



INVITATION FOR BIDS

SOLICITATION NO. DHMH OPASS – (12-10876)

Issue Date: June 14, 2012

PHARMACEUTICAL SERVICES POTOMAC CENTER

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO BIDDERS/CONTRACTORS**

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your bids. If you have chosen not to bid on this Contract, please fax this completed form to: (410) 333-5958 to the attention of the Procurement Officer.

Title: Pharmaceutical Services
Solicitation No: DHMH OPASS –12-10876

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

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

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

REMARKS:

Bidder Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

**STATE OF MARYLAND
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

KEY INFORMATION SUMMARY SHEET

Invitation for Bids: Pharmaceutical Services

Solicitation Number: DHMH OPASS – 12-10876

IFB Issue Date: June 14, 2012

IFB Issuing Office: Maryland Department of Health and Mental Hygiene
Potomac Center

Procurement Officer: Sharon R. Gambrill, CPPB
201 W. Preston St., Room 416B
Baltimore, MD 21201
Phone: (410) 767-5816 Fax: (410) 333-5958
e-mail: gambrills@dhmh.state.md.us

Contract Monitor: JoAnn Appleyard, Director of Nursing
Potomac Center
1370 Marshall Street, Room 155
Hagerstown, MD 21740
(240) 313-3530 (301) 797-1798
jappleyard@dhmh.state.md.us

Bids are to be sent to: Maryland Department of Health and Mental Hygiene
Potomac Center
1380 Marshall Street, Room 122
Hagerstown, MD 21740
Attention: Frances Penner, Procurement Coordinator

Pre-Bid Conference: Wednesday, June 27, 2012 @ 10:00 a.m. Local Time
1370 Marshall Street, Infirmary Conference Room
Hagerstown, MD 21740

Closing Date and Time: Tuesday, July 10, 2012 @ 2:00 p.m. Local Time

MBE 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), Office of Procurement and Support Services, is issuing this Invitation for Bids (IFB) to provide pharmaceutical services to the Potomac Center.
- 1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the successful Bidder and the State.
- 1.1.3 The Department intends to make a single award as a result of this IFB.
- 1.1.4 Bidders, either directly or through their subcontractors, must be able to provide all services and meet all of the requirements requested in this solicitation.
- 1.1.5 The Potomac Center (Center) is located in Hagerstown, Maryland and provides 24/7 habilitation services. The Center serves as a temporary home to 63 people with intellectual disabilities, some with co-occurring mental illness, substance abuse and forensic involvement, e.g. criminal or police background.
- 1.1.6 All required services shall be provided in compliance with licensure, certification, and accreditation standards, including but not limited to, the Intermediate Care Facilities – Intellectually Disabled (ICFs/ID) standards of the Office of Health Care Quality (OHCQ), Maryland Department of Health and Mental Hygiene, as well as all applicable Maryland and/federal laws and regulations governing pharmacies, pharmacists, their employees, and services.

1.2 Abbreviations and Definitions

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

- a. **Bidder** – An entity that submits a bid in response to this IFB.
- b. **Center** – means the Potomac Center.
- c. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
- d. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment A**.
- e. **Contract Monitor (CM)** – The State representative for this project who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this project to ensure compliance with the terms and conditions of the Contract, monitoring MBE compliance, and achieving on budget, on time, and within scope completion of the project.
- f. **Contractor** – The selected Bidder that is awarded a Contract by the State.
- g. **DHMH or the Department** – Maryland Department of Health and Mental Hygiene.
- h. **Forensic involvement** - criminal or police background
- i. **Invitation for Bids (IFB)** – This Invitation for Bids issued by the Maryland Department of Health and Mental Hygiene, for the Potomac Center, Solicitation Number OPASS-12-10876 dated June 14, 2012, including any addenda.

- j. **LAN** – Local Area Network.
- k. **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.
- l. **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.
- m. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- n. **Notice to Proceed** – Letter from the Contract Monitor to the Contractor stating the date the Contractor can begin work subject to the conditions of the Contract.
- o. **Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation are which are expressly set forth herein.
- p. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.
- q. **SMAC** – State Maximum Allowable cost.
- r. **State** – The State of Maryland.
- s. **WAC** – Wholesale Acquisition cost.

1.3 Contract Type

The Contract(s) resulting from this IFB shall be an Indefinite Quantity Contract as defined in COMAR 21.06.03.06.

1.4 Contract Duration

The Contract resulting from this IFB shall be for a period of five (5) year(s) beginning on or about October 1, 2012 and ending September 30, 2017. The Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Monitor.

1.5 Procurement Officer

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

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

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

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

Frances Penner, CPPB
Maryland Department of Health and Mental Hygiene
Potomac Center
1380 Marshall Street, Room 122
Hagerstown, MD 21740
Phone Number: (240) 313-3553
Fax Number: (240) 313-3507
E-mail: fpenner@dhhm.state.md.us

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

1.6 Contract Monitor

The Contract Monitor is:

JoAnn Appleyard, Director of Nursing
Maryland Department of Health and Mental Hygiene
Potomac Center
1370 Marshall Street, Room 155
Hagerstown, MD 21740
Phone Number: (240) 313-3530
Fax Number: (301) 797-1798
E-mail: jappleyard@dhhm.state.md.us

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

1.7 Pre-Bid Conference

A Pre-Bid Conference (Conference) will be held on **Wednesday, June 27, 2012**, beginning at **10:00 a.m.** Local Time, at 1370 Marshall Street, conference room, Hagerstown, MD 21740. Attendance at the Conference is not mandatory, but all interested Bidders are encouraged to attend in order to facilitate better preparation of their bids.

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax at (240) 313-3507 the Pre-Bid Conference Response Form to the attention of the Procurement Coordinator, Frances Penner, fpenner@dhhm.state.md.us, no later than 4:00 p.m. Local Time on **Monday, June 25, 2012**. The Pre-Bid Conference Response Form is included as **Attachment E** to this IFB. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Coordinator no later than **Monday, June 25, 2012**. DHMH will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

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

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

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsa/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 may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Coordinator. Questions, both oral and written, will also be accepted from prospective Bidders attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Coordinator in a timely manner prior to the bid due date. Questions are requested to be submitted at least five (5) days prior to the bid due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the IFB.

1.10 Bids Due (Closing) – Date and Time

The bids must be received by the Procurement Coordinator, at the address listed on the Key Information Summary Sheet, no later than **2:00 p.m.** Local Time on **Tuesday, July 10, 2012** in order to be considered.

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

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

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

1.11 Duration of Offer

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

1.12 Revisions to the IFB

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

any addenda issued prior to the submission of bids. Addenda made after the due date for bids will be sent only to those Bidders that submitted a timely bid.

Acknowledgment of the receipt of all addenda to this IFB issued before the bid due date must accompany the bid in the Transmittal Letter accompanying the bid. Acknowledgement of the receipt of addenda to the IFB issued after the bid due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum.

1.13 Cancellations

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

1.14 Incurred Expenses

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

1.15 Protest/Disputes

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

1.16 Bidder Responsibilities

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

1.17 Mandatory Contractual Terms

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

1.18 Bid/Proposal Affidavit

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

1.19 Contract Affidavit

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB. This Affidavit must be provided within five (5) business days of notification of proposed Contract award, however, to expedite processing, it is suggested that this document be completed and submitted with the bid.

1.20 Minority Business Enterprise Goals

A minimum overall MBE subcontractor participation goal of 0% has been established for the services resulting from this Contract

1.21 Arrearages

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

1.22 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Bidding method at COMAR 21.05.02.

1.23 Verification of Registration and Tax Payment

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

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

1.24 False Statements

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

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

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

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

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

1.25 Payments by Electronic Funds Transfer

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

1.26 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, section 31 "Prompt Payment." (See **Attachment A**). Additional information is available on GOMA's website at: http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf.

1.27 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State's living wage requirement is contained in **Attachment G**. Bidders submitting bids of \$100,000 or more must complete and submit the Maryland Living Wage Requirements Affidavit (**Attachment G-1**) with their bids. If a Bidder fails to complete and submit the required documentation, the State may determine a Bidder to be not responsible under State law.

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

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

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

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

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

1.28 Federal Funding Acknowledgement

- 1.28.1 There are / are not programmatic conditions that apply to this Contract, regardless of the type of funding.
- 1.28.2 The total amount of Federal funds allocated for the Potomac Center is \$0.00 in Maryland State fiscal year FY'12. This represents 0% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 1.28.3 This Contract does / does not contain federal funds.

1.29 Conflict of Interest Affidavit and Disclosure

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as **Attachment H** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08. Bidders shall complete and sign the Conflict of Interest Affidavit and Disclosure and submit it with their bids.

1.30 Non-Disclosure Agreement

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

1.31 HIPAA - Business Associate Agreement

Based on the determination by DHMH that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in HIPAA, the Bidder shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. §164.501 and set forth in **Attachment I**. This Agreement must be provided within five (5) business days of notification of proposed Contract award, however, to expedite processing, it is suggested that this document be completed and submitted with the bid. Should the Business Associate Agreement not be submitted upon expiration of the five (5) day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the next lowest bidder.

1.32 Electronic Procurements Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, DHMH may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes

facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., eMarylandMarketplace.com), and electronic data interchange.

- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.25 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMM, e-mail or facsimile to issue:
 - (a) the solicitation (e.g., the RFP or IFB);
 - (b) any amendments;
 - (c) pre-proposal conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or proposal to any Offeror or potential Offeror including requests for clarification, explanation, or removal of elements of an Offeror’s proposal deemed not acceptable;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer’s decision on any bid protest or Contract claim.
 2. An Offeror or potential Offeror may use e-mail or facsimile to:
 - (a) ask questions regarding the solicitation;
 - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) request a debriefing; or
 - (d) submit a "No Bid Response" to the solicitation.
 3. The Procurement Officer, the Contract Monitor and the Contractor may conduct day-to-day Contract administration, except as outlined in section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. submission of initial bids or proposals;
 2. filing of bid protests;
 3. filing of Contract claims;
 4. submission of documents determined by DHMH to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
 5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder, or Offeror be provided in writing or hard copy.
- F. Any facsimile or 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.

SECTION 2 – SCOPE OF WORK

2.1 Purpose

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

2.2 Bidder Minimum Qualifications

The Bidder must provide proof with its bid that the following minimum qualifications have been met.

2.2.1 A current license for the pharmacy by the Maryland Board of Pharmacy

2.2.2 A current license for each pharmacist by the Maryland Board of Pharmacy assigned to this contract.

2.2.3 Pharmacy shall be within one hour driving time of Center.

2.2.4 Pharmacy shall have two (2) years’ experience in institutional (medical facility, long term nursing home) pharmaceutical delivery service within the past five (5) years.

2.3 Scope of Work - Requirements

The Contractor shall:

2.3.1 Comply with all applicable Maryland and federal laws and regulations related to pharmacies, pharmacists, and the provision of pharmaceutical services.

2.3.2 Notify the Center immediately if the Maryland Board of Pharmacy advises any disciplinary action against a pharmacist employed by Contractor. If an individual is awarded the Contract and receives disciplinary action by the Maryland Board of Pharmacy, the Contract will be terminated immediately. If a company is awarded the Contract and an employee, contractor, or agent of the company receives disciplinary action by the Maryland Board of Pharmacy, the employee, contractor, or agent of the company shall be prohibited from working on this Contract.

2.3.3 Provide the following pharmaceutical services

- a. Deliver both prescription and non-prescription medications approved for hospitals and nursing facilities by the Centers for Medicare and Medicaid services and DHMH, Office of Health Care Quality.
- b. Provide these services for each person at the Center’s five (5) living units and one (1) observation unit. The Center is currently licensed for 63 beds but has the ability to go to a maximum of twenty-five (25) people per living units and approximately ten (10) people receiving Respite Care Services.
- c. Provide a minimum of two (2) medication carts per living unit. Cabinets (emergency and interim) and carts shall be furnished by Contractor and remain property and responsibility of Contractor. Provide medications in unit dose packaging for tablets, capsules, etc. Ensure Center approved liquids are individually labeled in bottles, tubes, jars, etc. in sizes appropriate to expected individual usage and practical imitations of size (i.e. the storage unit of the medication shall be equal to the amount of medication prescribed. If a prescription is 10 pills, it shall be in a 10 pill bottle.).
- d. Provide unit dose medications for short term visits (overnight to one week), trips, or events (e.g., leave of absence). The medications shall be packaged in unit doses and include the person’s name, name of medications, dosage, and time to be given.
- e. Use generic drugs whenever feasible. The Contractor shall furnish the lowest-priced available brand in accordance with the Interchangeable Drug Costs formulary established by DHMH.

http://www.mdmahealthchoicercx.com/healthchoice_docs/mmmh_form.pdf However, under certain circumstances “Brand Only” medications may be necessary for medical reasons. The Center reserves the right to document justification in the form acceptable for reimbursement by the Medicare Assistance program for “Brand Only” medications.

- f. Provide medications for both emergency and interim drug cabinets, the contents of which will be determined by the medical staff of the Center. The Contractor will be advised by the Center whenever any of these drugs are used and if the Center or the person’s insurance is to be charged. Replenishment of emergency or interim stock shall be the responsibility of the Contractor and shall be performed with the next drug delivery following notification from the Center unless a request is made by the Center for a STAT replacement. The Contractor shall monitor and update the drug supplies in the emergency and interim drug cabinets at least quarterly to ensure that all drugs listed on the cabinet are present and acceptable for use (e.g., expiration dates are valid, drugs are appropriate strength, form and delivery dispenser, etc.)
- g. For people having insurance, the Contractor shall bill the person’s insurance for any medications and accept that amount paid by that insurance as payment in full. Over the counter medications are not covered by insurance.
- h. For people with Medicaid/Medicare/Medical Assistance, the Contractor shall bill these agencies and accept the amount paid by these agencies as payment in full.
- i. For person’s who neither have private insurance nor Medicaid/Medicare/Medical Assistance coverage invoices shall be submitted to the Contract Monitor by the 21st of the month following the month in which the services were provided in both a summary format and a detail form for all medications (e.g. over the counter medications supplied by the contractor and not billable to Medicare/Medical Assistance). The two must reconcile before payment is made.
- j. Maintain adequate inventory to supply the Center’s medication needs. Attachment J is a listing of drugs most frequently utilized by the Center. It is furnished for the sole purpose of providing a guide (i.e., it is provided for informational purposes only) and shall not be construed to represent the only drugs utilized or a minimum or maximum quantity that will be ordered.
- k. Bill per Price Proposal on page 48. All pricing shall include all costs necessary to perform all services required under this Contract, including, but not limited to, the cost of dispensing, the cost of providing delivery, in-service pharmaceutical training, attendance at committee meetings, and all other services as detailed in this solicitation. There will be no additional compensation for any and all services provided. It is, therefore, recommended that the Contractor fully understand and weigh the estimated amount of time required for the contract.
- l. Provide the Center’s Contract Monitor with an electronic version, if available and hard copy of WAC or SMA or COST screens for invoices in order to provide an audit trail.
- m. Provide, to the Contract Monitor, a preprinted hardcopy, in duplicate, and an (EMR) **Electronic Medical Records** version of physician orders, with medication administration record forms for each person served monthly, one week prior to medication expiration. The physician orders are currently FAXED to the pharmacy, but at some point in the future may be sent electronically. The Contractor shall provide forms in the same manner as those provided by the current contractor. (See Attachment K) The actual type/name of EMR that will be used in the future has yet to be determined. When the system becomes available for public use the Contractor shall be required to register with the EMR provider and use the EMR system selected by the State.
- n. Present reports, requested by Contract Monitor, in a way that is easy to understand.
- o. Provide continuous pharmacy consultation services, including advice on drugs of choice for therapeutic indications, cost-effective prescribing practices, drug interactions, and other aspects of pharmacy and therapeutics that are recognized to be within a pharmacist’s area of professional expertise and/or professional responsibility to physician, nursing staff, dietitian, Contract Monitor and psychologist.

- p. Have the assigned pharmacist verify the content of each unit-dose package and each cassette before delivery to the Center. Documentation of the pharmacist's review shall be maintained by the Contractor and provided to the Center upon request.
- q. Perform a quarterly drug regimen review of each person at the Center taking medication and make written recommendations to the person's attending physician. For consistency purposes, a specific pharmacist shall be assigned to this task for the duration of the contract.
- r. Inventory all drug storage areas at the Center quarterly, or as necessary to maintain proper quantity levels. The Contractor shall monitor the expiration dates of drugs, proper storage of drugs, temperature, etc. Contractor shall notify Center of any drugs set to expire within four months of inspection date. All inspections, recommendations and subsequent corrective actions shall be documented and the reports forwarded to the Center's Contract Monitor by the 15th day of the month following the inspection. In the event the Contractor does not notify the Center of any recorded drugs set to expire, as required in these quarterly inspections, and those drugs are returned to the Contractor after their expiration date, the Contractor will fully reimburse the Center for the cost of those specific drugs, notwithstanding their expired status, or provide equivalent replacement at no cost to the Center.
- s. Meet, or designate someone to meet, with the Center's Contract Monitor per the contract Monitor's request.
- t. Attend and participate in the quarterly meetings of the Center's Pharmacy Committee. Submit reports quarterly to the Pharmacy Committee detailing the current status of the Center's pharmacy services, describing problems occurring in the delivery of pharmacy services and suggesting relevant policy and procedure changes. The first report will be due the first full calendar quarter following the initiation of the contract with subsequent reports submitted quarterly thereafter. The Contractor shall present the quarterly report at the pharmacy committee meeting; date and time TBD.
- u. Provide two (2) hours of pharmaceutical in-service training to the Center's staff at least four (4) times per year on topics selected by the pharmacist and approved by the Center's Contract Monitor.
 - v. If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the contract may be terminated for default which shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law.

2.3.4 Delivery of Medication:

- a. The Contractor shall deliver medication with exchange cassettes containing a seven (7) to fourteen (14) day unit dose supply for each person every seven (7) to fourteen (14) days to the Center daily, except Sundays and approved State Holidays. The specific delivery time will be determined by the Center.
- b. The Contractor shall deliver Short term Leave of Absence medications no later than two (2) days prior to the date the Leave of Absence is to occur if at least three (3) days' notice is given to the Contractor by the nursing staff prior to the leave of Absence.
- c. STAT and emergency medications that are not available within the Center shall be provided by the Contractor within one (1) hour of notification of need on a 24 hour per day, 7 day per week basis.
- d. The Contractor shall deliver all medication errors (e.g., incorrect drugs, incorrect strengths, insufficient quantity, etc.) within one (1) hour of notification of error on a 24 hour per day, 7 day per week basis.

2.3.5 Quality Level Indicators and Expectations:

- a. The Contractor's medication errors shall be no greater than 1% of medication dispensed per month. If a higher percentage of error occurs the errors shall constitute a material breach of contract and the State may terminate the contract for default, in addition to any other remedies which may be available by the terms of the contract, applicable by law, or in equity.
- b. If the Contractor commits multiple documented medication errors that could result in serious or fatal complications for a person, or persons, those errors, even if the Contractor's medication error rate is below the 1% monthly threshold, it shall constitute a material breach of the contract and the State may terminate the contract for default, in addition to any other remedies which may be available by the terms of the contract, applicable laws, or in equity.

2.4 Security Requirements

2.4.1 Employee Identification

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

2.4.2 Information Technology

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

2.4.3 Criminal Background Check

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

2.5 MBE Reports (Not Applicable)

2.6 Payment Type

Payments will be made as progress payments as set forth herein. In no case will any payment be viewed as partial payments.

2.7 Invoicing

2.7.1 General

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

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

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

Credit/debit adjustments will be made based upon audit verification or review of invoices. All non-controlled substance medications that are returned to pharmacy shall be credited back to Center.

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

- (c) Contractor shall have a process for resolving billing errors.
- (d) Funds for any Contract(s) resulting from this solicitation are dependent upon appropriations from the Maryland General Assembly.

2.7.2 Invoice Submission Schedule

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

- a. For people having insurance, the Contractor shall bill the person's insurance for any medications and accept that amount paid by that insurance as payment in full. Over the counter medications are not covered by insurance.
- b. For people with Medicaid/Medicare/Medical Assistance, the Contractor shall bill these agencies and accept the amount paid by these agencies as payment in full.
- c. For person's who neither have private insurance nor Medicaid/Medicare/Medical Assistance coverage invoices shall be submitted to the Contract Monitor by the 21st of the month following the month in which the services were provided in both a summary format and a detail form for all medications (e.g. over the counter medications supplied by the contractor and not billable to Medicare/Medical Assistance). The two must reconcile before payment is made.
- d. The invoices shall reflect medication details as follows:
 - a. Listing by person;
 - b. Drug identification (description plus NDC code.);
 - c. Date of prescription order;
 - d. Quantity/unit dispensed;
 - e. Number of times dispensed; and
 - f. Total cost per person.

2.8 Insurance Requirements

- 2.8.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 2.8.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$3,000,000 per occurrence.
- 2.8.3 Upon execution of a Contract with the State, Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
 - a. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
 - b. Commercial General Liability as required in subsection 2.8.1.
 - c. Errors and Omissions/Professional Liability as required in subsection 2.8.2.

- 2.8.4 The State shall be named as an additional named insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than sixty (60) days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least thirty (30) days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 2.8.5 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

2.9 Problem Escalation Procedure

- 2.9.1 The Contractor must provide and maintain a Problem Escalation Procedure for both routine and emergency situations. This Procedure 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 other personnel should the Contract Monitor not be available.

- 2.9.2 The Contractor must provide a Problem Escalation Procedure no less than 10 days prior to the beginning of the contract, and within 10 days after the start of each contract year (and within 10 days after any change in circumstance which changes the Procedure). The Problem Escalation Procedure shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Details shall include:

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

SECTION 3 – BID FORMAT

3.1 One Part Submission

Bidders shall submit bids, all minimum qualification documentation, and all Additional Required Submissions (see section 3.4 “Additional Required Submissions”) in a single sealed envelope.

3.2 Labeling

Each Bidder is required to label the sealed bid. The bid shall bear the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the bids.

3.3 Bid Completion

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

3.4 Additional Required Submissions

3.4.1 Transmittal Letter

A transmittal letter shall accompany the bid. The purpose of this letter is to transmit the bid and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Bidder to the services and requirements as stated in this IFB. See section 1.16 “Bidder Responsibilities.”

3.4.2 Completed Bid Page (**Attachment E**). Submit three (3) copies with original signatures.

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

3.4.4 Other Attachments: Submit three (3) copies with original signatures.

- a. Completed Maryland Living Wage Requirements Affidavit (**Attachment F-1**)
- b. Signed Conflict of Interest Affidavit and Disclosure (**Attachment G**)

Please note that:

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

are not required to be submitted with the bid. These documents will be required to be completed and submitted by the successful Bidder within five (5) business days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

3.4.5 Other Required Documentation

3.4.5.1 References

- a. Three (3) current references that demonstrate required pharmaceutical services experience. Each reference must include name of contact, address, telephone number, and, if possible, e-mail address.

The Department reserves the right to contact and consider references obtained through other means.

- b. As part of its bid, each Bidder is to provide a list of all contracts with any entity of the State of Maryland for which it is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Bidder is to provide:
 - i. The State contracting entity;
 - ii. A brief description of the services/goods provided;
 - iii. The dollar value of the contract;
 - iv. The term of the contract;
 - v. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
 - vi. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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

3.4.5.2 Financial Capability Statements

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

3.4.5.3 Certificate of Insurance

The Bidder shall provide a copy of the Bidder's current certificate of insurance with the prescribed limits set forth in section 2.8 "Insurance Requirements." The successful Bidder must provide a certificate of insurance naming the State as an additional insured, if required, within five (5) business days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

3.4.5.4 Subcontractors

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

3.4.5.5 Legal Action Summary.

This summary shall include:

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

3.4.5.6 Minimum Qualifications Documentation

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

3.5 Reciprocal Preference

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

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

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

3.6 Delivery

Bidders may either mail or hand-deliver bids.

- 3.6.1 For U.S. Postal Service deliveries, any bid that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the IFB will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. A Bidder using first class mail will not be able to prove a timely delivery at the mailroom and it could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit.
- 3.6.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Bidder. For any type of direct (non-mail) delivery, offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 3.6.3 After receipt, a bid tabulation will be created that identifies each Bidder and the amount bid.

The remainder of this page is intentionally left blank.

SECTION 4 - ATTACHMENTS

ATTACHMENT A – Contract

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

ATTACHMENT B – Bid/Proposal Affidavit

This document must be completed and submitted with the Bidder's bid.

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Pre-Bid Conference Response Form

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

ATTACHMENT E – Bid Pricing Instructions and Bid Page

Bid forms must be completed and submitted with the bid.

ATTACHMENT F – Living Wage Requirements for Service Contracts

ATTACHMENT F-1 – Maryland Living Wage Requirements and Living Wage Affidavit

This document must be completed and submitted with the bid.

ATTACHMENT G – Conflict of Interest Affidavit and Disclosure

This document must be completed and submitted with the bid.

ATTACHMENT H – Business Associate Agreement

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

ATTACHMENT I – Non-Disclosure Agreement (Award)

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

ATTACHMENT J – TOP 100 DRUGS USED IN 2010

ATTACHMENT K – SAMPLE OF PHYSICIANS ORDERS

ATTACHMENT A – CONTRACT

Pharmaceutical Services)

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

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

1. Definitions

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

- 1.1 “Bid” means the Contractor’s Bid dated (date on bid).
- 1.2 “Contract Monitor” means the Department employee identified in the IFB as the Contract Monitor.
- 1.3 “Contractor” means (contractor’s name) whose principal business address is (contractor’s main address) and whose principal office in Maryland is (contractor’s local address).
- 1.4 “Department” means the Maryland Department of Health and Mental Hygiene and any of its Agencies, Offices, Administrations, Facilities or Commissions.
- 1.5 “IFB” means the Invitation for Bids for (title of IFB) Solicitation # DHMH OPASS (OPASS assigned number), and any addenda thereto issued in writing by the State.
- 1.6 “Procurement Officer” means the Department employee identified in the IFB as the Procurement Officer.
- 1.7 “State” means the State of Maryland.

2. Scope of Contract

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

Exhibit A – The IFB

Exhibit B – The Bid

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

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

Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

3. Period of Performance.

- 3.1 The Contract resulting from this IFB shall be for a period of five (5) years beginning October 1, 2012, and ending September 30, 2017. The Contractor shall begin provision of services upon receipt of official notification of award.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Bid Page (Attachment F). Unless properly modified (see above subsection 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$_____.
- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, § 15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Contractor's eMarylandMarketplace vendor ID number is_____.

5. Rights to Records

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

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

6. Exclusive Use

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

7. Patents, Copyrights, and Intellectual Property

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

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

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

8. Public Information

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

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

9. Loss of Data

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

10. Indemnification

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

11. Non-Hiring of Employees

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

12. Disputes

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

13. Maryland Law

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

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

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

14. Nondiscrimination in Employment

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

15. Contingent Fee Prohibition

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

16. Non-availability of Funding

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

17. Termination for Cause

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

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the

date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

19. Delays and Extensions of Time

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

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

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

24. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.

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

- 24.1 That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly-authorized representatives, shall be granted access to the Contractor's contract, books, documents, and records necessary to verify the cost of the services provided under this contract, until the expiration of four (4) years after the services are furnished under this contract; and
- 24.2 That similar access will be allowed to the books, documents, and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is subcontracting to provide services with a value of \$10,000 or more in a twelve (12) month period to be reimbursed through funds provided by this contract.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

- 25.1 It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 25.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. Cost and Price Certification

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

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

27. Subcontracting; Assignment

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

28. Liability

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

- a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10 "Indemnification" of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

29. Parent Company Guarantee (If Applicable)

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

30. Commercial Nondiscrimination

30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material

breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

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

31. Prompt Pay Requirements

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

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

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

- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
- b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

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

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

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

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

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

32. Contract Monitor

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

33. Notices

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

If to the State: Sharon R. Gambrell, CPPB
 Procurement Officer
 Maryland Department of Health and Mental Hygiene
 Office of Procurement and Support Services
 201 West Preston Street, Room 416B
 Baltimore, Maryland 21201

If to the Contractor: _____

36. Compliance with Federal HIPAA and State Confidentiality Law

36.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

36.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and set forth in Attachment I. The fully-executed Business Associate Agreement must be submitted within five (5) working days after notification of selection, or within five (5) days after award, whichever is earlier. Upon expiration of the five (5) day submission period, if the Department determines that the selected offeror has not provided the HIPAA agreement required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the next qualified offeror.

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

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

CONTRACTOR

STATE OF MARYLAND
DEPARTMENT OF HEALTH AND
MENTAL HYGIENE

By:

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

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, _____ (print name), possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)-(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

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

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

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

Revised August, 2011

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID

Number: _____ Address: _____

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

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 – 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing

contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

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

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

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

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business's policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

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

(i) Abide by the terms of the statement; and

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

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

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

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D – PRE-BID CONFERENCE RESPONSE FORM

**Solicitation Number OPASS 12-10876
Pharmaceutical Services**

A Pre-Bid Conference will be held at 10:00 a.m., on Wednesday, June 27, 2012, at 1370 Marshall Street, conference Room, Hagerstown, MD 21740. Please return this form by Monday, June 25, 2012, advising whether or not you plan to attend.

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

Frances Penner
Potomac Center (administration, office or facility)
Department of Health and Mental Hygiene
1380 Marshall Street, Hagerstown, MD 21740
Email: fpenner@dhmh.state.md.us
Fax #: (240) 313-3507

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)

BID PRICING INSTRUCTIONS

Instructions

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

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

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e. .344 shall be 34 and .345 shall be 35.
- D) Every blank in every Bid Page shall be filled in. Any blanks may result in the bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Page by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the form, nothing shall be entered on the Bid Page that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions shall render the bid non-responsive.
- G) It is imperative that the prices included on the Bid Page have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Page. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12.

Price Proposal

There are various “indexes” that exist which purport to have access to pharmaceutical costs at various points in the manufacturing and distribution cycles. DHMH has found that they are either not reliable, involve excess work to monitor, are subject to interpretation and manipulation, and are inconsistent. In short, they are not reliable for purposes of providing bids or proposals on our solicitations.

Therefore, DHMH is now changing its traditional pricing model to allow the successful vendor to determine its own efficiencies and to provide prices accordingly.

In the present contract, prescriptions are charged based upon the persons’ insurance (or lack of insurance). If the person has private insurance, that insurance is responsible for the cost and the vendor, by participating in this solicitation, agrees to accept the insurance as payment in full. DHMH will not be liable for any co-pay. DHMH expects that claims under this method will be a small part of the compensation to the vendor. The next tier of payment comes from Medicaid/Medicare. Most of the prescriptions to be filled will have Medicaid/Medicare coverage and the vendor will accept the payments from these agencies as payment in full. The last tier of payment comes from the obligation of the facility to pay for prescriptions that are for persons who are not covered by either private insurance or Medicaid/Medicare.

In this last circumstance (concerning prescriptions for people with no insurance coverage), vendors are to propose a DISCOUNT from their Wholesale Acquisition Cost (“WAC”) for brand drugs and a DISCOUNT or UPCHARGE from the State Maximum Allowable Cost (“SMAC”) for generics. Such DISCOUNTS and/or UPCHARGES must be applied to the total monthly bill submitted to the facility for payment. The percentage DISCOUNTS and/or UPCHARGES may not vary during the term of the contract. It is important for the vendor to note that the net price to the facility is to include DISPENSING and DELIVERY charges. Vendors should further note that this payment methodology may be supplanted with Medicaid pricing at a future date by the State. DHMH intends to implement an electronic process where the pharmacy can access the Medicaid reimbursement cost (including any dispensing fee). Should that happen during the life of this contract, DHMH may unilaterally require the vendor to fill these prescriptions based upon the same method and pricing as if they were filling a prescription for a Medicaid-eligible person. If such a change occurs, the vendor will be entitled to the Medicaid/Medicare payments only and shall not be entitled to any other adjustment to the contract price as a result of that change in payment methodology.

Over-the-counter items shall be charged based upon vendor COST plus a DISPENSING and DELIVERY FEE as shown on the bid page.

The bill that is sent to the facility monthly must include black and white print-outs of any WAC or SMAC or COST screens or invoices in order to provide an audit trail. Failure to do so will cause bills to not be paid until this information is provided and identified as covering the time when the prescription or over-the-counter item was furnished.

Medicaid records indicate that from April 1, 2007 to February 29, 2012 there have been 21213 prescriptions filled for a cost to Medicaid of \$490,543.28. That works out to \$10,219.65 per month (based on 48 months) and \$23.12 per prescription.

Bid Page – Attachment E

(October 1, 2012 – September 30, 2017)

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

Please complete all areas of this sheet that require pricing. Failure to do so will render your bid invalid.

Dispensing/delivery/ BRANDED DRUGS: _____% DISCOUNT from WAC

Dispensing/delivery GENERIC DRUGS: _____% DISCOUNT from SMAC or

_____% UPCHARGE from SMAC

OVER-THE-COUNTER ITEMS: \$_____DISPENSING FEE

\$_____DELIVERY FEE (if not delivered with prescription(s))

In order to calculate the most advantageous bid for the State, please apply the above information to the following estimates:

A. BRANDED DRUGS NOT COVERED BY ANY INSURANCE: 100 prescriptions: WAC=\$25,000. State pays \$_____

B. GENERIC DRUGS NOT COVERED BY ANY INSURANCE: 500 prescriptions: SMAC=\$25,000. State pays \$_____

C. OVER-THE-COUNTER ITEMS: 100 items: dispensing fee when not delivered with prescriptions. State pays \$_____

D. OVER-THE-COUNTER ITEMS: 100 items, cost=\$10,000. Dispensing fee when delivered with prescriptions: State pays \$_____

TOTAL (A+B+C+D): \$_____. This is the amount to be used for comparison purposes.

Submitted By:

Authorized Signature: _____ Date: _____

Printed Name and Title: _____

Company Name: _____

Company Address: _____

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

FEIN: _____

eMM #: _____

Telephone: (_____) _____-- _____

Fax: (_____) _____-- _____

E-mail: _____@_____

ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

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

the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

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

ATTACHMENT F-1 – MARYLAND LIVING WAGE REQUIREMENTS AFFIDAVIT

Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

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

ATTACHMENT G – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

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

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

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

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

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

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

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

SUBMIT THIS AFFIDAVIT WITH BID

ATTACHMENT H – BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the Potomac Center, a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”), and _____ (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity have a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent regulations (45 C.F.R. Parts 160 and 64), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

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

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

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

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

I. DEFINITIONS.

- A. Individual. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. §164.502(g).
- B. Breach. “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.402.
- C. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. §164.501.
- D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- E. Protected Health Information or PHI. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity
- F. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. §164.501.
- G. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.

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

II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.
- B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 C.F.R. §164.504(e).
- C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.
- B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- C. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this Agreement
- D. In addition to its obligations in Section III.C, Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate’s notification to Covered Entity hereunder shall:
1. Be made to Covered Entity without unreasonable delay and in no case later than fifty (50) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifty (50) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
 2. Include the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
 3. Be in substantially the same form as **Exhibit A** hereto; and
 4. Include a draft letter for the Covered Entity to utilize to notify the Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:
 - a) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

- b) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - c) Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
 - e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.
- F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- G. To the extent applicable, Business Associate shall provide access to PHI in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524.
- H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual.
- I. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.
- J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.
- K. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.
- L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate.
- M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

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

IV. TERM AND TERMINATION.

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for Pharmaceutical Services, Solicitation # DHMH OPASS 12-10876, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section IV.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement;
 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 3. If neither termination nor cure is feasible, report the violation to the Secretary.
- C. Effect of Termination.
1. Except as provided in paragraph C (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the PHI.
 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
 3. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

V. CONSIDERATION. Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH. Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

VII. MODIFICATION; AMENDMENT. This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES. Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW. The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for protected health information, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS.

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Ramiek James, Privacy Officer
Department of Health and Mental Hygiene
Office of the Inspector General
201 W. Preston Street, 5th Floor
Baltimore, MD 21201
Phone: (410) 767-5411

D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____

Phone: _____

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

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

This notification is made pursuant to Section IIID(3) of the Business Associate Agreement between the Potomac Center, a unit of the Maryland Department of Health and Mental Hygiene (DHMH), and _____ (Business Associate).

Business Associate hereby notifies DHMH that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____

Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes / No

If yes, do the people live in multiple states? Yes / No

Number of individuals affected by the breach: _____.

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

E-mail Address: _____

Phone Number: _____

ATTACHMENT I – NON-DISCLOSURE AGREEMENT (AWARD)

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

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for the Invitation for Bids (“IFB”) Pharmaceutical Services, Solicitation # DHMH OPASS 12-10876; and

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

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

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the IFB or who will otherwise have a role in performing any aspect of the IFB, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor: _____ Maryland Department of Health and Mental Hygiene

By: _____(SEAL) By: _____

Printed Name: _____ Printed Name: _____

Title: _____ Title: _____

Date: _____ Date: _____

NON-DISCLOSURE AGREEMENT - EXHIBIT B

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

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

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT J – TOP 100 DRUGS OF 2010

Potomac Center - Hagerstown

Top 100 Drugs by RX Count

Drug Name and Strength	Type	# Scripts	Avg Qty per RX
DOCUSATE SODIUM 100MG CAP	OTC	257	51.87
DOCUSATE SOD 50MG/5ML	OTC	156	480.00
DIVALPROEX SOD 500MG ** T	RX	141	76.91
OYST CAL D 500MG ** TAB	OTC	140	37.01
BENZTROPINE MES 1MG ** TA	RX	122	49.66
DILANTIN 125MG/5ML SUSP	RX	116	241.09
BISACODYL 10MG UNISERT	OTC	102	9.18
CLONAZEPAM 1MG TABLET	RX	97	43.36
OMEPRAZOLE 20MG ** CAPS D	RX	89	31.26
DAILY VITE W/IRON &MINERA	OTC	88	29.58
CLONAZEPAM 0.5MG TABLET	RX	87	44.11
GOLDEN AGE LIQUID	OTC	85	237.18
DIVALPROEX SOD 250MG ** T	RX	80	38.03
CARBAMAZEPINE 200MG ** TA	RX	78	118.38
DIAZEPAM 2MG TABLET	RX	77	46.82
PREVACID 30MG SOLUTAB	RX	66	31.17
LORATADINE 10MG ** TABLET	OTC	63	22.14
GABAPENTIN 300MG ** CAPSU	RX	63	62.73
ALENDRONATE SOD 70MG ** T	RX	62	4.10
LAMOTCRIGINE 100MG ** TABL	RX	62	40.15
RANITIDINE 15MG/ML SYRUP	RX	61	216.39
MI ACID LIQUID	OTC	60	355.00
HALOPERIDOL 5MG ** TABLET	RX	59	39.53
SENNALAXATIVE 8.6MG TABL	OTC	59	46.64
TEGRETOL 100MG/5ML SUSP	RX	58	433.86
RANITIDINE 150MG ** TABLET	RX	57	46.14
TRICOR 145MG ** TABLET	RX	56	27.93
DIPHERXIST 12.5MG/5ML ELI	OTC	56	450.00
CARARXATE 1GM/10ML SUSP	RX	55	420.33
RXLUPHENAZINE 5MG ** TABLET	RX	55	137.53
RXORTICAL NASAL SPRAY	RX	52	3.70
OXCARBAZEPINE 300MG/5ML S	RX	51	250.00
SUCRALRXATE 1GM ** TABLET	RX	51	81.55
METOPROLOL 25MG ** TABLET	RX	51	43.33
HALOPERIDOL 10MG TABLET	RX	50	45.18

CLONAZEPAM 2MG TABLET	RX	50	41.48
LEVETIRACETAM 100MG/ML SY	RX	49	230.20
LEVOTCHYROXINE 0.05MG ** T	RX	49	24.24
DAILY MULTIVITAMIN TABLET	OTC	49	28.27
VALPROIC ACID 250MG/5ML S	RX	48	479.56
LEVOTCHYROXINE 0.075MG **	RX	48	26.35
DEPAKENE 250MG/5ML SYRUP	RX	45	466.89
RISPERIDONE 2MG ** TABLET	RX	45	29.20
GEMRXIBROZIL 600MG ** TABL	RX	45	45.36
LITHIUM CARBONATE 300MG *	RX	45	53.13
LORAZEPAM 1MG TABLET	RX	45	20.93
TAMSULOSIN HCL 0.4MG CAPS	RX	44	33.55
LACTULOSE 10GM/15ML SYRUP	RX	44	485.02
RXIBER-LAX 625MG **TABLET	OTC	44	71.89
METRXORMIN HCL 1000MG ** T	RX	44	42.09
CALCIONATE 1.8GM/5ML SYRU	RX	43	153.49
POLYETHYLENE GLYCOL 527GM	RX	42	527.00
DEEP SEA 0.65% NOSE SPRAY	OTC	42	45.00
RISPERDAL CONSTA 25MG SYR	RX	41	1.00
LEVOTCHYROXINE 0.1MG ** TA	RX	41	28.27
NEXIUM 40MG ** CAPSULE	RX	40	46.50
RISPERIDONE 1MG ** TABLET	RX	38	21.76
SIMVASTATIN 10MG ** TABLE	RX	38	29.53
TRAZODONE 150MG ** TABLET	RX	38	17.82
VALPROIC ACID 250MG ** CA	RX	37	162.05
BENZTROPINE MES 2MG TABLE	RX	37	43.68
POTASSIUM CHL 10% LIQ	RX	37	475.27
DIPHERXYDRAMINE 50MG CAPS	RX	37	20.49
CRANBERRY 400MG ** CAPLET	OTC	36	60.08
ALENDRONATE SOD 70MG TABL	RX	36	4.42
OYST-CAL-D 250MG TABLET	OTC	36	59.42
RXERROUS SULRXATE 325MG **	OTC	36	51.33
IBUPROXEN 400MG TABLET	RX	36	11.22
TRAMADOL HCL 50MG ** TAB	RX	35	30.40
ACETAMINOPHEN 325MG TABLE	OTC	35	13.94
IPRATR-ALBUTEROL 0.5-3 MG	RX	34	90.00
GLYCOPYRROLATE 1MG TABLET	RX	33	59.45
RISPERIDONE 0.5MG ** TAB	RX	33	40.61
UTAC TABLET	RX	33	58.27
HYDROXYZINE HCL 25MG ** T	RX	33	57.30
SIMVASTATIN 40MG ** TABLE	RX	33	24.52
LISINAPRIL 10MG ** TABLET	RX	33	19.18
BACLORXEN 10MG ** TABLET	RX	32	74.63
PLAVIX 75MG ** TABLET	RX	31	27.55
CARBAMAZEPINE 100MG/5ML S	RX	31	434.52

LDR ANTACID LIQUID	OTC	31	355.00
DAILY VITE W/RXE & MINERAL	OTC	31	29.84
RISPERIDONE 3MG ** TABLET	RX	30	31.70
RXLUTICASONE 50MCG NASAL S	RX	30	16.00
PROSHIELD PLUS SKIN PROTCE	OTC	30	120.00
ANTACID ANTI-GAS LIQUID	OTC	30	355.00
ZYPREXA 20MG TABLET	RX	29	27.66
RISPERIDONE 4MG TABLET	RX	29	20.38
LDR SENNA PLUS TABLET	OTC	29	103.72
CALCIUM 500MG W/D CHEW TA	OTC	29	58.97
VITAMIN C 500MG ** TABLET	OTC	29	31.66
SULRXAMETHOXAZOLE/TMP DS T	RX	28	27.21
SIMETHICONE 80MG TAB CHEW	OTC	28	45.46
LORAZEPAM 2MG TABLET	RX	28	15.86
LEVOTCHYROXINE 0.125MG TAB	RX	27	27.78
METRXORMIN HCL 500MG ** TA	RX	27	46.37
LITHIUM CARBONATE 600MG C	RX	26	63.54
RXLUPHENAZINE DEC 25MG/ML	RX	26	5.00
LEVOTCHYROXINE 0.088MG **	RX	26	27.15
TRAZODONE 100MG ** TABLET	RX	26	32.96
GERI-LANTA LIQUID	OTC	26	355.00

ATTACHMENT K – PHYSICIANS ORDERS SAMPLE

PHYSICIAN'S ORDERS

POTOMAC CENTER

MEDICATIONS	HOUR	DIAGNOSIS	ORDERS
ASPIRIN 81MG TABLET CHE ONE PO DAILY FOR POLYCYTHEMIA	08/26/11 07579598 8AM	DR. WASEEM	1380 MARSHALL STREET, HAGERSTOWN, MD 21740 *****DISCONTINUE PREVIOUS ORDERS***** ***** DIET *****
CHLORPROMAZINE 100 MG T THORAZINE 100 MG TABLET ONE PO EVERY EVENING AT 9M FOR MOOD	08/16/10 0757959E 9PM	DR. JERMAN	REGULAR ***** LABORATORY WORK *****
CHLORPROMAZINE 10MG TAB THORAZINE 10MG TABLET ONE PO EVERY MORNING FOR MOOD STABILIZATION	10/12/10 0757959S 8AM	DR. JERMAN	T4 AND TSH EVERY 4 MONTHS DEPAKOTE LEVEL EVERY 4 MONTHS CBC EVERY 3 MONTHS DX: ELEVATED H&H *****TREATMENTS*****
DESMOPRESSIN ACET 0.2MG ONE PO EVERY EVENING FOR ENURESIS	08/16/10 07579597 9PM	DR. WASEEM	***** ANCILLARY ORDERS ***** YEARLY EYE EXAM DUE TO MYOPIA AND ASTIGMATISM PREVENT 5000 PLUS FLUORIDE TOOTH PASTE USE EVERY DAY, RUB TO TEETH CLOSE TO GUM LINE WITH Q-TIP APPLICATOR APPLY A&D OINTMENT TOPICALLY TO BOTH NOSTRILS PRN DRYNESS RETURN FOR ROUTINE DENTAL FOLLOW-UP IN 6 MONTHS (FROM: 5/17/2011)
DOCUSATE SODIUM 100MG C COLACE 100MG CAPSULE ONE PO EVERY EVENING FOR CONSTIPATION	08/16/10 07579602 9PM	DR. WASEEM	
LEVOTHYROXINE 0.025MG * SYNTHROID 0.025MG TABLET TAKE ONE BY MOUTH DAILY FOR HYPOTHYROIDISM	01/11/11 07579601 8AM	DR. WASEEM	
SEA-OMEGA 1000MG CAPSUL ONE PO DAILY FOR HYPERCHOLESTEROLEMIA	08/16/10 0748884S 8AM	DR. WASEEM	
VITAMIN D 1000U TABLETS ONE PO EVERY MORNING WITH BREAKFAST FOR BORDERLINE VIT. D LEVEL (IE: CHOLECALCIFEROL)	08/16/10 07579603 8AM	DR. WASEEM	
DIVALPROEX SOD 500MG ** DEPAKOTE 500MG TABLET EC ONE PO TWICE DAILY FOR MOOD STABILIZATION	11/17/10 07579600 9PM	DR. JERMAN	

Trapel 11/4/11

I AUTHORIZE ALL PRESCRIPTIONS ORDERS PRINTED WITH MY NAME: 11-4-11 KHALID WASEEM, M.D.
I AUTHORIZE ALL PRESCRIPTIONS ORDERS PRINTED WITH MY NAME: _____ M. JERMAN, MD

MEDS REVIEWED BY: <i>Connie Harsh</i> DATE: <u>11/2/11</u>		PHYSICIANS SIGNATURE: <i>Trapel 11/4/11</i>	
CHARTING FOR <u>11/4/11</u> THROUGH <u>12/2/11</u>		DATE: _____ PAGE 1 OF 2	
Physician	WASEEM, KHALID M BW5737448	Telephone No.	240-420-2656
Alt. Physician	WASEEM, KHALID M BW5737448	Alt. Telephone	240-420-2656
Allergies	BEESTINGS, NKDA	Rehabilitative Potential	<u>P68</u>
Diagnosis <u>PSYCHOSIS, INTELLECTUAL DISABILITY, AD. HYPERACTIVITY/D/G/EMURESIS, MOOD, HYPOTHYROIDISM</u>			
Medical Number	Medicare Number	Complete Entries Checked:	08/16/10
RESIDENT		By: _____ Title: _____	RESIDENT CODE ZIMMICH ROOM NO. C3138 BED # 4 FACILITY C 099999999