
- 3.2.1.16.2 The Contractor shall utilize parking spaces in the school parking lot and parallel spots along the side of the school unless otherwise notified by the Facility. Employees of the Contractor may only enter and exit the Facility through the loading dock doors and the school entrance closest to Blackwell Road.

#### 3.2.1.17 Expendable Inventory

- 3.2.1.17.1 The Facility and Contractor shall jointly inventory before the Go-Live Date of the Contract, including all china, flatware, glassware and all other equipment and supplies. A signed copy of the inventory shall be provided to both parties. The Facility and Contractor shall then mutually agree as to the adequacy of these inventory levels for normal requirements; the Facility shall bring below normal inventories up to the agreed upon operating level at the Facility's expense. The Contractor shall be responsible thereafter for making necessary replacement to maintain the agreed upon level. The Contractor shall bring below-normal inventories to the agreed upon operating level at the termination of the Contract.
- 3.2.1.17.2 The Contractor shall sign for all other items provided and return them in good condition to the Center at completion of the contract taking into consideration normal wear and tear.

#### 3.2.1.18 Quality Assessment

- 3.2.1.18.1 The Contractor shall develop a performance improvement program for the Dietetic Department and submit it to the Facility's Contract Monitor for review and approval within thirty (30) days of the Go-Live Date. The Dietetic Department performance improvement program will be subject to review and acceptance by the Facility's

Performance Improvement Committee for inclusion in the Facility's overall plan. The program shall be reviewed annually by the Contractor's Dietetic Department Director with contemplated revisions submitted for review and approval to the facility's Contract Monitor and the Facility's Performance Improvement Committee. A written report documenting performance improvement activities completed during the year shall be submitted to the Facility's Contract Monitor annually before the end of January and (2) weeks prior to the expiration of the Contract.

- 3.2.1.18.2 The focus of the performance improvement program shall be the identification and resolution of problems associated with any aspect of the Dietetic Department services. The review and evaluation of identified problems shall include corrective action and plans for restudy.

#### 3.2.1.19 Vending Services

- 3.2.1.19.1 Vending machines for use within the Facilities shall not be a part of this Contract. The Contractor shall not be permitted to install or place vending machines in the Facilities.

#### 3.2.1.20 Catering Services

- 3.2.1.20.1 Occasionally JLG-RICA allows groups from outside the facility or civic organizations to use the Facility's conference rooms. Often these groups wish to serve coffee, snacks or full meals to their attendees. The Facility will refer these groups to the Contractor if they desire to have food items for their meeting.
- 3.2.1.20.2 The Contractor will provide a menu of catering services for outside groups. This menu of services must be approved by the Contract Monitor before they can be offered to the outside groups. The Facility reserves the right to modify or discontinue menu offerings after they have been approved.
- 3.2.1.20.3 The Contractor will have full authority to set prices for their catering services. They will notify the CEO's office 30 days prior to implementing price changes to their menu of services.
- 3.2.1.20.4 The Contractor will limit catering services to outside groups that are using JLG-RICA or Noyes Center facilities. The Contractor is strictly prohibited from using the JLG-RICA kitchen to provide catering services beyond JLG-RICA and Noyes Center grounds.
- 3.2.1.20.5 Booking of JLG-RICA and Noyes facilities by outside groups must be approved by either the JLG-RICA Chief Executive Officer or Chief Operating Officer or the Noyes Superintendent. The Contractor will be notified of the booking details from the CEO's or Superintendent's office before the Contractor finalizes any catering arrangements.
- 3.2.1.20.6 The Contractor will use formal written catering agreements with the outside groups. These contracts must stipulate that the provision of services represents an explicit agreement between the Contractor and the outside group and that JLG-RICA or Noyes is not materially responsible for commitments made between these parties.
- 3.2.1.20.7 At no time will alcoholic beverages be served during these events. This is a violation of hospital policy, state regulation and local liquor law. This includes but is not limited to beer, wine, distilled spirits, hard cider, and malt liquor.

- 3.2.1.20.8 The Center will provide all tables and chairs needed for catering events. The CEO's office will coordinate with the outside group the number and placement of these items.
- 3.2.1.20.9 Other than modest table decorations, the Contractor is prohibited from decorating or enhancing either facility for events. There shall be no decorations that include open flames such as candles, lanterns, etc. Any decorations provided by the Contractor must comply with NFPA regulations in terms of materials and placement.
- 3.2.1.20.10 The Contract will provide sufficient manpower for catering events so that food service to other areas is not adversely affected.
- 3.2.1.20.11 At the conclusion of catering events the Contractor will be responsible for clearing all food service related items and disposing refuse in the facility's dumpsters.

### **3.2.2 Staffing**

3.2.2.1 Dietetic Department Director. The Contractor shall provide a Dietetic Department Director. The Dietetic Department Director shall be considered Key Personnel and subject to the Provisions of Section 1.23. The Dietetic Department Director shall meet the following qualifications:

#### 3.2.2.1.1 Education

3.2.2.1.1.1 Possess a bachelor's degree from a four year accredited college or university in Dietetics, Foods, Nutrition, Food Service Management, Food Service Administration, Hotel and Restaurant Administration, Hospitality Management or a similar major with a curriculum that requires the completion of a variety of courses such as quantity food purchasing and food production, menu development, inventory management, food cost control, budgeting, sanitation and nutrition courses required to satisfactorily direct the functions of a complex dietetic department in the provision of quality nutrition care and food services, or,

3.2.2.1.1.2 Be a Registered Dietitian with the Commission of Dietetic Registration and be licensed by the Board of Dietetic Practice, State of Maryland. A photocopy of current registration and license shall be maintained by the Contractor in the Department and be updated annually for review by licensure and accreditation surveyors.

#### 3.2.2.1.2 Experience

3.2.2.1.2.1 Possess four (4) years full-time successful experience in a management position of a Dietetic Department, full-service menu restaurant or similar type food service operation with a minimum of two (2) years current, continuous employment with the Contractor during which one (1) year shall have been managing a complex food service operation.

#### 3.2.2.1.3 Professional Qualifications

3.2.2.1.3.1 Possess current membership in comparable food service oriented professional associations and provide annually proof of a minimum of fifteen (15) hours of professional continuing education related to the administrative and management responsibilities of a complex dietetic department. Documentation of continuing education shall be updated annually and maintained by the

Contractor in the Dietary Department at JLG-RICA for review by licensure and accreditation surveyors.

#### 3.2.2.1.4 Certification

- 3.2.2.1.4.1 Have a certificate of completion of a Sanitation course approved by the Department of Health and Mental Hygiene. Recertification must be completed as needed to maintain current certification throughout the duration of the Contract.
- 3.2.2.1.4.2 Possession of a ServSafe Certification is highly desirable and shall be required after six months of service. If the Dietetic Department Director is not certified at the time of Bid submission, the Contractor shall submit evidence of his or her ServSafe Certification to the Contract Monitor by no later than six months after Contract Commencement. A SafeServ certified member of the Contractors staff must be in the Dietary Department whenever it is open.
- 3.2.2.1.4.3 At the discretion of the Facility's Administration, an individual with lesser qualifications may be considered, provided the Contractor can satisfactorily substantiate the inability to recruit an acceptable candidate who meets all the qualifications for the full-time Dietetic Department Director.

#### 3.2.2.2 Absence of Dietetic Department Director

- 3.2.2.2.1 When the Dietetic Department Director is the sole Management representative of the Contractor at JLG-RICA, and he/she is absent beyond two (2) weeks or when there are two (2) management representatives, the Dietetic Director and a designated Assistant Director, and one (1) of these employees is absent beyond four (4) weeks, the Contractor must provide at that point as a replacement an individual with the same defined qualifications who is acceptable to the Contract Monitor.

#### 3.2.2.3 Supervisory Employees

- 3.2.2.3.1 The Contractor shall provide supervisory employees in sufficient numbers to ensure that at least one (1) employee of the Contractor with designated supervisory responsibility is on duty whenever the Dietetic Department is operational. This means that from the time the first food service employee reports for duty in the morning until the last food service employee departs in the evening, there shall be at least one (1) person with supervisory responsibility on duty seven (7) days per week. All Supervisory Employees shall be SafeServ certified.

#### 3.2.2.4 Staff Employees

- 3.2.2.4.1 The number of employees to be employed and their classifications shall be defined in the Contractor's Technical Offer and be authorized by the Contract Monitor prior to employment of any employees for this Contract. For all employee classifications the term full-time shall be defined as forty (40) hours per week. For employee classifications designated other than full-time, specify the number of hours.

#### 3.2.2.5 Job Specifications

3.2.2.5.1 The Contractor shall provide job specifications for all authorized positions to the Facility's Contract Monitor for review and approval no less than two (2) weeks prior to the Go-Live Date. Any changes required shall be made within seven (7) days of notification to the Contractor. The Contractor shall review and revise job specifications annually and submit them to the Facility's Contract Monitor for review and approval no less than two (2) weeks prior to the anniversary of Contract Commencement.

#### 3.2.2.6 Job Descriptions

3.2.2.6.1 The Contractor shall develop detailed job descriptions for each employee which identify all assigned tasks and which indicate the time each task is to be performed. These shall be submitted to the Facility's Contract Monitor no less than two (2) weeks prior to the Go-Live Date for review and approval. Any changes required shall be made within seven (7) days of notification to the Contractor. The Contractor shall review and revise the job descriptions annually and submit to the Center's Contract Monitor for review and approval no less than two (2) weeks prior to the anniversary of Contract Commencement.

#### 3.2.2.7 Employee Schedule

3.2.2.7.1 A monthly employee time schedule shall be prepared in sufficient time for it to be posted two (2) weeks prior to implementation of the schedule. It shall include the work hours for all employees of the Contractor. A copy shall be submitted simultaneously to the Facility's Contract Monitor.

#### 3.2.2.8 Dietetic Department Director Schedule

3.2.2.8.1 The Contractor shall submit to the Center's Contract Monitor, no less than two (2) Business Days prior to the beginning of each month, a schedule for the Dietetic Department Director indicating duty days, work hours, vacation days, holidays, in-service training days, etc. The Facility's Contract Monitor shall be notified of any subsequent non-emergency changes to the schedule as soon as they are known.

#### 3.2.2.9 Staffing Responsibility

3.2.2.9.1 It shall be the Contractor's responsibility to provide the number of employees as proposed regardless of absences due to vacation, illness, labor dispute, strikes or any other reason.

#### 3.2.2.10 Timekeeping

3.2.2.10.1 The Contractor shall be responsible for all personnel timekeeping related functions.

#### 3.2.2.11 Oversight and Supervision of Employees

3.2.2.11.1 The Contractor shall be responsible for the supervision of its employees at all times that work is in progress to ensure compliance with all requirements of these specifications, and to ensure appropriate procedures are utilized to prohibit injury to the employees, public, and residents/clients, or damage to the physical facilities. The Contractor shall be familiar with and enforce all regulations of Occupational Safety and Health Administration (O.S.H.A.) and any other State or Federal requirements pertaining to safety (including MSDS information on cleaning chemicals in the kitchen area), fire, etc.

### 3.2.2.12 New Employee Orientation

- 3.2.2.12.1 All Contractor employees shall attend a general orientation program given by the Facility during their first week of employment. Documentation of employees' attendance at the orientation shall be maintained in their personnel files for review by licensure and accreditation surveyors.
- 3.2.2.12.2 All employees shall participate in a Departmental orientation conducted by the Contractor during the first week of their employment. As appropriate to the employee's level of responsibility, each employee shall receive instruction and demonstrate competence in: fire safety procedures, client and staff courtesies; personal hygiene and infection control; the proper inspection, handling, preparation, serving, and storing of food; portion control; comprehending modified diet menus; sanitation procedures; waste disposal; safe operation of equipment; general safety; writing modified diets; giving diet instructions; developing, implementing and following nutritional care protocol; employee supervision; management; etc. Documentation of the employees' orientation within the Department shall be maintained in their personnel files for review by licensure and accreditation surveyors.
- 3.2.2.12.3 As part of the Departmental orientation, the clinical Dietitian will instruct new employees with respect to the special nutritional requirements of the Facilities resident/client types and will arrange with the appropriate departmental staff for him/her to accompany them to observe a meal at both Facilities.

### 3.2.2.13 Internal Continuing Education

- 3.2.2.13.1 The Contractor shall provide relevant monthly in-service training/education programs for all Dietetic Department employees on all shifts. The Contractor shall develop an annual schedule. The annual in-service training/education program shall include safety, sanitation, and infection control each year and other subjects as required by licensure and accreditation agencies.

### 3.2.2.14 Hazard Analysis Critical Control Point

- 3.2.2.14.1 The Contractor shall develop a written plan to provide orientation training for new employees and on-going training for all employees in Hazard Analysis Critical Control Point (HACCP) procedures and the handling of food if a critical control point is not under control due to employee error, equipment malfunction or power failure.

### 3.2.2.15 External Continuing Education

- 3.2.2.15.1 The Contractor shall provide outside educational opportunities for the Dietetic Department professional employees as part of their continuing education program. A reasonable amount of release time to attend such programs will be granted provided the subject matter is consistent with the individual's direct responsibilities at the Facilities. Requests for release time shall be submitted and approved in advance by the Facility's Contract Monitor. The Contractor will maintain documentation of continuing education participation in the employee's file.

### 3.2.2.16 Corporate Representatives

- 3.2.2.16.1 The Contractor shall ensure that a representative from the corporate management staff and a supervising Registered Dietitian of the company will visit the Facility at least

monthly. Visits are to be coordinated so as to assure that the Facility's Contract Monitor is available at the time of the visit(s). A written report of all visit(s) shall be provided to the Contractor's Dietetic Department Director and the Facility's Contract Monitor within one (1) week following the visit.

### 3.2.2.17 Weekly Performance Records

3.2.2.17.1 The Dietetic Department Director shall maintain weekly performance records that include a summary of the conditions at Noyes, the number of meals served, and any special events. This record shall be of specific services performed, including site visits (minimum of two (2) per month) and findings at the Noyes Center, and is to be summarized and submitted on a quarterly basis to the Facility's Contract Monitor and the DJS Director of Food and Nutrition Service.

### 3.2.2.18 Hiring of Employees

3.2.2.18.1 The Contractor shall require all prospective employees to complete an application for employment. The Contractor shall give priority consideration to applications from State employees who will be replaced by the Contract(s) resulting from this solicitation.

3.2.2.18.2 The Contractor shall obtain from each prospective employee a signed statement permitting a security background check. The Contractor shall secure at its own expense and shall provide the Facility's Contract Monitor with a Criminal Justice Information System (CJIS) criminal background check on all new employees. The Contractor shall submit evidence of a satisfactory report to the Facility prior to the employee's assignment to the Facility to provide services under the Contract. The Contractor may not hire or maintain an employee under this Contract who has a criminal record under any circumstances.

3.2.2.18.2.1 Employees assigned to Noyes will need to sign a Prisoner Rape Elimination Act disclosure form before employment and at six (6) month intervals after employment on January 1, and July 1.

3.2.2.18.3 All Dietetic Department employees, prior to employment, shall be required to pass a medical examination as specified by Facility policy. The Contractor's policy shall minimally be the same as the Facility policy. Medical Certificates shall be maintained in the employee's file at the Facility for review by licensure and accreditation surveyors. The Contractor shall comply with any and other health testing requirements that are initiated during the term of this Contract. The cost of all such testing shall be the sole responsibility of the Contractor unless otherwise stated in this Contract. The Contractor shall maintain records of all required medical information for each employee as required by regulation and law. The Contractor shall also provide this information to the Facility's Contract Monitor upon request.

3.2.2.18.3.1 Required before employment is verification of immunity to Mumps, Measles and Rubella either through vaccination or titer.

3.2.2.18.3.2 Physician's certification of a current flu vaccination

3.2.2.18.3.2.1 Annually flu vaccinations will be offered to Contractor's employees for free on site.

3.2.2.18.3.3 The Contractor shall test prospective employees for Tuberculosis.

- 3.2.2.18.3.3.1 The first test will be before the prospective employee begins work under the Contract with a follow test 14 days later in accordance with the Center for Disease Control.
- 3.2.2.18.3.3.2 If the employee requires additional diagnostic testing to determine if the employee has infectious Tuberculosis the tests shall be conducted at the Contractor's expense.
- 3.2.2.18.4 The Contractor shall employ and assign to duty only those employees acceptable to the Facilities.
- 3.2.2.18.5 All prospective professional/management employees shall be interviewed and approved by the Facility's Contract Monitor or designee(s).
- 3.2.2.18.6 All new employees shall be subject to a six month probationary period.
  - 3.2.2.18.6.1 If the Contract Monitor determines during the probationary period, and/or course of employment, that an employee of the Contractor is unacceptable, the Contractor shall dismiss the employee or otherwise remove him/her from participation in this Contract.
- 3.2.2.18.7 The Contractor shall require all employees to comply with the rules and regulations of John L. Gildner Regional Institute for Children and Adolescents and the Alfred D. Noyes Center.

### 3.2.2.19 Organizational Chart

- 3.2.2.19.1 The Contractor shall develop an organization chart and submit it to the Facility's Contract Monitor for the Facility to approve at least two (2) weeks prior to the Go-Live Date. The organization chart shall be updated as needed to remain current and will be reviewed annually by the Facility's Contract Monitor.

### 3.2.2.20 Dress Requirements

- 3.2.2.20.1 The Contractor shall require all Contractor Dietetic non-professional (all but the Director and Assistant Director) employees to wear uniforms and develop and enforce a dress code.
  - 3.2.2.20.1.1 The dress code must be in accordance with the State of Maryland Regulations COMAR 10.15.03. Food Service Facilities and policies as included in the Contractor's Policy and Procedure Manual.
    - 3.2.2.20.1.1.1 Proposed uniforms will be subject to the Contract Monitor's approval.
    - 3.2.2.20.1.1.2 The cost of uniforms and laundering will be the sole responsibility of the Contractor.
  - 3.2.2.20.1.2 All employees shall wear hair restraints when present in food service and /or production areas.
  - 3.2.2.20.1.3 The Contractor shall provide all employees with visible identification tags, which must include photographs. Identification tags shall be worn when in the Facilities.

- 3.2.2.20.2 The Contractor shall require all professional employees (Director and Assistant Director, if any) to follow an appropriate dress code when present in the food service and/or production areas. Professional employees' attire when performing job responsibilities within other areas of the Facility will conform to the same dress code policy in effect for other professionals. These requirements shall be identified within the Contractor's dress code policy and included in the Contractor's Policy and Procedure Manual. The dress codes shall be submitted to the Facility's Contract Monitor

### **3.2.3 Equipment**

#### **3.2.3.1 Office Equipment**

- 3.2.3.1.1 The Contractor shall be responsible for the provision of all office equipment necessary to support the food services operation such as a typewriter, computer, calculator, copiers, fax machines, etc.

#### **3.2.3.2 Food Service Equipment**

- 3.2.3.2.1 The Contractor shall be responsible for implementing a system to insure that all food service equipment used in the daily preparation/maintenance of food products have been turned off at the end of the day. If equipment is discovered to have been left on, a letter will be sent to the Dietetic Department Manager notifying them of the problem within three (3) Business Days of discovery. If the number of occasions where food preparation/maintenance equipment is being left on after the close of the day exceeds three (3) times in a twelve (12) month period at either building site, a warning will be sent to the Contractor's headquarters. If the number of occasions exceeds six (6) times at either building site in a twelve (12) month period, a letter will be sent to the corporate office of the Contractor notifying them that the manager on-site will need to be replaced.

### **3.2.4 Performance Requirements / Review**

#### **3.2.4.1 On-going Regular Basis**

- 3.2.4.1.1 The Contract specifications will form the basis of the performance review as a means of quality control and quality assurance to determine the degree of Contractor compliance and level of performance satisfaction.
- 3.2.4.1.2 At any time, when the Contractor's level of performance and/or conditions in any area of their responsibilities is marginal or unacceptable, it will be reviewed by the Facility's Contract Monitor with the Contractor's Dietetic Department Director and /or Clinical Registered Dietitian(s) as appropriate.
- 3.2.4.1.2.1 Marginal or unacceptable performance and/or conditions will be documented with a copy to the Dietetic Department Director and to the corporate management representative and/or supervising Dietitian, as appropriate. For the purposes of this Contract, "marginal or unacceptable" means anything which puts certification or licensure at risk; or repeated violations of the Contract.
- 3.2.4.1.2.2 The Dietetic Department Director shall submit a plan of correction to the Facility's Contract Monitor within two (2) Business Days from the time an unacceptable condition is reviewed with the Dietetic Department Director and/or Clinical Registered Dietitian(s), indicating corrective action and time

frame for completion, The Facility's Contract Monitor will approve or reject the plan within one (1) Business Day.

- 3.2.4.1.3 Quarterly, an on premise departmental review will be conducted by the Facility's Contract Monitor or designee. At a minimum, participants will include a representative of the Contractor's Corporate Management Staff, the Contractor's Supervising Corporate Dietitian, the Facility's Dietetic Department Director and/or Clinical Dietitian(s).
  - 3.2.4.1.3.1 Marginal or unacceptable performance and/or conditions will be documented with a copy to the Dietetic Department Director and to the corporate management representative and/or supervising Dietitian, as appropriate.
  - 3.2.4.1.3.2 The Dietetic Department Director shall submit a plan of correction to the Facility's Contract Monitor within two (2) Business Days from the time an unacceptable condition is reviewed with the Dietetic Department Director and/or Clinical Registered Dietitian(s), indicating corrective action and time frame for completion, The Facility's Contract Monitor will approve or reject the plan within one (1) Business Day.
  - 3.2.4.1.3.3 A summary of the quarterly review findings will be documented by the Contract Monitor with a copy to each participant.
- 3.2.4.1.4 In the event an unacceptable condition is life-threatening to residents/clients, employees, etc., corrective action, as directed by the Facility's Contract Monitor, shall be initiated within one Business Day, if not immediately.
- 3.2.4.1.5 Continuing failure to satisfactorily respond in the time frames required in accordance with this section, including but not limited to more than one (1) instance of unacceptable conditions that are life threatening, or more than a total of three (3) situations involving marginal or unacceptable conditions during a twelve (12) month period, may be viewed as grounds for termination.

### **3.2.5 Responsibilities of John L. Gildner Regional Institute for Children and Adolescents and Alfred D. Noyes Center**

#### 3.2.5.1 Facility and Equipment

- 3.2.5.1.1 JLG-RICA will provide the Contractor with general kitchen facilities, permanently installed food service equipment, designate furnished office space, storage areas, locker area, restroom facilities and all utensils and tableware associated with the food service operation.
- 3.2.5.1.2 The Noyes Center will provide a food service line, hot holding unit, and refrigeration unit for use by the Contractor.

#### 3.2.5.2 Utilities

- 3.2.5.2.1 The Facilities will provide the Contractor with and pay for electric, gas, steam, water and refrigeration as associated with and required for the sanitary operation of the Dietetic Department.
- 3.2.5.2.2 JLG-RICA will provide the Contractor with local telephone service and equipment within the Facility. The Contractor shall be responsible for all associated long distance expenses.

- 3.2.5.2.3 JLG-RICA will provide the Contractor with a high speed Internet connection. The Contractor will be responsible for furnishing any networking equipment to deliver data from the building's demarcation point to offices needing Internet connectivity. The Facility will provide all connectivity infrastructure needed by the Contractor.

### 3.2.5.3 Maintenance and Repairs

- 3.2.5.3.1 The Facilities will maintain and repair the building structure, including the maintenance of water, steam, sewer, and electrical lines, ventilation, electrical lighting fixtures, and space heating systems. The Contractor will bear the expense of repairs necessitated by its employees' negligence or maliciousness.
- 3.2.5.3.2 All requests for repair service or replacement of equipment shall be approved by the Facility's Administration. The Facilities will assume responsibility for payment of all equipment repairs and replacements approved by them.

### 3.2.5.4 Refuse Removal and Housekeeping

- 3.2.5.4.1 JLG-RICA will provide refuse removal and all other housekeeping services not delegated to the Contractor.

## 3.2.6 Role of the Contract Monitor

### 3.2.6.1 Liaison Role

- 3.2.6.1.1 The Facility's Contract Monitor is the liaison between the Facility's Administration and the Contractor. The Contract Monitor may obtain assistance for any of the following responsibilities from an appropriate source. The Facility's Contract Monitor may designate a qualified alternate in his/her absence. The Contract Monitor shall:
  - 3.2.6.1.1.1 Review the Contractor's operating policies and procedures for the Dietetic Department prior to final approval.
  - 3.2.6.1.1.2 Review and approve the Policy and Procedure Manual prepared by the Contractor prior to commencement of the Contract.
  - 3.2.6.1.1.3 Review and approve all job specifications developed by the Contractor and annual revisions thereafter.
  - 3.2.6.1.1.4 Review and approve individual employee job descriptions developed by the Contractor and annual revisions thereafter.
  - 3.2.6.1.1.5 Approve all special food/function requests of JLG-RICA. Special food/functions requests of Noyes Center shall be approved by the Superintendent of the Noyes Center and the DJS Director of Food and Nutrition Services.
  - 3.2.6.1.1.6 Review and recommend changes in the Contractor's employment practices and/or staffing patterns.
  - 3.2.6.1.1.7 Review and approve the Contractor's in-service training plans and observe in-service training.
  - 3.2.6.1.1.8 Establish a regular meeting schedule with the Dietetic Department Director.
  - 3.2.6.1.1.9 Monitor the performance of the clinical Dietitian(s) by reviewing quarterly accomplishment reports of the Dietitian(s) with the Dietetic Department Director by meeting monthly with the Contractor's supervising Dietitian to review findings and assess that all licensure and accreditation/standards are being performed at an acceptable level of compliance.

- 3.2.6.1.1.10 Meet with the Contractor's Corporate Management representative and the supervising Registered Dietitian monthly.
- 3.2.6.1.1.11 Review and approve all cycle menus.
- 3.2.6.1.1.12 Review and approve monthly, anticipated menu changes/revisions.
- 3.2.6.1.1.13 Review and approve portion sizes and selling prices of food for the employees prior to initiation of the Contract and thereafter, according to price revision schedules developed by the Contractor.
- 3.2.6.1.1.14 Review and approve emergency menu plans.
- 3.2.6.1.1.15 Facilitate the coordination of the Contractor's plan for responding to both an internal and external disaster with the appropriate individual/committee responsible for the total Facility plan and the annual revision thereafter.
- 3.2.6.1.1.16 Review and make determinations concerning any requests for additional or replacement equipment by the Contractor.
- 3.2.6.1.1.17 Review and make determinations concerning equipment repairs and /or service.
- 3.2.6.1.1.18 Monitor the Contractor's performance with respect to the Contract requirements, through review of licensing and accreditation inspection reports, conducting the performance reviews, staff consultations and other appropriate methods.
- 3.2.6.1.1.19 Review and approve the sanitation manual and schedule developed by the Contractor.
- 3.2.6.1.1.20 Coordinate the quarterly Contract performance requirements/review evaluation.
- 3.2.6.1.1.21 Make requests to the Contractor concerning any aspect of the Dietetic Department operations.
- 3.2.6.1.1.22 Ensure that the Facility policies and procedures are understood and complied with by the Contractor's employees.

### **3.2.7 Successor Transition**

#### **3.2.7.1 Failure to Succeed Self**

- 3.2.7.1.1 In the event the Contractor is not awarded a subsequent contract when this procurement is re-solicited, the Contractor must cooperate with the incoming new Contractor in the following manner:
  - 3.2.7.1.1.1 Take and verify all food, beverage, cleaning and sanitation supplies and equipment inventories.
  - 3.2.7.1.1.2 Leave premises and equipment in the same condition as when the Contract began with the exception of normal wear and tear. This will be verified by an inspection conducted by the Facility's Contract Monitor in the presence of the current Contractor's Dietetic Department Director.
  - 3.2.7.1.1.3 In order to enhance the transition from one Contractor to another, and in keeping with the intent of Section 3.2.7.1.4 of this section, the Contractor shall not impede any of its employees working under this Contract from accepting employment with a successor vendor for a subsequent contract.
- 3.2.7.1.2 The current Contractor will verify in writing all transition activities which occurred relative to the transfer of food, supplies, equipment and/or funds identifying the value and purpose to the Facility's Contract Monitor with a copy to the incoming Contractor.
- 3.2.7.1.3 The Center will make space available to the in-coming Contract two weeks (2) weeks prior to takeover for job interviews and overall planning for the transition.

- 3.2.7.1.4 In the event the current Contractor is not awarded a subsequent contract when this procurement is re-solicited, the incoming new contract awardee is encouraged to extend the opportunity of employment to as many of the previous Contractor's employees as are desirous of continuing employment under the new contract as the new contract awardee determines it can accommodate.

### **3.3 Security Requirements**

#### **3.3.1 Employee Identification**

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

#### **3.3.2 Criminal Background Check**

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

#### **3.3.3 Information Technology**

For purposes of this solicitation and the resulting Contract:

- (a) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., Com. Law § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., State Gov. § 10-1301(c).
- (b) "Relevant subContractor" includes any subContractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subContractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (c) The Contractor, including any relevant subContractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and shall ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed,

disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.

- (d) The Contractor, including any and all subContractor(s), agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State of Maryland Department of Information Technology Security Policy: <http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>. The State IT Security Policy may be revised from time to time. The Contractor and all subContractors shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

### 3.3.3.1 Information Security Requirements

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

- (a) Establish separate production, test, and training environments for systems supporting the services provided under this Contract and ensure that production data is not replicated in the test and/or training environment unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements.
- (b) Apply hardware and software hardening procedures as recommended by the manufacturer to reduce the Contractor/subContractor's systems' surface of vulnerability. The purpose of system hardening procedures is to eliminate as many security risks as possible. These procedures may include but are not limited to removal of unnecessary software, disabling or removing of unnecessary services, the removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor/subContractor's system configuration files.
- (c) Establish policies and procedures to implement and maintain mechanisms for regular internal vulnerability testing of operating system, application, and network devices supporting the services provided under this Contract. Such testing is intended to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the Contractor's and/or subContractor's security policy. The Contractor and any relevant subContractor(s) shall evaluate all identified vulnerabilities for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.
- (d) Where website hosting or Internet access is the service provided or part of the service provided, the Contractor and any relevant subContractor(s) shall conduct regular external vulnerability testing. External vulnerability testing is an assessment designed to examine the Contractor's and subContractor's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. The Contractor and any relevant subContractor(s) shall evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the system's security and/or integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under this Contract.

- (e) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation.
- (f) Enforce strong user authentication and password control measures over the Contractor/subContractor's systems supporting the services provided under this Contract to minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.
- (g) Ensure State data under this service is not processed, transferred, or stored outside of the United States.
- (h) Ensure that State data is not comingled with the Contractor's and subContractor's other clients' data through the proper application of data compartmentalization security measures. This includes but is not limited to classifying data elements and controlling access to those elements based on the classification and the user's access or security level.
- (i) Apply data encryption to protect State data, especially Sensitive Data, from improper disclosure or alteration. Data encryption should be applied to State data in transit over networks and, where possible, State data at rest within the system, as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2.  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- (j) Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:  
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- (k) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subContractor's performance to confirm the effectiveness of these measures for the services being provided under this Contract.
- (l) Ensure system and network environments are separated by properly configured and updated firewalls to preserve the protection and isolation of Sensitive Data from unauthorized access as well as the separation of production and non-production environments.
- (m) Restrict network connections between trusted and untrusted networks by physically and/or logically isolating systems supporting the services being provided under the Contract from unsolicited and unauthenticated network traffic.
- (n) Review at regular intervals the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed,

including the rationale or compensating controls implemented for those protocols considered insecure but necessary.

- (o) Ensure that the Contractor's and any subContractor's personnel shall not connect any of their own equipment to a State LAN/WAN without prior written approval by the State. The Contractor/subContractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor/subContractor-owned equipment to a State LAN/WAN.

### **3.3.3.2 Contingency / Disaster Recovery Plans**

- (a) The Contractor and any relevant subContractor(s) shall have robust contingency and disaster recovery plans in place to ensure that the services provided under this Contract will be maintained in the event of disruption to the Contractor/subContractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- (b) The contingency and disaster recovery plans must be designed to ensure that services under this Contract are restored after a disruption within 2 hours in order to avoid unacceptable consequences due to the unavailability of services.
- (c) The Contractor and any relevant subContractor(s) shall test the contingency/disaster recovery plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one annual test shall include backup media restoration and failover / fallback operations.
- (d) Such contingency and disaster recovery plans shall be available for the Department to inspect and to practically test at any reasonable time, and shall be subject to regular updating, revision, and testing throughout the term of the Contract.

### **3.3.3.3 Incident Response Requirement**

- (a) The Contractor shall notify the Contract Monitor when any Contractor and/or subContractor system that may access, process, or store State data or work product is subject to unintended access or attack. Unintended access or attack includes compromise by computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- (b) The Contractor shall notify the Contract Monitor within one (1) Business Day of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Monitor and Procurement Officer.
- (c) The Contractor shall notify the Contract Monitor within two (2) hours if there is a threat to the Contractor and/or subContractor's systems as it pertains to the use, disclosure, and security of the Department's Sensitive Data.
- (d) If an unauthorized use or disclosure of any Sensitive Data occurs, the Contractor must provide written notice to the Contract Monitor within one (1) Business Day after the Contractor's discovery of such use or disclosure and, thereafter, all information the State requests concerning such unauthorized use or disclosure.
- (e) The Contractor, within one (1) Business Day of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor's report shall identify:

1. the nature of the unauthorized use or disclosure;
  2. the Sensitive Data used or disclosed;
  3. who made the unauthorized use or received the unauthorized disclosure;
  4. what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and:
  5. what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  6. the Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- (f) The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- (g) This Section 3.3.3.3 shall survive expiration or termination of the Contract.

### **3.4 Insurance Requirements**

- 3.4.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subContractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.4.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.4.4 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.4.5 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
- a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
  - b. Commercial General Liability as required in Section 3.4.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.4.2.
  - d. Automobile and/or Commercial Truck Insurance as required in Section 3.4.3.

e. Employee Theft Insurance as required in Section 3.4.4.

3.4.6 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

3.4.7 The Contractor shall require that any subContractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.5 Problem Escalation Procedure**

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

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

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

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

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

### **3.6 Invoicing**

#### **3.6.1 General**

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

- Contractor name and address;
- Remittance address;
- Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- Invoice period (i.e. time period during which services covered by invoice were performed);
- Invoice date;
- Invoice number;
- State assigned Contract number;
- State assigned (Blanket) Purchase Order number(s);
- Number of meals and snacks served at JLG-RICA;
- Number of meals and snacks served at Noyes Center;
- Any other charges, catering, supplies, etc.;
- Rebates, discounts and other applicable credits received allocable to the USDA CNPs;
- Cost of nutritional supplements, as required in Section 3.2.1.7.4.2; and
- Amount due.

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

(b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the "Living Wage" provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.02.

### 3.6.2 Invoice Submission Schedule

The Contractor shall submit invoices in the following manner:

Invoices are due by the 10<sup>th</sup> of the month for services provided in the preceding month.

The amount due on each invoice shall be discounted by a Contractor rebate based on the value stated in the WBSCM Value of Commodities Received Report or Entitlement/Bonus Detail Report, per Attachment P. The Contractor shall show the value of its rebate as a line item credit on each invoice.

The number of meals the Contractor for which the Contractor can invoice in a month will be determined by the number of authorized individuals coming through the food service lines at JLG-RICA and Noyes Center receiving at least one element of the meal. For snacks, the Contractor shall invoice for the number of either delivered to JLG-RICA and Noyes Center staff members for an indicated number of individuals, or based on the number of authorized individuals that receive a snack at the food service line, or both as applicable. Authorized individuals shall include all youth served at the JLG-RICA Center and at the Noyes Center, staff taking their meals at the Noyes Center, parents and staff at special events, and any guests and other individuals allowed by the Contract Monitor to partake of a meal at one of the two facilities.

Each meal and snack shall be billed at the price Level indicated for the Level which the meal or snack falls on the Bid Form, Attachment F, for the respective Contract Year. For example, if the Contractor serves 5,700 billable meals during September of a given year the average number of meals per day would be 190 (5700 meals divided by 30 days) and all meals would be charged at the Level 1 pricing of that particular year. In October the Contractor served 6,820 meals, the average number of meals per day would be 220 meals (6,820 meals divided by 31 days) and all meals would be billed at the level 2 rate. The billing for snacks would be done in the same manner.

The Contractor shall invoice for catering and special events as provided in Section 3.2.1.14.

The Contractor shall invoice for the actual cost of nutritional supplements provided in the preceding month, per 3.2.1.7.4.2.

### **3.7 MBE Reports**

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

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

### **3.8 VSBE Reports**

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

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

### **3.9 SOC 2 Type 2 Audit Report**

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

### **3.10 End of Contract Transition**

See Sections 3.2.7. .

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## **SECTION 4 – BID FORMAT**

### **4.1 Two Part Submission**

Bids shall be submitted in the following manner:

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

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

### **4.2 Technical Offer**

#### **4.2.1 Technical Offer Requirements**

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

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

- b. The Bidder shall give a definitive description of the proposed plan to meet the requirements of the IFB, i.e., a Work Plan. It shall include the specific methodology and techniques to be used by the Bidder in providing the required services as outlined in IFB Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Bidder and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- c. The Bidder must provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department’s Contract Monitor should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures must be submitted as indicated in IFB Section 3.5.
- d. The Bidder shall identify the location(s) in which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State’s

requirements as outlined in this IFB. Bidders are expected to use the JLG-RICA food service facility to provide services for JLG-RICA and the Noyes Center. A Bidder shall indicate if it will use the Department facility, other facilities, or both, for the provision of services under a Contract resulting from this solicitation.

- e. Provide the overall operational plan outlining the mechanisms by which the Bidder proposes to provide the required services. This narrative presentation shall describe activities, programs and/or systems, in addition to those generally associated with the provision of nutrition care in health care and educational facilities, which are available to be implemented and are specifically dedicated to support the provision of nutrition care in residential and school settings, behavior programs, day treatment programs, youth detention settings, etc. Distinguish those activities, programs, and/or systems currently functional within existing accounts and those for which initiation is proposed. The presentation shall include the proposed staffing requirements, by classification, to accomplish this plan, and shall also include a description of the information systems (computer hardware and software) to be utilized and the intended use in the performance of this contract.
- f. Identify the company's management resources and technical support systems currently utilized by the bidders in the provision of type and extent of services requested.
  - 1. Identify the company's management personnel areas of responsibility, designated headquarters, and those who are available within forty-eight (48) hours of notification to meet with JLG-RICA's or Noyes' Administration concerning unresolved problems. Describe the extent to which staff is available to provide emergency service.
- g. Provide a list of personnel classifications for both professional and non-professional staff to be utilized, the number of productive labor hours for each and indicate the minimum salary of employees (at the beginning of the Contract, at the end of twelve (12) months for continuously employed employees, and at the end of twenty-four (24) months for continuously employed employees). These should be salaries for individual employee classifications only, not any actual bid prices.
  - 1. Provide the benefit package to be provided for both professional and non-professional employees.
  - 2. Identify what determines full time employment and what levels of employment qualifies for benefits and are benefits prorated for part-time and hourly employees and, if so how.
- h. Provide a transitional plan for implementing the food service program at JLG-RICA and the Noyes Center as applicable.
- i. Provide for the base Contract Year and for each of the four (4) option years the percentage distribution of expenditures (but not any actual prices), by the following item expense areas;
  - 1. Food
  - 2. Labor
  - 3. Administrative/Professional
  - 4. Management Staff
  - 5. Clinical Professional
  - 6. Non-Management Staff
  - 7. General Operating Expenses
  - 8. Management Fee
  - 9. Administrative Expenses
- j. Provide a list of names and addresses of all health care facilities with which the company currently has accounts. Include the name of the client contact, title, and telephone number, date of initial contract, and type and size of facility. If the company has established regions of operation, provide this information for the region to which JLG-RICA account would be assigned.
  - 1. The Facility and/or the Evaluation Committee reserve the right to contact any account identified in this Section.

- k. Provide a list of names and addresses of all school systems with which the company currently has accounts. Include the name of the client contact, title, and telephone number, and date of initial contract. If the company has established regions of operations, provide this information for the region to which JLG-RICA account would be assigned.
  - 1. The Facility and/or the Evaluation Committee reserve the right to contact any account identified in this Section.
- l. Provide a list of names and addresses of health care facilities that have terminated accounts with the company in the past three years. Include the name of the client contact, title and telephone number, type and size of facility, date of initial contract and termination and the reason for termination, i.e. lost re-bid, switched to in-house performance, etc.
  - 1. The Facility and/or the Evaluation Committee reserve the right to contact any account identified in this Section.
- m. Provide a list of names and addresses of school systems that have terminated accounts with the company in the past three years. Include the name of the client contact, title and telephone number, type and size of facility, date of initial contract and termination and the reason for termination, i.e. lost re-bid, switched to in-house performance, etc.
  - 1. The Facility and/or the Evaluation Committee reserve the right to contact any account identified in this Section.
- n. Provide a proposed complete Table of Contents for the Dietetic Department Policy and Procedure Manual.
- o. Provide two (2) samples of the policies and the related procedures that are typically included in the following sections of the Dietetic Department Policy and Procedure Manual>
  - 1. Quality Assurance and Improvement/Quality Control (include two (2) samples each of clinical and non-clinical examples);
  - 2. Clinical Nutrition Care Protocol;
  - 3. Purchasing; and
  - 4. Safety.
- p. Provide a minimum sample of 21 days of menus meeting the standards of the USDA CNPs for breakfast, lunch, and afterschool snacks for high school students. The menus should be representative of those to be included in the Cycle Menus proposed for use at the Facilities.
- q. Provide a sample of three (3) days emergency menus typical of those to be included in an emergency plan. The menus should meet the standards for breakfast and lunch of the USDA CNPs and include dinner menu and snack.
- r. Provide an index of the Standardized recipes available to be used to fulfill the requirements of this Contract which have been developed in the Hazard Analysis Critical Control Point (HACCP) format consistent with all related requirements of COMAR 10.15.03 Food Service Facilities regulations. Provide standardized recipes for one complete day of the menus mentioned above along with a nutritional analysis of each recipe.
- s. Provide a sample menu of catering services, and a sample catering services contract.
- t. Provide an in-service training and education policy and a corresponding comprehensive sample annual in-service training plan outline representative of the plan to be implemented at this Facility for employees at all levels.

- u. Provide a sample Table of Contents for a complete Sanitation Program Manual.
- v. Provide separate detailed sanitation procedures for the following;
  - 1. Cleaning of grease filters;
  - 2. Cleaning of a dish machine;
  - 3. Cleaning and sanitizing food contact surfaces;
  - 4. Cleaning and sanitizing a food slicer; and
  - 5. Cleaning of kitchen floors similar to those in the Facility.
- w. Certify that the Bidder will not impede any of its employees working under this Contract from accepting employment with a successor vendor for a subsequent contract.

#### 4.2.2 **Technical Offer Submissions**

- a. Some of the documents required to be submitted with the Technical Offer are samples to be representative of those to be developed for use at the Facilities. The recommended awardee shall be required to furnish the Facility's Contract Monitor with a complete set of all actual documents to be used at the Facilities no less than two (2) weeks prior to the Go-Live Date for review and approval, unless otherwise noted in Section 3.2.

#### 4.2.3 **Technical Offer Opening**

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

#### 4.2.4 **Technical Criteria**

- a. The following criteria shall determine the acceptability of each item listed or provided under Section 4.2.1 "Technical Offer Requirements." All criteria are pass/fail. Technical Offers are not ranked but determined to be acceptable or not acceptable. All requirements in section 4.2.1 should be addressed in the Technical Bid.
  - 1. The Bidder's comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done (i.e., response to IFB Section 3.2 requirements), (see Section 4.2.1.a).
  - 2. The Bidder's Work Plan (see Section 4.2.1.b)
  - 3. The Bidder's Problem Escalation Procedure (see Section 4.2.1.c)

#### 4.2.5 **Unacceptable Technical Bids**

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

### **4.3 Bid Price Form**

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

#### **4.4 Required Bid Submissions**

Bidders shall include the following with their Bid:

##### **4.4.1 Transmittal Letter:**

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

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

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

In addition, the Transmittal Letter shall indicate whether the Bidder is the subsidiary of another entity, and if so, whether all information submitted by the Bidder pertains exclusively to the Bidder. If not, the subsidiary Bidder shall include a guarantee of performance from its parent organization as part of its Executive Summary (see RFP Section 1.22 for more information).

##### **4.4.2 Minimum Qualifications Documentation:**

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

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

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

##### **4.4.4 Additional Documents \*If Required:** Submit three (3) copies of each with original signatures, if required.

\* See appropriate IFB Section to determine whether the document is required for this procurement:

- a. A Signed Statement from the Bidder's Parent Organization Guaranteeing Performance of the Bidder. **\*see Section 1.22**
- b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) **\*see Section 1.33.**
- c. Completed Federal Funds Attachment (**Attachment H**) **\*see Section 1.35.**
- d. Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) **\*see Section 1.36.**
- e. Completed Mercury Affidavit (**Attachment L**) **\*see Section 1.40.**
- f. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/SubContractor Participation Schedule. (**Attachment M-1**) **\*see Section 1.41.**
- g. Completed Location of the Performance of Services Disclosure (**Attachment N**) **\*see Section 1.42.**

#### 4.4.5 **References:**

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

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

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

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

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

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

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

#### 4.4.7 **Financial Capabilities:**

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

#### 4.4.8 **Certificate of Insurance:**

The Bidder shall provide a copy of the Bidder's current certificate of insurance. The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in Section 3.4 "Insurance

Requirements,” naming the State as an additional insured if required, within five (5) Business Days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

#### 4.4.9 **SubContractors:**

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

#### 4.4.10 **Legal Action Summary:**

This summary shall include:

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

### **4.5 Reciprocal Preference**

Although Maryland law does not generally authorize procuring units 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 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- The Maryland resident business is a responsible Bidder;
- The most advantageous Bid is from a responsible Bidder whose principal office or principal operations through which it would provide the services required under this IFB is in another state;
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

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

### **4.6 Delivery**

Bidders may either mail or hand-deliver Bids.

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

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

#### **4.7 Documents Required upon Notice of Recommendation for Contract Award**

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

- a. signed Contract (**Attachment A**),
- b. completed Contract Affidavit (**Attachment C**),
- c. completed MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; \*see **Section 1.33**,
- d. MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; \*see **Section 1.33**),
- e. signed Non-Disclosure Agreement (**Attachment J**), if applicable; \*see **Section 1.37**,
- f. signed HIPAA Business Associate Agreement (**Attachment K**), if applicable; \*see **Section 1.38**,
- g. completed VSBE **Attachment M-2**, if applicable \*see **Section 1.41**,
- h. completed DHR Hiring Agreement, **Attachment O**, if applicable \*see **Section 1.43**, and
- j. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 “Insurance Requirements,” listing the State as an additional insured, if applicable; \*see **Section 3.4**.

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## **IFB ATTACHMENTS**

### **ATTACHMENT A – Contract**

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

### **ATTACHMENT B – Bid/Proposal Affidavit**

This Attachment must be completed and submitted with the Bid.

### **ATTACHMENT C – Contract Affidavit**

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

### **ATTACHMENT D – Minority Business Enterprise Forms**

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Bidder's Bid or the Bid will be deemed non-responsive and rejected. Within 10 Business Days of receiving notification of recommendation for Contract award, the Bidder must submit Attachments D-2 and D-3A/B.

### **ATTACHMENT E – Pre-Bid Conference Response Form**

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

### **ATTACHMENT F – Bid Form Instructions and Bid Form**

The Bid Form must be completed and submitted with the Bid.

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

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

### **ATTACHMENT H – Federal Funds Attachment**

If required (see Section 1.35), these Attachments must be completed and submitted with the Bid as instructed in the Attachments.

### **ATTACHMENT I – Conflict of Interest Affidavit and Disclosure**

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

### **ATTACHMENT J – Non-Disclosure Agreement**

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

### **ATTACHMENT K – HIPAA Business Associate Agreement**

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

### **ATTACHMENT L – Mercury Affidavit**

If required (see Section 1.40), this Attachment must be completed and submitted with the Bid.

**ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms**

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

**ATTACHMENT N – Location of the Performance of Services Disclosure**

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

**ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement**

If required (see Section 1.43), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

**ATTACHMENT P – USDA Child Nutrition Programs Requirements**

## ATTACHMENT A – CONTRACT

### John L. Gildner Regional Institute for Children and Adolescents Dietary Services

THIS CONTRACT (the “Contract”) is made this (“X<sup>th</sup>”) 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 adequacy and sufficiency of which is duly acknowledged by the parties, the parties agree as follows:

#### 1. Definitions

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

- 1.1 “Bid” means the Contractor’s Bid dated (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the Department of Health and Mental Hygiene, Office of Procurement and Support Services. .
- 1.4 “Contract Monitor” means the Department employee identified in Section 1.6 of the IFB as the Contract Monitor.
- 1.5 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.6 “Department” means the Maryland Department of Health and Mental Hygiene and any of its Agencies, Offices, Administrations, Facilities, or Commissions.
- 1.7 “IFB” means the Invitation for Bids for John L. Gildner Regional Institute for Children and Adolescents Dietary Services Solicitation # DHMH OPASS 16-,15807 and any addenda thereto issued in writing by the State.
- 1.8 “Procurement Officer” means the Department employee identified in Section 1.5 of the IFB as the Procurement Officer.
- 1.9 “State” means the State of Maryland.

#### 2. Scope of Contract

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

Exhibit A – The IFB

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

Exhibit C – The Bid

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

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

### **3. Period of Performance.**

3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately 1 year beginning on or about July 1, 2016 and ending on or about June 30, 2017. At the Department's unilateral option, the Contract may be extended for four additional, successive periods of one year each.

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

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

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal...

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

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

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

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

## **5. Rights to Records**

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

## **6. Exclusive Use**

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subContractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subContractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

## **7. Patents, Copyrights, and Intellectual Property**

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

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

## **8. Confidential or Proprietary Information and Documentation**

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

## **9. Loss of Data**

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

## **10. Indemnification**

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subContractors under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

- 10.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subContractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subContractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subContractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subContractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

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

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

#### **12. Disputes**

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

#### **13. Maryland Law**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland), does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.
- 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, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a

subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subContractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**15. Contingent Fee Prohibition**

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

**16. Non-availability of Funding**

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

**17. Termination for Cause**

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

**18. Termination for Convenience**

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

**19. Delays and Extensions of Time**

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

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

## **20. Suspension of Work**

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

## **21. Pre-Existing Regulations**

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

## **22. Financial Disclosure**

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

## **23. Political Contribution Disclosure**

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

## **24. Documents Retention and Inspection Clause**

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

24.2 If the Contractor supplies services to a State residential health care facility under the Behavioral Health Administration, the Family Health Administration, or the Developmental Disabilities Administration, the

Contractor agrees, in addition to the requirements below;

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

## **25. Right to Audit**

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

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

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

**27. Cost and Price Certification**

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

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

**28. Subcontracting; Assignment**

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

**29. Liability**

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

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

**30. 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, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subContractors, vendors, suppliers, or commercial customers, nor shall

Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subContractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

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

### **31. Prompt Pay Requirements**

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

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

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

- a. Retainage which had been withheld and is, by the terms of the Contract between the Contractor and subContractor, due to be distributed to the subContractor; and
- b. An amount withheld because of issues arising out of a Contract or occurrence unrelated to the Contract 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. Living Wage**

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

### **33. Variations in Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

### **34. Contract Monitor and Procurement Officer**

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

**35. 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: Queen Davis  
Chief of Procurement  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street – Room 416D  
Baltimore, MD 21201

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

**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 Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.

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.

**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.

**39. Miscellaneous**

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

39.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE

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

\_\_\_\_\_  
By: Van T. Mitchell, Secretary

\_\_\_\_\_  
Date

Or designee:

\_\_\_\_\_  
Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

## ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

### A. AUTHORITY

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

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

#### B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

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

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7205, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

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

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

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

(ii) Not overturned on judicial review;

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

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

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

(ii) Not overturned on judicial review;

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

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

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

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**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).

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**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):

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**G. SUBCONTRACT AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

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

I FURTHER AFFIRM THAT:

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

**M. I FURTHER AFFIRM THAT:**

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

**N. ACKNOWLEDGEMENT**

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

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

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

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

**ATTACHMENT C – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

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

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

**I FURTHER AFFIRM THAT:**

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

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

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

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

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

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

#### I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

**F. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

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

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

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

By: \_\_\_\_\_ (printed name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

## ATTACHMENTS D – MINORITY BUSINESS ENTERPRISE FORMS

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

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

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

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

- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subContractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime’s ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime’s ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B Waiver Guidance**, the MBE Prime’s ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA’s website ([www.goma.maryland.gov](http://www.goma.maryland.gov)) for the MBE Prime Regulations Q&A for illustrative examples.
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the contract that the certified MBE performs with its own workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
  7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
  8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT’s Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.
  9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule **MUST** at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Bidder/Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Bidder/Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Bid will be deemed not responsive, or the Proposal determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

**SUBGOALS (IF APPLICABLE)**

**TOTAL AFRICAN AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL ASIAN AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL HISPANIC AMERICAN MBE PARTICIPATION:** \_\_\_\_\_ %  
**TOTAL WOMEN-OWNED MBE PARTICIPATION:** \_\_\_\_\_ %

**OVERALL GOAL**

**TOTAL MBE PARTICIPATION (INCLUDE ALL CATEGORIES):** \_\_\_\_\_ %

**MBE ATTACHMENT D-1A**  
**MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**  
**& MBE PARTICIPATION SCHEDULE**

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

In connection with the Bid/Proposal submitted in response to Solicitation No. DHMH OPASS 17-15807, I affirm the following:

**1. MBE Participation (PLEASE CHECK ONLY ONE)**

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 5 percent and all of the following subgoals:

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

**OR**

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

**2. Additional MBE Documentation**

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

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

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

**3. Information Provided to MBE firms**

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

**4. MBE Participation Schedule**

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

| Prime Contractor | Project Description | PROJECT/CONTRACT NUMBER |
|------------------|---------------------|-------------------------|
|                  |                     |                         |

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

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

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

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

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

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

(Continue on separate page if needed)

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

\_\_\_\_\_  
Bidder/Offeror Name  
*(PLEASE PRINT OR TYPE)*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## **MBE ATTACHMENT D-1B** **WAIVER GUIDANCE**

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

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

#### **I. Definitions**

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

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

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

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

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

## **II. Types of Actions Agency will Consider**

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

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

#### 1. Identified Items of Work in Procurements

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

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

#### 2. Identified Items of Work by Bidders/Offerors

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

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

### **B. Identify MBE Firms to Solicit**

#### 1. MBE Firms Identified in Procurements

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

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

#### 2. MBE Firms Identified by Bidders/Offerors

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

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

## **C. Solicit MBEs**

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

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

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

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

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

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

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

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

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

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

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

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

## **D. Negotiate With Interested MBE Firms**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**E. Assisting Interested MBE Firms**

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

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the Bidder/Offeror; and
2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

**III. Other Considerations**

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

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

**IV. Documenting Good Faith Efforts**

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

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

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

**B. Outreach/Solicitation/Negotiation**

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

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

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

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

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

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

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

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

**D. Other Documentation**

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

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

**MBE ATTACHMENT D-1B - Exhibit A**  
**MBE SubContractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_

(Name of Minority firm)

located at \_\_\_\_\_

(Number)

(Street)

\_\_\_\_\_

(City)

(State)

(Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

in \_\_\_\_\_ County by \_\_\_\_\_

(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the

work/service or unable to prepare a bid for this project for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
**Signature of Minority Firm's MBE Representative**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
MDOT CERTIFICATION #

\_\_\_\_\_  
TELEPHONE #

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

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

\_\_\_\_\_  
Signature of Prime Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**MBE ATTACHMENT D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE \_\_ OF \_\_

| <b>Prime Contractor</b> | <b>Project Description</b> | <b>SOLICITATION NUMBER</b> |
|-------------------------|----------------------------|----------------------------|
|                         |                            |                            |

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

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

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

**PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE  
TO MBE FIRMS**

PAGE \_\_ OF \_\_

| <b>Prime Contractor</b> | <b>Project Description</b> | <b>SOLICITATION NUMBER</b> |
|-------------------------|----------------------------|----------------------------|
|                         |                            |                            |

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

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

Please check if Additional Sheets are attached.

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

**PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_ OF \_\_

| <b>Prime Contractor</b> | <b>Project Description</b> | <b>SOLICITATION NUMBER</b> |
|-------------------------|----------------------------|----------------------------|
|                         |                            |                            |

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

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

Please check if Additional Sheets are attached.

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

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE \_\_ OF \_\_

|                         |                            |                            |
|-------------------------|----------------------------|----------------------------|
| <b>Prime Contractor</b> | <b>Project Description</b> | <b>SOLICITATION NUMBER</b> |
|                         |                            |                            |

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

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

Please check if Additional Sheets are attached.

**MBE ATTACHMENT D-2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

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

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

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

---

---

---

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

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

---

---

---

4. **Please Check One:**

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

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5. **Please Check One:**

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

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

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**MBE ATTACHMENT D-3A**

## **MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION**

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

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

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

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

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

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

**MBE ATTACHMENT D-3B**  
**MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

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

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

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

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

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

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

| Prime Contractor:   |                  | Contact Person: |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
|---|------------------|-----------------|-----------------|---------------|----|--|--|----|--|--|----|--|--|----|--|--|-------------------------------|--|-------|--|--|--|------------------|---------------|----|--|--|----|--|--|----|--|--|----|--|--|---------------------------------|--|-------|
| Address:  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| City:   |                  | State:          | ZIP:            |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| Phone:  | Fax:             | E-mail:         |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| MBE SubContractor Name:   |                  | Contact Person: |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| Phone:  | Fax:             |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| SubContractor Services Provided:  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| <b>List all payments made to MBE subContractor named above during this reporting period:</b><br><br><table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice#</u></th> <th style="width: 40%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b></td> <td>_____</td> </tr> </tbody> </table> |                  |                 | <u>Invoice#</u> | <u>Amount</u> | 1. |  |  | 2. |  |  | 3. |  |  | 4. |  |  | <b>Total Dollars Paid: \$</b> |  | _____ | <b>List dates and amounts of any outstanding invoices:</b><br><br><table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 40%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b></td> <td>_____</td> </tr> </tbody> </table> |  |  | <u>Invoice #</u> | <u>Amount</u> | 1. |  |  | 2. |  |  | 3. |  |  | 4. |  |  | <b>Total Dollars Unpaid: \$</b> |  | _____ |
|   | <u>Invoice#</u>  | <u>Amount</u>   |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 1.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 2.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 3.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 4.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| <b>Total Dollars Paid: \$</b>   |                  | _____           |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
|   | <u>Invoice #</u> | <u>Amount</u>   |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 1.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 2.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 3.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| 4.  |                  |                 |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |
| <b>Total Dollars Unpaid: \$</b>   |                  | _____           |                 |               |    |  |  |    |  |  |    |  |  |    |  |  |                               |  |       |  |  |  |                  |               |    |  |  |    |  |  |    |  |  |    |  |  |                                 |  |       |

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

|   |
|---|
| Contract Monitor: _____<br>Contracting Unit and Address: _____<br>_____ |
|---|

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**MBE ATTACHMENT D-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

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

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

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

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

|   |
|---|
| Contract Monitor: _____<br>Contracting Unit and Address: _____<br>_____<br>_____<br>_____ |
|---|

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**MBE ATTACHMENT D-5**  
**Minority Business Enterprise Participation**  
**SubContractor Paid/Unpaid MBE Invoice Report**

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

| MBE SubContractor Name: _____   |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
|---|--------------------|-----------------------|--------------------|-------------|----|--|--|----|--|--|----|--|--|-------------------------------------|--|--|---|--|--------------------|-------------|----|--|--|----|--|--|----|--|--|---------------------------------------|--|--|
| MDOT Certification #: _____   |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| Contact Person: _____   |                    | E-mail: _____         |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| Address: _____  |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| City: _____   | State: _____       | ZIP: _____            |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| Phone: _____  | Fax: _____         |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| <b>SubContractor Services Provided:</b>   |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| <b>List all payments received from Prime Contractor during reporting period indicated above.</b><br><table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 60%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 30%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b> _____</td> <td></td> </tr> </tbody> </table> |                    |                       | <u>Invoice Amt</u> | <u>Date</u> | 1. |  |  | 2. |  |  | 3. |  |  | <b>Total Dollars Paid: \$</b> _____ |  |  | <b>List dates and amounts of any unpaid invoices over 30 days old.</b><br><table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 60%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 30%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b> _____</td> <td></td> </tr> </tbody> </table> |  | <u>Invoice Amt</u> | <u>Date</u> | 1. |  |  | 2. |  |  | 3. |  |  | <b>Total Dollars Unpaid: \$</b> _____ |  |  |
|   | <u>Invoice Amt</u> | <u>Date</u>           |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| 1.  |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| 2.  |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| 3.  |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| <b>Total Dollars Paid: \$</b> _____   |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
|   | <u>Invoice Amt</u> | <u>Date</u>           |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| 1.  |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| 2.  |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| 3.  |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| <b>Total Dollars Unpaid: \$</b> _____   |                    |                       |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |
| Prime Contractor: _____   |                    | Contact Person: _____ |                    |             |    |  |  |    |  |  |    |  |  |                                     |  |  |   |  |                    |             |    |  |  |    |  |  |    |  |  |                                       |  |  |

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

|   |
|---|
| Contract Monitor: _____<br>Contracting Unit and Address: _____<br>_____<br>_____<br>_____ |
|---|

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_  
 (Required)

**ATTACHMENT E – PRE-BID CONFERENCE RESPONSE FORM**

**Solicitation Number 17-15807**  
**John L. Gildner Regional Institute for Children and Adolescents Dietary Services**

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

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

Please indicate:

\_\_\_\_\_ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

\_\_\_\_\_ No, we will not be in attendance.

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

---

Signature

Title

---

Name of Firm (please print)

## ATTACHMENT F – BID PRICING INSTRUCTIONS

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

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

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

**ATTACHMENT F – BID FORM**

Please see attached Excel spreadsheet.

## ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

### Living Wage Requirements for Service Contracts

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

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

**Maryland Living Wage Requirements Affidavit of Agreement**

(submit with Bid/Proposal)

Contract No. \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract Is Exempt from the Living Wage Law**

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

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

**If the Contract Is a Living Wage Contract**

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

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

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

- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

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

Name of Authorized Representative: \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

### A Summary of Certain Federal Fund Requirements and Restrictions

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) 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 (OMB) 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 Department Contract Monitor.
  - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
  - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

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

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

- a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment,

advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- c) In the event of the Contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.
- d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subContractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

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

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

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level 1 per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)
- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.

- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
  
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

**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                       |



## 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.

## **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.

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Signature of Authorized Certifying Individual

**ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

This solicitation does not require a Conflict of Interest Affidavit and Disclosure.

## ATTACHMENT J – NON-DISCLOSURE AGREEMENT

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

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for John L. Gildner Regional Institute for Children and Adolescents Dietary Services Solicitation #17-15807; and

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

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

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

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

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

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

Contractor: \_\_\_\_\_

Department of Health and Mental Hygiene

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

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

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

**NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1**

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

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

**NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2**

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and \_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 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. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “Agreement”) is made by and between the John L. Gildner Regional Institute for Children and Adolescents, a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”) and \_\_\_\_\_ (Insert Name of Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

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

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

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

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

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

**DEFINITIONS.**

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, SubContractor, Unsecured Protected Health Information, and Use.
- B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean (**Insert Name of Contractor**).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean (**Department**).
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

#### **PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.**

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

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

#### **DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.**

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- D. 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
- A. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
- B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
- C. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and
- D. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
- i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

- ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
  - iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
  - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subContractors. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2) shall ensure that any subContractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subContractors as required by HIPAA;
- F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;
- G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;
- H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;
- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);
- J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.
- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

#### IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for John L. Gildner Regional Institute for Children and Adolescents Dietary Services, Solicitation #17-15807, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
  2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subContractors or agents of Business Associate.
  2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.
- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

#### V. CONSIDERATION

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

## **VI. REMEDIES IN EVENT OF BREACH**

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

## **VII. MODIFICATION; AMENDMENT**

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

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

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

## **IX. COMPLIANCE WITH STATE LAW**

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

## **X. MISCELLANEOUS**

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.

- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Name: Ramiek James, Esq.  
Privacy Officer and Compliance Analyst  
Department of Health and Mental Hygiene  
Office of the Inspector General  
Address: 201 W. Preston Street, Fifth Floor  
Baltimore, MD 21201-2301  
Email: [ramiek.james@maryland.gov](mailto:ramiek.james@maryland.gov)  
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: \_\_\_\_\_

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

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

**COVERED ENTITY:**

**BUSINESS ASSOCIATE:**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

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

This notification is made pursuant to Section III.2.D(3) of the Business Associate Agreement between John L. Gildner Regional Institute for Children and Adolescents, a unit of the Maryland Department of Health and Mental Hygiene and \_\_\_\_\_ (Business Associate).

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

Description of the breach: \_\_\_\_\_  
\_\_\_\_\_

Date of the breach: \_\_\_\_\_ Date of discovery of the breach: \_\_\_\_\_

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

Number of individuals affected by the breach: \_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Contact information to ask questions or learn additional information:

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_  
\_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**ATTACHMENT L – MERCURY AFFIDAVIT**

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

**ATTACHMENTS M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE**

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

**ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE**

**(submit with Bid/Proposal)**

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. \_\_\_\_\_, the following disclosures are hereby made:

- 1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subContractors:
  - \_\_\_ have plans
  - \_\_\_ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subContractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):

a. Location(s) services will be performed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Reasons why it is necessary or advantageous to perform services outside the United States:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned, being an authorized representative of the Bidder/Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

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

Bidder/Offeror Name: \_\_\_\_\_

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

Name: \_\_\_\_\_

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

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

**ATTACHMENT O – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.

## ATTACHMENT P – USDA CHILD NUTRITION PROGRAMS REQUIREMENTS

**The Contractor shall comply with the following regulations and provisions specifically applicable to food services provided in conjunction with the USDA Child Nutrition Programs. For the purposes of this attachment, School Food Authority (SFA) shall mean the “Department.”**

**Compliance with State and Federal Regulations**—Code of Federal Regulations (CFR) provides rules that SFAs must observe if they are to participate in the National School Lunch Program, the School Breakfast Program, and other meal programs. The Contractor must conduct program operations in accordance with 2 CFR Part 200, 7 CFR Parts 210, 220, 245, 250 and USDA instructions and policies, as applicable. Incorporation of program regulations provides a common basis for performance by the Contractor. The Contractor shall be in conformance with the applicable portions of the SFA's agreement under the program. (*7 CFR Part 210.16(a)(2)*).

**Provisions Under Program Agreement**, 7 CFR Part 210.16(a)(2) – SFA must ensure that the food service operation is in conformance with the SFA's Agreement under the Program.

**Signature Authority**—SFA retains signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims for reimbursement. (*7 CFR Part 210.16(a)(5)*)

**Control of the School Food Service and Financial Responsibility**-The SFA shall:

- a. Retain control of the quality, extent, and general nature of its food service, and the prices to be charged the children for meals 7 CFR Part 210.16(a)(4);
- b. Maintain a nonprofit school food service and observe the requirements for and limitations on the use of nonprofit school food service revenues set forth in §210.14 and the limitations on any competitive school food service as set forth in §210.11. 7 CFR Part 210.9(b)(1)
- c. Retain signature authority on the State agency-school food authority agreement, free and reduced price policy statement and claims. (*7 CFR Part 210.16(a)(5)*); and
- d. Maintain responsibility for the implementation of free and reduced price policy in accordance with 7 CFR Part 210.16(a)(5) and 7 CFR Part 245.

**USDA Donated Foods**—Contractor must comply with the regulations for the use of USDA donated foods, including:

**Utilization of USDA Foods**—Contractor shall select, accept, and utilize USDA Foods meeting at least 1% of the SFA's USDA Foods entitlement, subject to approval of the SFA. The SFA shall consult with the Contractor in selection of USDA Foods; however, final decision is made by the SFA. The SFA's USDA Foods entitlement for the current school year is \$9,765.62.

**Crediting for the Value of Donated Foods**—In accordance with 7 CFR 250.51(a) and (b), the Contractor must ensure that it credits the SFA for the value of all donated foods received for use in the SFA's meal service in the school year, per contract terms, through invoice reductions, refunds, discounts, or other means. Such requirement includes crediting for the value of donated foods contained in processed end products if the Contractor, in accordance with its contract, procures such end products on behalf of the SFA, or acts as an intermediary in passing the donated food value in such end products on to the SFA. All forms of crediting must include clear documentation of the value received from the donated foods. In cost-reimbursable contracts, crediting may be performed by disclosure; i.e., the Contractor credits the SFA for the value of donated foods by disclosing, in its billing for food costs submitted to the SFA, the savings resulting from the receipt of donated foods for the billing period.

**Donated Food Values Required in Crediting**—In accordance with 7 CFR 250.51(c), the SFA must ensure that, in crediting it for the value of donated foods, the Contractor uses the donated food values determined by the distributing agency, in accordance with 7 CFR 250.58(e).

**Use of Donated Foods**—In accordance with 7 CFR 250.51(d), the Contractor must use all donated ground beef, donated ground pork, and all processed end products, in the SFA's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the SFA's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, must be used).

Any activities relating to donated foods that the Contractor will be responsible for, in accordance with 7 CFR Part 250.50(d), will be performed in accordance with the applicable requirements in 7 CFR Part 250.

The Contractor shall use all donated ground beef and ground pork products, and all processed end products, in the recipient agency's food service.

The Contractor shall use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the recipient agency's food service.

The procurement of processed end products on behalf of the recipient agency, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR Part 250 and with the provisions of distributing or recipient agency processing agreements, and will ensure crediting of the recipient agency for the value of donated foods contained in such end products at the processing agreement value.

The Contractor shall not itself enter into the processing agreement with the processor required in subpart C of 7 CFR Part 250.

The Contractor shall comply with the storage and inventory requirements for donated foods.

Extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

**Storage and Inventory Management**—Contractor must meet the general requirements for the storage and inventory management of donated foods in 7 CFR 250.14(b). In accordance with 7 CFR 250.52(a), the FSMC may store and inventory donated foods together with foods it has purchased commercially for the SFA's use, unless this is specifically prohibited in its contract. It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in 7 CFR 250.51(d). Additionally, under cost-reimbursable contracts, the FSMC must ensure that its system of inventory management does not result in the SFA being charged for donated foods.

**Special Functions**—Use of USDA donated foods or processed end products containing USDA donated foods for such functions is prohibited.

**Health Certification**—Contractor shall maintain all applicable health certifications and assure that all State and local regulations are being met by a Contractor preparing or serving meals at a SFA facility (7 CFR Part 210.16(a)(7)).

**Buy American**—Contractors are required to purchase, to the maximum extent practicable, domestic commodities or products. 7 CFR 210.21(d)(2)(i). Definition of domestic commodity or product is:

- a. An agricultural commodity that is produced in the United States; and
- b. A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

**Free and Reduced Price Meal Process**—SFA determines eligibility for free and reduced price meals in accordance with 7 CFR Part 210.16(a). Such responsibilities include the conduct of any hearings related to such determinations and verification of applications for free and reduced price meals.

**Free and Reduced Price Policy**—Contractor shall comply with the SFA's free and reduced price meal policies. However, the SFA is ultimately responsible for ensuring that all requirements are being met and the information on the application remains the property of the SFA. The information cannot be used or possessed by Contractor for any use other than to determine eligibility for free or reduced price meals

An employee of the Contractor may perform for the SFA in various aspects of the application, certification and verification process of eligibility for school meals programs. The Contractor's employee must comply with all requirements for these processes, including limited disclosure of individual eligibility information. However, the SFA is ultimately responsible for ensuring that all requirements are being met and the information on the application remains the property of the SFA and cannot be used or possessed by the Contractor for any use other than to determine eligibility for free or reduced price meals.

**Recordkeeping**—2 CFR Part 210.16(c)(1), Contractor shall maintain such records as the SFA will need to support its Claim for Reimbursement under this part. Such records shall be made available to the school food authority, upon request, and shall be retained in accordance with 7 CFR Part 210.23(c).

Make all records available to the SFA upon request; and retain all records for a period of three (3) years after the SFA submits the final Claim for Reimbursement for the fiscal year for inspection and audit by representatives of the SFA, State agency, USDA and Comptroller General. In instances where audit findings have not been resolved, the records must be retained beyond the 3-year period until resolution of the issues raised by the audit. 2 CFR Part 210.23(c) and 2 CFR Part 200.333(a).

**Reporting**—Contractor shall report the claim information to the SFA promptly at the end of each month or more frequently as specified by the SFA, 7 CFR Part 210.16(c)(1).

**Monitoring**—Contractor shall be monitored to determine whether its food service operation is in conformance with the SFA's agreement to operate the program in accordance with program regulations. The SFA has the responsibility to implement internal controls as required under 7 CFR 210.8(a) and to ensure resolution of program review and audit findings.

**Meal Service**—Contractor shall provide the meal services as specified in Section 3.2 of the Scope of Work in relation to provisions, the method of providing the food, and the type of meals to be provided.

**21-Day Cycle Menu**—Under the competitive sealed bid method, the 21-day cycle menu enables the SFA to review each bid for responsiveness to the bid requirements.

The Contractor shall develop the 21-day cycle menu for the Contractor bid/proposal.

In those cases where the SFA has not supplied specifications, the Contractor shall identify the food products that will be served via the menu using specifications like grading, weight, item labels, nutritional qualities, etc., to allow the SFA to fairly evaluate all bids. Whether the specifications are provided by the SFA or the Contractor, they must be clearly identified and described in the solicitation or the proposal. Changes thereafter may only be made with the approval of the SFA, 7 CFR Part 210.16(b)(1)

**Financial (rebates, credits, discounts)**—SFA must ensure that all allowable costs paid from the nonprofit school food service account to the Contractor are net of all discounts, rebates and other applicable credits received by the Contractor, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA (7 CFR Part 210.21(f)(1)(i)). Document the value of discounts, rebates, and/or credits reconciled.

**Adult Meals**—Adult meal charges must be established in accordance with FNS Instruction 782-5, Pricing of Adult Meals in the National School Lunch and School Breakfast Programs. Under that instruction, "Breakfasts and lunches served to teachers, administrators, custodians and other adults must be priced so that the adult payment in combination with any per-lunch revenues from other sources designated specifically for the support of adult meals (such as State or local fringe benefit or payroll funds, or funding from voluntary agencies) is sufficient to cover the overall cost of the lunch, including the value of any USDA entitlement and bonus donated foods used to prepare the meal. If cost data are not available, the minimum adult payment should reflect the price charged to students paying the school's designated full price, plus the current value of Federal cash and donated food assistance (entitlement and bonus) for full price meals. In nonpricing programs, the adult charge should be at least the amount of reimbursement received for a free lunch under Sections 4 and 11 of the National School Lunch Act, plus the per-meal value of both USDA entitlement and bonus donated foods or, for breakfasts, the rate established for free meals under Section 4 of the Child Nutrition Act, plus the value of bonus commodities."

**Recovery of Overclaims**—Contractor shall pay the SFA for any overclaims assessed by the State Agency due to Contractor negligence or noncompliance with regulations. This liability should correspond to either the 3-year record retention period established in 7 CFR 210.23(c).

**Contract Work Hours and Safety Standards Act** (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or

mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Appendix II of 2 CFR Part 200(E)

**Byrd Anti-Lobbying Amendment** (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Appendix II of 2 CFR Part 200(I). See Appendix B to Part 3018-Disclosure Form to Report Lobbying.

**Clean Air and the Federal Water Pollution Control Acts** (42 U.S.C. 7401-7671q. and 33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Appendix II of 2 CFR Part 200(G)

**Uniform Administrative Requirements, Cost Principles and Audit Requirements**—2 CFR Part 200.318-326:

- a. **Codes of conduct:** 2 CFR Part 200.318I, as applicable.
- b. **Bonding requirements:** 2 CFR Part 200.325, as applicable.
- c. **Contract provisions:** 2 CFR Part 200.326 and Appendix II of 2 CFR Part 200, as applicable
- d. **Lobbying restrictions:** Appendix II to 2 CFR Part 200(I) .
- e. **Debarment and suspension:** 2 CFR Part 200.213 and 2 CFR Part 180.300(see also Appendix II to Part 200, Section H) as adopted and modified by USDA regulations at 2 CFR 417.

**Spoiled Meals**—JLG-RICA will make no payment for meals that are spoiled or unwholesome at the time of delivery, do not meet detailed specifications, or do not otherwise meet the requirements of the contract.

**Nondiscrimination**—In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992.

Submit your completed form or letter to USDA by:

- (1) mail: U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410;
- (2) fax: (202) 690-7442; or
- (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

This institution is an equal opportunity provider.

The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, disability, or sexual orientation in matters affecting employment or in providing access to programs and activities and provides equal access to the Boy Scouts and other designated youth groups. For inquiries related to Department policy, please contact: Agency Equity Officer, Equity Assurance and Compliance Office, Office of the Deputy State Superintendent for Finance and Administration, Maryland State Department of Education, 200 W. Baltimore Street - 6th Floor, Baltimore, Maryland 21201-2595, 410-767-0433 – voice, 410-767-0431 – fax, 410-333-6442 - TTY/TDD.