



**STATE OF MARYLAND**  
**DEPARTMENT OF THE ENVIRONMENT (MDE)**  
**REQUEST FOR PROPOSALS (RFP)**  
**ENVIRONMENTAL CONSULTING SERVICES**  
**RFP NUMBER #BPM023283**

**ISSUE DATE: MARCH 17, 2021**

**NOTICE**

A Prospective Offeror that has received this document from a source other than eMaryland Marketplace Advantage (eMMA) <https://procurement.maryland.gov> should register on eMMA. See **Section 4.2**.

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

### VENDOR FEEDBACK FORM

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

**Title: Environmental Consulting Services**

**Solicitation No: BPM023283**

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

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

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

REMARKS:

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

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

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

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

**STATE OF MARYLAND**  
**DEPARTMENT OF THE ENVIRONMENT (MDE)**  
**KEY INFORMATION SUMMARY SHEET**

<b>Request for Proposals</b>	Services – Environmental Consulting Services
<b>Solicitation Number:</b>	BPM023283
<b>RFP Issue Date:</b>	March 17, 2021
<b>RFP Issuing Office:</b>	Department of the Environment (MDE or the "Department")
<b>Procurement Officer:</b>  <b>e-mail:</b> <b>Office Phone:</b>	Shareda Holifield 1800 Washington Boulevard Baltimore, MD 21230 <a href="mailto:Shareda.holifield@maryland.gov">Shareda.holifield@maryland.gov</a> (410) 537-3075
<b>Proposals are to be sent to:</b>	Submit via eMMA
<b>Pre-Proposal Conference:</b>	March 29, 2021 at 10am EST via Teleconferencing/Virtual Meeting on Google Meeting See <b>Attachment A</b> for directions and instructions.
<b>Questions Due Date and Time</b>	<del>April 9, 2021 at 5pm EST</del> <b>April 16, 2021 at 5pm EST</b>
<b>Proposal Due (Closing) Date and Time:</b>	<del>April 16, 2021 at 2pm EST</del> <b>April 30, 2021 at 5pm EST</b> Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see <b>page iv</b> ).
<b>MBE Subcontracting Goal:</b>	22% with the following subgoals: 2% for Hispanic-American MBEs 3% for Asian-American MBEs 10% for Woman-Owned MBEs
<b>VSBE Subcontracting Goal:</b>	1%
<b>Contract Type:</b>	Indefinite Quantity, with Firm Fixed Prices with Work Orders of Time & Materials and Fixed Price
<b>Contract Duration:</b>	Five (5) Year base period with one 1-year option period. July 1, 2021 to June 30, 2026 with one 1-year option period (July 1, 2026 to June 30, 2027).
<b>Primary Place of Performance:</b>	Maryland Department of the Environment 1800 Washington Boulevard Baltimore, MD 21230
<b>SBR Designation:</b>	No
<b>Federal Funding:</b>	No

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## 1 Minimum Qualifications

### 1.1 Offeror Minimum Qualifications

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

- 1.1.1 The Offeror shall demonstrate that both Well Drillers and Geoprobe operators possess a valid, active Maryland Well Drilling License and are certified as having received training in accordance with Occupational Health and Safety Training (OSHA) 29 CFR 1910.120.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal copies of all valid, active Maryland Well Drilling Licenses and certificates demonstrating that both the Well Drillers and Geoprobe operators have completed the necessary OSHA 29 CFR 1910.120 training.

- 1.1.2 The Offeror shall demonstrate that a minimum of one employee of the Offeror's company is an active licensed Maryland Professional Engineer.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal copies of all valid, active Maryland Professional Engineer Licenses.

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## 2 Contractor Requirements: Scope of Work

### 2.1 Summary Statement

- 2.1.1 The Department of the Environment (MDE or the "Department") is issuing this Request for Proposals (RFP) to seek proposals from firms that will provide environmental consulting services on a statewide basis, including project management and technical services, to support MDE's remedial response activities at controlled hazardous substance (CHS) and petroleum sites in Maryland where releases, or threats of releases, of CHS or petroleum products have occurred.
- 2.1.2 It is the State's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is five (5) years, with an optional one (1) year renewal at Year 5 prices.
- 2.1.3 The Department intends to make a single award as a result of this RFP. The total funding authority for the contract shall not exceed \$7,500,000. MDE reserves the right to modify the total funding authority. No minimum amount of work or funds is guaranteed under the Contract. See RFP **Section 4.9 Award Basis** for more Contract award information.
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5 A Contract award does not ensure a Contractor will receive all or any State business under the Contract. MDE is not obligated by the Contract to issue any Work Orders to the Contractor. The Department expressly reserves the right to solicit offers outside of this Contract for the same or similar work as that proposed or contemplated under this Contract.

### 2.2 Background and Purpose

The purpose of the Contract is to obtain environmental consulting services on a statewide basis, including project management and technical services, in support of MDE's remedial response activities at Maryland sites known or suspected to be source(s) of a release(s) of CHS, petroleum, or both. The Department has approximately 6 ongoing CHS related projects in the Land Restoration Program (LRP) and approximately 60 ongoing petroleum related projects in the Oil Control Program (OCP).

For ongoing and new projects, the successful Offeror will provide investigative and/or technical services to assist the Department in investigating the nature and extent of contamination, the source of a release and plan, implement, or oversee a response strategy to reduce or eliminate the threat to public health or the environment. The Department expects the majority of tasks under this Contract to involve small to moderate sized investigations where the source of the release of CHS or petroleum into the environment is unknown. The successful Offeror will be expected to perform approved environmental consulting services in cooperation with the assigned MDE Project Manager.

### **2.2.1 Project Goals**

- A. Secure support for the Department's LRP, OCP, and other Land and Materials Administration (LMA) programs that regulate the use, storage, or disposal of either CHS, petroleum products, or other wastes;
- B. Specify contractor accountability to MDE for meeting technical, schedule, and cost goals; and
- C. Improve continuity in performing response activities by providing technical and field support to the Department.

The types of services anticipated under this Contract are listed in the **Section 2.3**.

### **2.2.2 State Staff and Roles**

In addition to the Procurement Officer and Contract Monitor, the State will have the following project management roles:

- A. Project Officer – Both the OCP and the LRP will have an assigned Project Officer. The OCP Remediation Division Chief and the LRP State Assessment and Remediation Division Chief will serve in this role for their respective programs. When other LMA programs use the Contract, then a Project Officer for that program will be identified accordingly. The Project Officer will be the main technical point of contact for the Contractor. The Project Officers will interface with the Contract Monitor on a regular basis to track the overall budget of the Contract and the Contractor's compliance with the Contract terms.
- B. Project Managers – Each program will assign Project Managers on a Work Order basis. The OCP Remediation Division's State-Lead Section Head will be the Project Manager for all OCP projects. The LRP will assign Project Managers per individual Work Order. Generally, the Project Manager will initiate a Work Order Request under the Contract.
- C. Program Managers – The Program Managers for the OCP and LRP will serve in a senior management role for the Contract and ongoing projects. The Program Managers will also review and approve all Work Orders and invoices following Project Officer review.

### **2.2.3 Other State Responsibilities**

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

## **2.3 Responsibilities and Tasks**

The selected Offeror will provide MDE with environmental consulting services throughout the State. These services include, but are not limited to environmental assessments, site characterizations, scientific investigations, risk assessments, response action planning and implementation, project management, third party oversight, permitting compliance, monitoring activities, in limited circumstances operation and maintenance (O&M) of treatment systems, and general technical assistance.

The following is an illustration of the typical project sequence.

- MDE becomes aware of a potential project requiring Contractor services
- MDE notifies Contractor of project and requests a work plan for the associated support tasks (i.e. a Work Order Request)

- Contractor prepares work plan with cost proposal (i.e. a Work Order) and sends it to MDE for review and approval
- MDE reviews and approves the plan and issues a Purchase Order to fund the plan implementation
- Contractor completes the project assignment and invoices the Department

Based on experience with prior contracts, the Contractor's work tasks will fall into the following general categories:

Common (Expected Frequency: Monthly to Quarterly)

- Work plan preparation (usually includes introductory meeting/phone call and possibly site visit)
- Utility clearance
- Surveying
- Technical consultation services
- Private supply well sampling (residential and commercial)
- Long-term groundwater monitoring assignments
- Liquid phase hydrocarbons (LPH) recovery
- Liquid nonaqueous phase liquid (LNAPL) baildown testing
- Vapor intrusion surveys
- Soil gas surveys
- Residential point of entry treatment system installation and operation and maintenance (O&M)
- Contaminant assessment activities
- Report preparation (including data summary tables and graphs and maps)
- Direct push subsurface investigations, including soil and groundwater collection
- Exploratory test pitting
- Site reconnaissance activities
- Supply bottled water to select residential properties
- Investigation derived waste (IDW) management

Occasional (Expected Frequency: Semi-Annually)

- Monitoring well network installation, development, and sampling
- ASTM compliant phase I/II environmental site assessments
- Response action planning and implementation activities (e.g. targeted soil removal, spill containment, vapor mitigation)
- Permit application services
- Membrane interface probe surveys
- Potable well location surveys

Infrequent (Expected Frequency: Annually)

- Contract Laboratory Program (CLP) sampling for USEPA-funded Hazard Ranking System (HRS) Investigations
- Surface geophysical surveys (e.g. electromagnetic, ground penetrating radar)
- CHS characterization and disposal

- Direct push high resolution site characterization (e.g. membrane interface probe [MIP], laser induced fluorescence [LIF], electron capture detector [ECD], hydraulic profiling tool [HPT], optical imaging profiler [OIP])
- Groundwater hydraulic testing (e.g. draw down testing, slug testing)
- Borehole geophysical surveys (e.g. caliper testing, heat pulse, video)
- Underground storage tank (UST) removal
- Monitoring well abandonment
- Geographical information system (GIS) and other mapping services

Rare (Expected Frequency: once or twice per Contract duration)

- Sonic drilling
- Expert witness testimony
- Third party oversight

### **2.3.1 Other Technical and Management Assistance**

Support MDE in oversight of remedial responses being conducted by either an Inculpable Person as defined in Section 7-501 of the Environment Article, Annotated Code of Maryland, or a Responsible Person as defined in Section 7-201 of the Environment Article; provide support for staff training and enforcement, Potentially Responsible Party (PRP) searches, community relations, quality assurance, data management, analytical activities, and other related technical activities. Examples of typical contractor services are listed in Table 3.

### **2.3.2 Contract Structure**

MDE is soliciting for an Indefinite Quantity Contract, with Firm Fixed Prices (labor and unit rates) with Work Orders of Time & Materials and Fixed Price. This provides for compensation to the selected Offeror for the cost of furnishing requested environmental consulting services to MDE. This compensation will be based upon hourly labor rates, unit rates for field services, field supplies, field equipment, and laboratory analytical costs. Travel costs shall be paid by a mileage rate, with exceptions, and in conformance with the State of Maryland Travel Regulations.

MDE is soliciting for one Contract with no guaranteed minimum level of effort (LOE) and a maximum number of hours, which is 54,000 hours for the awarded Contract. The period of performance for the Contract shall not exceed six years (5 years with one optional year at Year 5 rates), a total of 54,000 hours, or a Contract total amount of \$7,500,000, whichever is attained first.

Table 1 indicates the anticipated distribution of LOE by labor category. It is recognized that this distribution may vary for individual work assignments depending on the nature of the work assignment. It is anticipated, however, that this distribution will approximate the LOE distribution on an annual basis. Deviations from the LOE distribution over the annual period or from the 10,800 hours need to be approved by the MDE Project Officers.

**Table 1: Contract LOE Size – 54,000-Hour Maximum OVER FIVE YEARS**

Labor Category*	% of Total Hours	LOE Hours/Year
	Contract	Contract
P4	20	2,160
P3	25	2,700
P2	30	3,240
P1	10	1,080
T2	10	1,080
T1	5	540
Total	100%	10,800
<i>*Labor categories are defined in Section 3.10.4, Tables 5 &amp; 6</i>		

### 2.3.3 Contract Management

The MDE Project Officers (one for LRP and one for OCP), within the LMA, will have overall responsibility for managing and directing activities performed under the Contract for the respective LMA program the work is being done for. Each Project Officer, along with a Contract Monitor, and the support of MDE's Office of Procurement and Contract Management, will be responsible for verifying that contracting activities are performed as authorized by law, regulation, and the terms and conditions of the Contract. Each Project Officer will oversee the work performed for their program in the State under the Contract.

The Offeror must specify the proposed organization and management of the project. It must address all aspects of the scope of work, including interaction within the team and with MDE. An organization chart showing all key personnel proposed for assignment to this project must be included. The chart should clearly show lines of authority, including those with any subcontractor. All key personnel should be clearly identified, as well as key subcontracting personnel. The successful Offeror must have all the listed personnel and one person cannot hold more than two (2) positions. The Offeror must be able to provide staffing to meet the needs of the Contract. See **Section 3.10** for definitions of key personnel and required staffing levels.

### 2.3.4 Work Order and Invoice Procedures

A more detailed description of the Work Order process under this Contract is provided in **Section 3.14** and a more detailed description of the invoicing requirements are listed in **Section 3.3**. The following is a general summary of that process.

When the need for technical assistance arises, the Department shall issue a request for a Work Order to the Contractor. The Work Order shall detail the requested services and the time period within which the work shall be completed (i.e. the Tasks). If deemed to be warranted by MDE, a Pre-Work Order meeting may be convened between the Project Officer, the assigned Project Manager, and the Contractor to discuss the pending technical project.

A Work Order will be prepared by the Contractor to include a Work Plan detailing the goals and objectives of the project and the specific scope of work to be performed. The Work Order will also include a Time and Materials-Not to Exceed (T&M-NTE) cost proposal. The cost proposal will detail the personnel time, equipment, and other services needed to complete the Work Order.

Upon review and approval of the Work Order, a formal Purchase Order (PO) requesting the Work Order will be issued. No work may proceed until this authorization is issued. Once the PO is issued, the assigned Project Manager will become the point of contact for that project.

The project shall be performed according to the scope of work, schedule, and cost in the Work Order. Any variance shall be approved before the Contractor proceeds in the form of a change order to the PO or a new PO.

The Contractor will be compensated based upon the submission of an invoice reflecting time expended by each professional category, equipment, and other service. Payment will be made upon invoice receipt and approval of the deliverables as described under the Work Order. Invoicing may occur monthly for ongoing projects.

MDE is not obligated by the Contract to issue any Work Orders to the Contractor. The Department expressly reserves the right to solicit offers outside of this Contract for the same or similar work as that proposed or contemplated under this Contract.

### **2.3.5 Reports and Other Documents**

A variety of reports may be requested as part of any Work Order. These may range from a simple letter report with accompanying data to a full site investigation report. Accordingly, MDE will specify the type of report(s), the appropriate format, and the required number of copies as part of each Work Order. All documents must be submitted and approved by the Project Manager prior to publication. A schedule for submitting draft and final reports will be determined by the Work Order. See **Section 2.4** for more details on deliverable requirements.

### **2.3.6 Activity and Financial Reports**

The Contractor shall prepare semi-annual progress reports for MDE. The purpose of these reports will be to apprise the Contract Monitor, Project Officers, and MDE managers of the status of the individual Work Orders / projects, the overall Contract status, and to call attention to any departures from approved Work Plans. As part of the report, the Contractor will include a concise summary of all technical activities performed during the reporting period and the actual expenditures for each project. The report will also include a MS Excel spreadsheet summary of the LOE hours and costs during the reporting period and a running total under the Contract.

### **2.3.7 Cost Recovery Support**

For those sites potentially subject to cost recovery actions, the Contractor shall be required to maintain cost recovery documentation in sufficient detail to enable reconstruction of costs incurred on a site-specific basis and to provide other support for the purposes of cost recovery litigation. Particular attention will have to be focused on cost documentation when subcontracting is involved. Documentation shall include site-specific lab cost ledgers and construction logs necessary for this purpose. Documentation and costs shall be coordinated with the Project Officer in accordance with applicable MDE program requirements.

### **2.3.8 Special Conditions**

#### **2.3.8.1 Health and Safety Program**

The Contractor will have a robust health and safety program within its firm. The Contractor will be responsible for ensuring its staff and any subcontractors working on projects under this Contract have all requisite health and safety training required by the Occupational Health and Safety Administration (OSHA). The Contractor is required to have a medical monitoring program for its employees as required by OSHA. Additionally, the Contractor is responsible for creating health and safety plans (HASPs) for projects under this Contract.

#### **2.3.8.2 Quality Assurance / Quality Control**

The Contractor will have a quality assurance / quality control (QA/QC) program to ensure work products, field work, data collection, etc. are done in a manner that provides consistent and meaningful results. A QA/QC program is critical for sampling activities to ensure that the resultant data is usable and meets the data quality objectives of the project (see **Section 2.3.9**). However, a more general



QA/QC program used by the Contractor in its day to day operations will provide assurance to the Department that general work products and overall quality of work will meet professional standards.

#### 2.3.8.3 CHS, Petroleum, and Debris Management

Disposal or other disposition (e.g. recycling) of CHS, petroleum, and debris collected during investigative or response actions shall be the responsibility of the Contractor. This includes debris or other material that is contaminated with CHS and/or petroleum. That responsibility shall be carried out in accordance with all State and federal laws. The Contractor must provide the Department, within 30 days of disposal, with documents showing how all recovered CHS, petroleum, and debris were disposed at a Department approved disposal facility. If known, manifests must indicate appropriate responsible party as the generator, not the Department.

#### 2.3.8.4 Contractor Travel

Direct labor hours for the Contractor's travel time will be charged only for travel time necessary to make one round trip per day between the Contractor's offices and the job site. Travel time will also be allowed in situations when there is travel between multiple project locations within the same day. A mileage rate will be charged per mile driven and vehicle type (see **Attachment B**). If the Contractor is working in a capacity where they are assigned to the MDE offices in Baltimore as in-house staff, then the standard state travel guidelines will apply and there will be no travel time or mileage reimbursement. See **Section 3.3.4** for additional travel cost details.

#### 2.3.8.5 Equipment Unit Rates

Unit rates for equipment ordered shall be at those rates identified in the Financial Proposal. Unit rates shall be considered for daily, weekly, and monthly use according to the descriptions below. At sites where the Department pays a charge to the Contractor for use of equipment for more than ninety (90) consecutive days, the amount the Department pays as a charge for use of the equipment shall not exceed 150% of the Contractor's original purchase price for that equipment, unless the Department, in its sole discretion, determines that documentation provided by the Contractor justifies a higher rate not to exceed 180% of the Contractor's original purchase price for that equipment.

Rate	Basis	Requirements
Daily Rate	Based on use up to a 10-hour day. Time operated over 10 hours in a day will be prorated.	Charged when equipment is in use on a job site. No charges for weekends and Offeror holidays when work is not performed. No charge when work is canceled due to weather conditions.
Weekly Rate	Based on use up to a 10-hour day. Time operated over 10 hours in a day will be prorated.	Amount charged when equipment is on the job site during a consecutive 7 calendar day period and in use at least 4 days, not including weekends and Offeror holidays.
Monthly Rate	Based on use up to a 10-hour day. Time operated over 10 hours in a day will be prorated.	Amount charged when equipment is on a job site during a consecutive 30 calendar day period and in use at least 16 days, not including weekends and Offeror holidays.

#### 2.3.8.6 Equipment Use and Capabilities

The Contractor shall use its equipment in a manner that will provide for the most efficient investigation, containment, and cleanup of the site. The Contractor is responsible for knowing the capabilities of its equipment. If the Department directs the Contractor to use its equipment in a manner that will exceed

its capabilities, the Contractor shall promptly advise the Department of this fact. The Project Officer will then modify such directions. If the Department persists in directing the Contractor to use the equipment in a manner exceeding its normal capabilities, the Contractor will give the Project Officer written notice specifying the equipment at issue and stating its objections to the use directed by the Department. If, after such a notice has been submitted to the Project Officer, the equipment is subsequently damaged, such damage shall be handled under the "Disputes" clause, of the State of Maryland Procurement Contract – "Attachment M."

#### **2.3.8.7 Equipment Security**

The Contractor is responsible for the security of its equipment. The Department will not be responsible for replacement of lost, stolen, or damaged Contractor equipment. If the Contractor believes that security services at the job site are required, the Contractor shall promptly advise the Project Officer. The cost to the Contractor for security services shall be submitted as a Work Order for the Department's approval.

#### **2.3.8.8 Response Timeliness**

In certain situations, timeliness of a response is critical. The Project Officer will advise the Contractor when response time is critical. A critical response is defined as a site condition where an imminent or substantial endangerment exists to either public health or the environment as identified in Section 7-222 or Section 4-405 of the Environment Article. Failure of the Contractor to respond in a timely manner as described above, or in a substitute manner authorized by the Project Officer, may result in termination of the Work Order, for which no reimbursement will be allowed. The parties may exercise any other remedy permitted under the Contract or at law.

#### **2.3.8.9 Services and Materials Inspection**

All services and materials may be subject to inspection by the Department as they are rendered. The Contractor shall advise the Project Officer when additional personnel, equipment, or materials are brought to the site, employed, withdrawn from employment, or sent away from the site.

#### **2.3.8.10 Energy Efficiency**

The Contractor must comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan that is issued in compliance with the Energy and Conservation Act (Pub. L. 94-163).

### **2.3.9 Sample Analysis**

As part of the Contract, the Contractor shall be required to provide laboratory support. In support of this requirement, contractors are instructed to provide fully loaded fixed rates for the duration of the Contract for use at a stationary laboratory. These rates are fully loaded in that they are inclusive of all direct and indirect charges. MDE will utilize varying levels of validation depending on the use of the data. MDE is requesting rates for analyses based on two levels of data deliverables. On the pricing sheets, these will be referred to Deliverable Package 2 and Deliverable Package 4, which correspond to commonly used analytical levels used by most laboratories.

Deliverable Package 2 will include the project name, sample ID, date sampled, date received, date analyzed, method of analysis, test results, detection limit, flags, surrogate spike recovery results (GC and GC/MS data), and a copy of the chain of custody. Deliverable Package 4 will be for full CLP-like or full Voluntary Cleanup Program deliverables.

MDE has specified a normal Turn Around Time (TAT) of 14 days (calendar) as specified in Table 2. In the event that a site may present an imminent and substantial threat to public health or the environment,



MDE may request an expedited TAT of 48 hours or 5 days. Offeror is requested to provide a multiplier for these analyses on the laboratory price sheet. Requests for expedited TAT will generally be limited to the most frequently requested analyses.

The Contractor shall perform all analyses based on the technical guidelines provided in the current Scope of Work (SOW) used in EPA's CLP.

#### 2.3.9.1 Requirements General

The prospective Contractor must document an ability to provide the following required services and service criteria:

1. Supply all glassware / bottleware / sample collection media for collection of soil, sediments, and water samples.
2. Maintain a viable and well-maintained QA/QC program documenting all pre-analytical, analytical, and post-analytical aspects of the testing process and procedures.
3. Demonstrate ability to perform specific analytical tests using standard methods and procedures outlined in SW846, OLM04.3, ILM05.3, and other EPA guidance on the analysis of environmental contaminants.
4. Demonstrate ability to provide a standard 14 day TAT;
5. Demonstrate ability to provide a special 48 hours or 5 day TAT;
6. Demonstrate ability to store samples at optimum conditions and retain samples for 60 days;
7. Demonstrate ability to safely dispose of samples; and
8. Provide complete data and supporting information package for third party validation of sample results in accordance with EPA Region III Modifications to the National Functional Guidelines for Data Validation.

#### 2.3.9.2 Laboratory Quality Assurance Program

The Contractor must demonstrate that the laboratory to be used possesses and maintains a written quality assurance (QA) program covering all pre-analytical, analytical, and post-analytical aspects of laboratory operations that includes but is not limited to:

1. Standard operating procedures (SOPs);
2. Standardized test requisition and report forms and formats;
3. A quality control (QC) program covering each test procedure;
4. An equipment routine and preventative maintenance program;
5. Copies of all required State and federal licenses, permits, certifications, and accreditations;
6. Documentation of acceptable performance evaluations and audits conducted by professional organizations and government agencies; and

7. Documentation of any unacceptable performance evaluations and audits conducted by professional organizations and government agencies.

#### 2.3.9.3 Laboratory Manuals

The laboratory must possess and maintain written SOPs and QA manuals covering the performance of every analytical method/test procedure to be performed under this solicitation. SOPs and QA manuals must be maintained for at least three years. SOPs must include where applicable:

1. Requirements for sample collection, preservation, handling, and transport;
2. Criteria for sample rejection;
3. Step by step analytical procedures/methods acceptable to the Department that include data calculations, interpretation of test results, and report formats;
4. Preparation of solutions, calibrators, controls, reagents, spikes, and other materials used in testing and quality control;
5. Equipment calibration records and calibration procedures;
6. Detection levels/reportable ranges employed for all analytical procedures and equipment;
7. Limitations in test methods/tests/procedures;
8. Reference ranges (normal/acceptable values) for all analytical procedures and equipment;
9. Pertinent literature references;
10. Criteria for sample preservation, storage, and holding times necessary to ensure sample integrity prior to testing;
11. Criteria for long-term storage of samples;
12. Criteria for disposal of samples;
13. Method and formats for reporting test results;
14. Description of course of action to be taken in the event that the test system becomes unstable or inoperable; and
15. Original copy of all methods and procedures used by the laboratory signed and dated by laboratory's director.

#### 2.3.9.4 SOP and QA Manual Availability

Laboratory SOPs and QA manuals must be readily available and strictly followed by laboratory personnel.

#### 2.3.9.5 Laboratory QA/QC Protocol

The laboratory must perform all analysis using standard QA/QC MS/MSD protocols including duplicate samples, spiked samples, blank samples, standards, and controls for each matrix and for every batch.

#### 2.3.9.6 Turn Around Time and Data Deliverables

The laboratory must complete all tests and report all test results within the Contract required TAT as outlined in Table 2. TAT starts from the time the samples arrive at the laboratory. The laboratory must provide an original data package for the Department and a full data package for third party review and data validation if required.

**Table 2: Standard Turn-Around Times (TAT) for Sample Analysis**

Parameter	Solid	Aqueous	Air
Special Analyses	14 days	14 days	14 days
Pesticides / PCB	14 days	14 days	14 days
Semi-Volatile Organic Compounds	14 days	14 days	14 days
Volatile Organic Compounds	14 days	14 days	14 days
Total Petroleum Hydrocarbons	14 days	14 days	14 days
Metals	14 days	14 days	14 days

Note – TAT is measured in calendar days

Data validation should be in accordance with the SOP Validation Guidelines established by the USEPA Region III Modification to the National Functional Guideline (NFG) document and Innovative Approaches to Data Validation (EPA Region III, June 1995) for Inorganic Tier 1M-1 and Organic Tier M-2, which include the following:

1. Holding times;
2. Instrument tune (VOA and BNA only);
3. Calibration and retention time windows;
4. Blank contaminants;
5. Surrogates (a measure of extraction efficiency);
6. Matrix effect errors; interference from the sample itself;
7. Quality Control Samples;
8. Internal Standards (VOA and BNA only);
9. Compound identification;
10. Quantification Limits;
11. Percent Moisture; and
12. Case Narratives

#### 2.3.9.7 Electronic Data Deliverables/Electronic Reports

Though MDE will require a hard copy of all data within the standard TAT, the laboratory will be expected to provide an electronic data deliverable (EDD) package within the Contract specified TAT if requested. This package will follow an MDE-specified excel spreadsheet format or other electronic format.

#### **2.3.9.8 Test Parameters and Methods**

The laboratory must perform all required tests in accordance with EPA reference methods listed in the SW-846 for each of the parameters and prescribed contaminants in the stated matrices and within the prescribed TAT for analysis specified.

#### **2.3.9.9 Sample Retention**

Unused sample volume must be stored and maintained for no less than 60 calendar days after submittal of the sample results to MDE.

Disposal of unused sample volume is the responsibility of the laboratory and shall be done in accordance with all applicable State and federal laws and regulations.

#### **2.3.10 Well Drilling**

An important aspect of MDE's ability to conduct environmental investigations is the ability to collect geological information from borings and wells. It is anticipated, not guaranteed, that there will be between one (1) and twenty (20) sites per year, with anywhere between one (1) and ten (10) wells or soil borings per site. Sites are located throughout the State.

All work will be performed under an approved Work Order. As part of its capacity to perform, the Contractor shall indicate the number of licensed drillers and equipment available under the Contract and clearly demonstrate the capacity to perform the requested tasks.

The Contractor shall be expected to mobilize all necessary equipment to begin work on a site within fourteen (14) calendar days of notification by MDE unless another response time is agreed to in the Work Order. The Contractor will be responsible for drilling, constructing, developing, and completing (i.e. overall proper construction to State and industry standards) wells. This includes:

1. Collection and placement of drill samples in glass jars or other appropriate containers;
2. Control, collection, and possible containerization of drill cuttings and fluids and development water;
3. Gauging static water levels and product thicknesses;
4. Record keeping, which includes the applications for permits, driller's logs, completion reports, and well abandonment reports;
5. Logging of soils, screening with PID;
6. Decontamination of equipment (i.e., augers, backhoe buckets, shelby tubes, split spoons);
7. Site safety procedures as they pertain to normal drilling operations;
8. Obtaining any required permits;
9. Well construction and development;
10. Site clean-up and restoration; and
11. Well abandonment.

Site access and site preparation activities, including road construction, vehicle towing, tree clearing, leveling, and drainage amendments, may be required in order to complete a project. If required to

complete a project, the Contractor will propose such work in the Work Order and the Project Officer will approve the work as part of the Work Order approval process.

All drillers utilized by the Contractor must possess valid active State of Maryland Well Drilling Licenses. Copies of all licenses must be supplied with the Offer. All personnel shall be certified as having received training in accordance with OSHA 29 CFR Section 1910.120. All drilling, well construction, and well abandonment activities are to be performed in accordance and/or consistent with State regulations at COMAR 26.04.04 and ASTM Standard D5092-90 (Construction of Monitor Wells in Aquifers). Any deviation from this standard necessitated by field conditions or other considerations or circumstances will be mutually agreed upon by the Contractor and MDE representatives and documented by a written change order to the work scope.

It shall be the responsibility of the Contractor to contact the Miss Utility of Maryland to identify and mark all underground utilities prior to initiation of intrusive activities. The Contractor can also contract for a private utility locating company to perform and mark any underground utilities at the study area. The Contractor can also propose bore hole clearance activities if site conditions dictate it. Damage to underground utilities will be the sole responsibility of the Contractor and the subcontracted private utility locating company and Miss Utility. The Contractor shall hold the Department harmless in the event of underground utility damage and other property damage related to the event.

The Contractor shall be responsible for preparing site specific HASPs for the drillers on site for hazards associated with drilling. MDE will provide any information concerning known hazards at the site when the Work Order is prepared.

Based on past experience, MDE does not anticipate that Contractors will need to utilize more than OSHA level D protection. However, the Contractors shall be capable of upgrading to levels B or C should site conditions warrant such a change. Additional costs for such an eventuality will be negotiated as part of the Work Order or handled as a change order.

The State is not obligated to pay for wells that are constructed off-plumb or otherwise deemed not usable due to faulty construction. It shall be the responsibility of the Contractor to abandon off-plumb or faulty wells at its own expense, including consultant oversight effort.

#### **2.3.10.1 Drilling Equipment**

The Contractor must own or demonstrate that it has access to sufficient equipment to utilize for this Contract. The available drilling rigs must be capable of drilling and installing a 4-inch diameter well to a depth of 75 feet below grade using the hollow stem auger method. One of the drilling rigs must be capable of drilling and installing a 4-inch diameter well to a depth of 100 feet below grade using the mud rotary method. One of the drilling rigs must be capable of drilling and installing a 4-inch diameter well to a depth of 200 feet below grade using the air rotary method. Other drilling technologies (e.g. sonic drilling) may be requested by the Department.

#### **2.3.11 Direct Push Technology**

In addition to drilled wells and borings, MDE often relies on the use of direct push technology to conduct environmental investigations. As part of its capacity to perform, the Contractor shall indicate the number of licensed drillers and the number and type of equipment available to perform the requested tasks. A copy of all drilling licenses shall be submitted with the Offer.

The Contractor shall be expected to mobilize all necessary equipment to begin work on a site within fourteen (14) calendar days of notification by MDE unless another response time is agreed to as part of the agreed Work Order. The Contractor will be responsible for drilling, installing, and completing (i.e., overall proper construction) direct push technology borings or wells. This includes:

1. Collection and placement of drill samples in glass jars or other approved containers;

2. Control, collection, and containerization of drill cuttings and fluids and development water;
3. Record keeping, which includes any required permits, the driller's log, completion reports, and well abandonment reports;
4. Decontamination of equipment (i.e., push rods, split spoons);
5. Site safety procedures as they pertain to normal direct push technology operations;
6. Screening of soil cores and/or samples with a PID;
7. Logging of soil cores as specified by the Department;
8. Gauging static water levels and petroleum thickness;
9. Using tools and techniques as described in Section 2.3.11.1;
10. Obtaining all required permits;
11. Well construction and development;
12. Site clean-up and restoration; and
13. Well abandonment.

Site access and site preparation activities, including road construction, vehicle towing, tree clearing, leveling, and drainage amendments, may be required in order to complete a project. If required to complete a project, the Contractor will propose such work in the Work Order and the Project Officer will approve the work as part of the Work Order approval process.

All drilling, well construction, and well abandonment activities are to be performed in accordance and/or consistent with State regulations at COMAR 26.04.04 and sampling activities are to be performed in accordance with industry standards and/or consistent with the following:

1. American Society for Testing and Materials (ASTM) Standard D6001-96e1 Standard Guide for Direct-Push Water Sampling for Geoenvironmental Investigations;
2. GEOPROBE Large Bore Soil Sampler Standard Operating Procedure or equivalent method;
3. GEOPROBE Macro-Core Soil Sampler Standard Operating Procedure or equivalent method;
4. GEOPROBE Screen Point 15 Ground Water Sampler Standard Operating Procedure or equivalent method;
5. GEOPROBE Dual Tube Soil Sampling System Standard Operating Procedure or equivalent method;
6. GEOPROBE ½ Inch Pre-Packed Monitoring Well Standard Operating Procedure or equivalent method; and
7. GEOPROBE 1 Inch Pre-Packed Monitoring Well Standard Operating Procedure or equivalent method.

Any deviation from this standard necessitated by field conditions or other considerations or circumstances will be mutually agreed upon by the Contractor and the MDE representatives and documented by a written change order to the work scope.

It shall be the responsibility of the Contractor to contact the Miss Utility of Maryland to identify and mark all underground utilities prior to initiation of intrusive activities. The Contractor can also contract for a private utility locating company to perform and mark any underground utilities at the study area. The Contractor can also propose bore hole clearance activities if site conditions dictate it. Damage to underground utilities will be the sole responsibility of the Contractor and the subcontracted private utility locating company and Miss Utility. The Contractor shall hold the Department harmless in the event of underground utility damage and other property damage related to the event.

The Contractor shall be responsible for preparing site specific HASPs for the drillers on site for hazards associated with drilling. MDE will provide any information concerning known hazards at the site when the Work Order is prepared.

Based on past experience, MDE does not anticipate that Contractors will need to utilize more than OSHA level D protection. However, the Contractors shall be capable of upgrading to levels B or C should site conditions warrant such a change. Additional costs for such an eventuality will be negotiated as part of the Work Order or handled as a change order.

The State is not obligated to pay for direct push technology wells that are off-plumb or otherwise deemed not usable due to faulty construction. It shall be the responsibility of the Contractor to abandon faulty wells at their own expense.

#### 2.3.11.1 Direct Push Equipment

The Contractor shall demonstrate access to the following types of direct push rigs: (1) Geoprobe 6712DT or equivalent, and (2) Geoprobe 54LT or equivalent. Both of the boring rigs must be capable of drilling a 1" diameter hole to a minimum depth of 50 feet below grade and collecting discrete groundwater and soil samples.

The Contractor or the subcontractor to be used for direct push technology borings or wells should possess the following:

1. The tools and ability to collect discrete depth groundwater samples from depths up to 50 feet below ground surface through a stainless steel screen with pumps, bailers, or "inertial ball foot valve pump" and tubing;
2. The tools and ability to collect continuous or discrete soil cores from depths of 50 feet below ground surface with open coring tools (macrocore), piston tip tools and dual tube sampling system (maintains a cased hole to depth);
3. Soil gas sampling tools and equipment including active and passive soil gas;
4. Soil lithology logging by electrical conductivity using a Geoprobe Wenner Array, or equivalent;
5. The tools and ability to provide direct sensing for volatile organic compounds using a Mobile Gas Chromatography Laboratory for testing volatile organic compounds. The Mobile Laboratory should include, but is not limited to, the following equipment:
  - i. Laboratory Grade Photoionization Detector (PID);
  - ii. Flame Ionization Detector (FID);



- iii. Electron Capture Detector (ECD); and
- iv. Gas Chromatograph/Mass Spectrometer;
- 6. The ability for each of the equipment used to achieve detection limits of less than 100 parts per billion for the instrument detection limit.
- 7. The tools and ability to prepare and deliver computerized mapping with electronic data deliverables in Computer Aided Design (CAD) or other GIS compatible format.
- 8. The tools and ability to utilize a high resolution site characterization tools (e.g. MIP, LIF, HPT, OIP).

### **2.3.12 Sub-Slab Vapor Sampling**

With increased concern about vapor intrusion from petroleum and chlorinated solvents in soil and groundwater entering buildings through utility lines and cracks and gaps in foundations, MDE increasingly relied on soil gas and sub-slab vapor testing to address this potential exposure pathway. The Contractor should be experienced in collecting representative soil gas and sub-slab vapor samples using industry-standard practices and informed by the methodologies summarized in:

- 1. The Department's September 2019 Technical Guidelines for Vapor Intrusion,
- 2. The June 2015 USEPA Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air,
- 3. The March 2004 USEPA Region 3 SOP for Construction and Installation of Permanent Sub-Slab Soil Gas Wells, and
- 4. The January 2007 Vapor Intrusion Pathway: A Practical Guideline prepared by the Interstate Technology & Regulatory Council - Vapor Intrusion Team.

The Contractor will be expected to mobilize all necessary equipment within (14) calendar days of notification by MDE unless another response time is agreed to in the work plan. The Contractor will be responsible for securing all the required equipment and installing the necessary vapor points. This will include:

- 1. Securing the required drill and bits to core through the concrete foundation;
- 2. Installing the ¼" OD stainless steel sleeve and Swagelock® fitting;
- 3. Cementing and sealing the vapor monitoring point for leaks;
- 4. Conducting leak testing prior to sampling;
- 5. Collecting soil gas samples in Summa canisters for analysis for volatile organic compounds using EPA method TO-15; and
- 6. When completed, removing and properly abandoning the vapor monitoring point.

### **2.3.13 Mark-Up for Supplies, Equipment, and Services**

The Contractor will be responsible for contracting and/or purchasing the equipment, supplies, and services necessary to complete each Work Order. For supplies, equipment, and services not listed in **Attachment B**, which are directly related to the completion of the Work Order, the Contractor may bill the Department for the direct cost plus a maximum markup of ten percent (10%). Additionally, the Contractor may charge the Department for equipment rental costs plus a maximum markup of 10%,



unless the equipment is specifically listed in **Attachment B**, then the cost to the Department may not exceed the daily, weekly, or monthly unit rate listed. When supplies or services are proposed where a markup is appropriate, the Contractor shall provide a sales quote for the items / services with the Work Order. The Department may request multiple quotes for high cost items or services.

## 2.4 Deliverables

### 2.4.1 Deliverable Submission

- A. For every deliverable, the Contractor shall request the Project Manager confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.
- B. Unless specified otherwise, written deliverables shall be compatible with Microsoft Office, Microsoft Project or Microsoft Visio within two (2) versions of the current version. At the Project Manager's discretion, the Project Manager may request one hard copy of a written deliverable.
- C. A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. This review process is entered into when the Contractor completes a deliverable.
- A. For any written deliverable, the Project Manager may request a draft version of the deliverable, to comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**. Drafts of each final deliverable, except status reports, are required at least two weeks in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 2.4.3 Minimum Deliverable Quality**.

### 2.4.2 Deliverable Acceptance

- A. A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in a work order.
- B. The Project Manager shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Project Manager is responsible for coordinating comments and input from various team members and stakeholders. The Project Manager is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.
- C. The Project Manager will issue to the Contractor a notice of acceptance or rejection of the deliverable.
- D. In the event of rejection, the Project Manager will formally communicate in writing any deliverable deficiencies or non-conformities to the Contractor, describing in those deficiencies what shall be corrected prior to acceptance of the deliverable in sufficient detail for the Contractor to address the deficiencies. The Contractor shall correct deficiencies and resubmit the corrected deliverable for acceptance within the agreed-upon time period for correction.

### 2.4.3 Minimum Deliverable Quality

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

Each deliverable shall meet the following minimum acceptance criteria:

- A. Be presented in a format appropriate for the subject matter and depth of discussion.
- B. Be organized in a manner that presents a logical flow of the deliverable's content.
- C. Represent factual information reasonably expected to have been known at the time of submittal.
- D. In each section of the deliverable, include only information relevant to that section of the deliverable.
- E. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
- F. Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
- G. Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.
- H. Must contain the date, author, and page numbers. When applicable for a deliverable, a revision table must be included.
- I. A draft written deliverable may contain limited structural errors such as incorrect punctuation and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with minimum deliverable quality criteria above.

#### **2.4.4 Deliverable Descriptions/Acceptance Criteria**

Deliverable descriptions and acceptance criteria will be provided in Work Orders.

## **2.5 Optional Features or Services, Future Work**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

## **2.6 Service Level Agreement (SLA)**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

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### 3 Contractor Requirements: General

#### 3.1 Contract Initiation Requirements

- A. Contractor shall schedule and hold a kickoff meeting within ten (10) Business Days of NTP Date. At the kickoff, the Contractor shall furnish a Project Schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning ongoing projects to the Contractor.
- B. Contractor shall meet with the Department and the incumbent to discuss the transfer of data, documents, and other Department information to maintain a continuity of operations on open and ongoing projects.
- C. Contractor shall obtain all data, documents, and other Department information from the incumbent within fifteen (15) Business Days of NTP Date.

#### 3.2 End of Contract Transition

- 3.2.1 The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to 60 days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:
  - A. Provide additional services and support as requested to successfully complete the transition;
  - B. Maintain the services called for by the Contract at the required level of proficiency;
  - C. Provide updated System Documentation (see Appendix 1), as appropriate; and
  - D. Provide current operating procedures (as appropriate).
- 3.2.2 The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.
- 3.2.3 The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor.
- 3.2.4 The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:
  - A. The Contractor shall provide a draft Transition-Out Plan 120 Business Days in advance of Contract end date.
  - B. The Transition-Out Plan shall address at a minimum the following areas:
    - 1) Any staffing concerns/issues related to the closeout of the Contract;
    - 2) Communications and reporting process between the Contractor, the Department, and the Contract Monitor;
    - 3) Any final training/orientation of Department staff;
    - 4) Activities and approximate timelines required for Transition-Out;
    - 5) Knowledge transfer, to include:

- a) A working knowledge of the general business practices of the Department; and
  - b) Review with the Department the procedures and practices that support the business process;
- 6) Plans to complete tasks and any unfinished work items (including open change requests, and known issues); and
- 7) Any risk factors with the timing and the Transition-Out schedule and transition process. The Contractor shall document any risk factors and suggested solutions.
- C. The Contractor shall ensure all documentation and data including, but not limited to, current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.
- D. Access to any data shall be available after the expiration of the Contract as described in **Section 3.2.5**.

### **3.2.5 Return and Maintenance of State Data**

- A. Upon termination or the expiration of the Contract Term, the Contractor shall: (a) return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data; (b) preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the expiration of 90 days (“the retention period”) from the date of termination or expiration of the Contract term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State; and (d) prepare an accurate accounting from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.
- B. During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor.
- C. In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.

## **3.3 Invoicing**

### **3.3.1 General**

- A. The Contractor shall send the original of each invoice and signed authorization to invoice to the Accounts Payable and the Project Manager at the e-mail address to be provided in Work Orders awarded under this Contract.
- B. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
- C. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
  - 1) Contractor name and address;
  - 2) Remittance address;

- 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
  - 4) Invoice period (i.e. time period during which services covered by invoice were performed);
  - 5) Invoice date;
  - 6) Invoice number;
  - 7) State assigned Contract number;
  - 8) State assigned (Blanket) Purchase Order number(s);
  - 9) Goods or services provided;
  - 10) Amount due; and
  - 11) Any additional documentation required by regulation or the Contract.
- D. Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.
- E. The 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 otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- F. Any action on the part of the 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 21.10.04.
- G. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- H. Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.
- I. See additional requirements in **Section 3.14 Work Orders**.

### **3.3.2 Invoice Submission Schedule**

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

- A. For items of work for which there is one-time cost, those items shall be billed in the month following the acceptance of the work by the Department.
- B. For items of work for which there is ongoing work that is subject to the submitted rates, see **Attachment B**– Financial Proposal Form, those items shall be billed monthly.

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

- A. The amount invoiced is inconsistent with the Contract;
- B. The proper invoice has not been received by the party or office specified in the Contract;

- C. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- D. The item or services have not been accepted;
- E. The quantity of items delivered is less than the quantity ordered;
- F. The items or services do not meet the quality requirements of the Contract;
- G. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- H. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
- I. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

#### **3.3.4 Travel Reimbursement**

- A. Travel reimbursement for Routine Travel shall be as noted in Section 2.3.8.4.
- B. Contractor shall not be reimbursed for Non-Routine Travel without prior Project Officer approval.
- C. Non-routine Travel is defined as travel outside of the State. Non-routine travel will be reimbursed according to the State's travel regulations and reimbursement rates, which can be found at: [www.DBM.maryland.gov](http://www.DBM.maryland.gov) - search: Fleet Management. The Contractor may bill for labor hours expended in non-routine traveling only if so specified in the Work Order.

#### **3.3.5 Labor Rates**

The Department requires the cost for the following items to be included in the fully loaded labor rates provided in **Attachment B**, regardless of whether the Offeror normally charges these items on a direct cost basis. Labor rates are to be fully loaded and include the following items:

- A. Direct labor costs.
- B. Overhead costs.
- C. General and administrative costs
- D. Employee benefit costs
- E. Profit
- F. Labor, equipment, and materials needed to perform accounts payable, payment processing and reconciliation, and accounts receivables duties under the Offeror's accounting systems.
- G. Labor, equipment, and materials needed to input time and process the Offeror's payroll.
- H. Labor, equipment, materials, and services necessary to prepare and submit invoices to the Department.
- I. Labor, equipment, materials, and services necessary to support audits conducted by the State.
- J. Labor, equipment, and materials needed to procure vendors and subcontractors, including processing pre-qualification packages, preparing and executing standard contract documents, internal system input, and negotiation of the Offeror's standard terms and conditions according to the Offeror's usual and customary procedures. The Department will pay for

project labor, as a direct labor billable item, to prepare Work Orders inclusive of the Work Plan and the cost estimates, review bids for technical qualification and compliance with the statement of work, prepare bid abstracts, negotiate exceptions to the technical statement of work and bid prices, and negotiate prime contract flow-down provisions.

- K. Labor, equipment, materials, and services needed to comply with MBE and VSBE reporting and compliance requirements of the Contract.
- L. Labor, equipment, and materials needed to set up and close out projects in the Offeror's systems, according to the Offeror's usual and customary procedures.
- M. Labor, equipment, and materials necessary to staff projects and hire personnel needed for the project, including temporary labor.
- N. Labor, equipment, and materials necessary to issue and restock equipment and inventory from the Offeror's facilities.
- O. Labor, equipment, and materials necessary to maintain project records according to the Contract provisions and the Offeror's usual and customary procedures.
- P. Labor, equipment, and materials associated with copying and distributing data, reports, and correspondence. The Department will pay for unusual and extraordinary copy requirements required under the work requisition.
- Q. Company required quality assurance and health and safety training and medical monitoring to comply with the Offeror's protocols and Federal laws. This does not include training or medical monitoring that is specifically required by technical requirements of the project and approved for payment as a direct project cost by the Department.
- R. Labor, equipment, materials, and services related to safety regulatory reporting, accident investigation, workers compensation claims, and safety audits.
- S. Labor, equipment, and materials necessary to negotiate Contract amendments and to revise all Contract rates.
- T. Senior management labor necessary for usual and customary quality control reviews of the Contract and projects.
- U. Labor, equipment, materials, and services necessary to maintain insurance required by the provisions of the Contract.
- V. Computer equipment the Offeror uses to prepare and submit reports, correspondence, and procurement documents.
- W. Hand tools (sparking and non-sparking) needed for field tasks that can be decontaminated, to include but not be limited to hammers, screwdrivers, wrenches, axes, pry bars, picks, shovels, tape measures, measuring wheels, levels.
- X. Incidental non-disposable sampling equipment needed for field tasks that can be decontaminated, including mixing bowls, scoops, spatulas, sieves, detector tube pumps, squeeze bottles, well slugs, bailers, and shipping coolers to be returned to the contractor.
- Y. Cleanup supplies needed for field support zone tasks that are not intended to be contaminated and disposed, including, but not limited to, brooms, mops, brushes, dust pans, garbage cans, buckets, squeegees.
- Z. Lifting and safety equipment needed for field tasks that can be decontaminated, including, but not limited to, slings, lanyards, drum dollies, flashlights (including explosion proof),



emergency showers, eye wash stations, first aid kits, fire blankets, fire extinguishers, safety vests, life jackets, and safety placards.

- AA. Miscellaneous supplies needed for field support zone tasks that are not intended to be contaminated and disposed, including, but not limited to, garden hoses (including nozzles and fittings), hand pumps, hand sprayers, extension cords, compasses, and 35-mm/digital still cameras.
- BB. Level D personnel protection equipment and work clothing, including, but not limited to, hard hats, hearing protection, safety shoes, safety eyewear, cold weather gear, hip boots, work gloves, rain gear, fluids and ice for hydration and electrolyte replacement (this does not include disposable sampling gloves which are allowed to be charged as a unit rate in accordance with Attachment B).
- CC. Field and office supplies for the Offeror's use, including, but not limited to, pens, pencils, markers, paper, note pads, paper clips, staplers, file folders, clipboards, file boxes, binders, scissors, tape, glue, rubber bands, computer disks, calculators, preprinted forms, and logbooks.
- DD. Faxing, mailing, or delivering correspondence, plans, reports, procurement documents, and other deliverables to the Department and potential vendors and subcontractors. This does not include costs for delivering samples to laboratories; delivering plans, reports or procurement documents, via overnight delivery, to meet an expedited work schedule as requested by the Department; and reasonable equipment delivery to and from a project site.
- EE. Cell phones and cell phone chargers.

### **3.4 Liquidated Damages**

#### **3.4.1 MBE Liquidated Damages**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

#### **3.4.2 Liquidated Damages other than MBE**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### **3.5 Data Contingency**

The following requirements apply to the Contract:

#### **3.5.1 Redundancy and Data Backup**

- A. Unless specified otherwise in the RFP, Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information throughout the Contract term. Any force majeure provisions of the Contract do not limit the Contractor's obligations under this provision.
- B. The Contractor shall have a robust contingency plan in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
- C. The contingency plan must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification.



- D. The Contractor shall test the contingency plan at least annually to identify any changes that need to be made to the plan to ensure a minimum interruption of service. The Contractor shall send the Contract Monitor a notice of completion following completion of testing.
- E. The contingency plan shall be available for the Department to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

### **3.5.2 Data Export/Import**

- A. The Contractor shall, at no additional cost or charge to the State, in an industry standard/non-proprietary format:
  - 1) Perform a full or partial import/export of State data within 24 hours of a request; or
  - 2) Provide to the State the ability to import/export data at will and provide the State with any access and instructions which are needed for the State to import or export data.
- B. Any import or export shall be in a secure format per the Security Requirements.

### **3.5.3 Data Ownership and Access**

- A. Data, databases, and derived data products created, collected, manipulated, or directly purchased as part of a RFP are the property of the State. The purchasing State agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.
- B. Public jurisdiction user accounts and public jurisdiction data shall not be accessed, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of the Contract, including as necessary to perform the services hereunder or (4) at the State's written request.
- C. The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.
- D. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- E. The Contractor shall not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

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

## **3.6 Insurance Requirements**

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

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

- A. Commercial General Liability – \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies. The policy shall provide the following coverage and endorsements:
  - 1) Premises and Operations Hazards;
  - 2) Explosions, Collapse and Underground Hazards;
  - 3) Products and Completed Operations Hazards;
  - 4) Contract Insurance; and
  - 5) Broad Form Property Damage.
- B. Errors and Omissions / Professional Liability – \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
- C. Pollution Liability Insurance – \$1,000,000 combined single limit per occurrence for environmental impairment and pollution that may arise during the execution of the Contract and \$2,000,000 annual aggregate.
- D. Crime Insurance/Employee Theft Insurance – To cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the Department should be added as a “loss payee.”
- E. Worker’s Compensation – The Contractor shall maintain such insurance as necessary or as required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act, to not be less than. \$1,000,000 per occurrence (unless a state’s law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
- F. Automobile or Commercial Truck Insurance – The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
  - 3.6.2 The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers’ Compensation Insurance and professional liability.
  - 3.6.3 All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.
  - 3.6.4 Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.
  - 3.6.5 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the

period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.

#### **3.6.6 Subcontractor Insurance**

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

### **3.7 Security Requirements**

The following requirements are applicable to the Contract:

#### **3.7.1 Employee Identification**

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- C. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

#### **3.7.2 Security Clearance / Criminal Background Check**

- A. A criminal background check for any Contractor Personnel providing any services shall be completed prior to each Contractor Personnel providing any services under the Contract.
- B. The Contractor shall obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
- C. The Contractor shall provide certification to the Department that the Contractor has completed the required criminal background check described in this RFP for each required Contractor Personnel prior to assignment, and that the Contractor Personnel have successfully passed this check.
- D. Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.
- E. The CJIS criminal record check of each Contractor Personnel who will work on State premises shall be reviewed by the Contractor for convictions of any of the following crimes described in the Annotated Code of Maryland, Criminal Law Article:

- 1) §§ 6-101 through 6-104, 6-201 through 6-205, 6-409 (various crimes against property);
  - 2) Any crime within Title 7, Subtitle 1 (various crimes involving theft);
  - 3) §§ 7-301 through 7-303, 7-313 through 7-317 (various crimes involving telecommunications and electronics);
  - 4) §§ 8-201 through 8-302, 8-501 through 8-523 (various crimes involving fraud);
  - 5) §§ 9-101 through 9-417, 9-601 through 9-604, 9-701 through 9-706.1 (various crimes against public administration); or
  - 6) A crime of violence as defined in CL § 14-101(a).
- F. A particular on-site location covered by the Contract may require more restrictive conditions regarding the nature of prior criminal convictions that would result in Contractor Personnel not being permitted to work on those premises. Upon receipt of a location's more restrictive conditions regarding criminal convictions, the Contractor shall provide an updated certification regarding the Contractor Personnel working at or assigned to those premises.

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

THIS SECTION IS INAPPLICABLE TO THIS RFP.

### **3.7.4 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.doi.maryland.gov](http://www.doi.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.

The Contractor shall:

- 1) Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.7.5**);
- 2) Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
- 3) The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

### **3.7.5 Data Protection and Controls**

- A. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in

connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment.

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

- 1) Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides <https://www.cisecurity.org/>, Security Technical Implementation Guides (STIG) <https://public.cyber.mil/stigs/>, or similar industry best practices to reduce the systems' surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor's system configuration files.
- 2) Ensure that State data is not comingled with non-State data through the proper application of compartmentalization Security Measures.
- 3) Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
- 4) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
- 5) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-2:  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- 6) Perform regular vulnerability testing of operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability's identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect the Contractor's policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.
- 1) Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology's Information Security Policy (<https://doit.maryland.gov/policies/Pages/default.aspx>), including specific requirements for password length, complexity, history, and account lockout.

- 2) Ensure State data is not processed, transferred, or stored outside of the United States (“U.S.”).
- 3) Ensure Contractor’s Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.
- 4) Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.

### 3.7.6 Security Incident Response

- A. The Contractor shall notify the Department in accordance with **Section 3.7.6A-D** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:
  - 1) Notify the Department within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, Department chief information officer, and Department chief information security officer; and
  - 2) Provide written notice to the Department within one (1) Business Day after Contractor’s discovery of unauthorized use or disclosure of State data and thereafter all information the State (or Department) requests concerning such unauthorized use or disclosure.
- B. Contractor’s notice shall identify:
  - 1) the nature of the unauthorized use or disclosure;
  - 2) the State data used or disclosed,
  - 3) who made the unauthorized use or received the unauthorized disclosure;
  - 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
  - 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
  - 6) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries, and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Contract.
- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such



individuals in accordance with applicable law and to indemnify and hold harmless the State (or Department) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### **3.7.7 Data Breach Responsibilities**

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
- 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
  - 2) Cooperate with the State to investigate and resolve the data breach;
  - 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
  - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.

3.7.8 Additional security requirements may be established in a Work Order.

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

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

## **3.8 Problem Escalation Procedure**

A Problem Escalation Procedure is not a Contractor requirement for this Contract.

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

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

## **3.10 Experience and Personnel**

### **3.10.1 Preferred Offeror Experience**

The prospective Contractor shall include in its corporate technical experience and capability package a demonstration of its ability to direct the technical work activities to be performed under this Contract through its performance on recent contracts of similar scope involving EPA Superfund National Priorities List (NPL) and/or non-NPL (i.e., State Superfund) and petroleum sites. The demonstration should focus on the following factors:

- Direct experience with investigating CHS and petroleum contaminated sites and problems of contaminated groundwater;
- Experience with identifying and evaluating response actions (RAs) for CHS and petroleum sites;
- Experience in designing and implementing site assessments and RAs for CHS and petroleum contaminated sites; and
- Experience in the related technical areas of environmental engineering, geology, groundwater hydrology, environmental assessments, field surveys and monitoring, cost-effectiveness analyses, emergency response or site cleanup activities, community relations, personnel health and safety, analytical support, and pilot testing of treatment technologies for CHS or petroleum.

The Offeror will be expected to provide evidence of knowledge in all areas of environmental investigation and response. Examples of typical activities conducted during the different phases are contained in Table 1.

**Table 1: Areas of Environmental Investigation and Response**

Site Specific Project Management	
Site Planning	Project Monitoring and Control
Project Coordination	Project Planning
Site Investigation	
Field Investigation	Data Acquisition
Well Drilling	Direct Push Investigations
Sample Analysis and Validation	MIP Survey
Data Evaluation	High Resolution Characterization
Assessment of Risks	LIF Survey
Pilot Testing	Removal Action
Surveying	Site Assessment Reports
Geophysical Survey	Equipment / Services Procurement
Miscellaneous Support	Conceptual Site Model Development
Other Environmental Support Activities	
Procurement Support	Construction Management
Technical Engineering Services	Remedial Oversight
Technical and Management Assistance	Data Management
Training support	Enforcement Support
Analytic Support	Treatment System Operation and Maintenance
UST Removal Services	Other Technical Support

### **3.10.2 Personnel Experience**

The Offerors should provide a clear demonstration that the key personnel, Project Managers (PMs) and Site Managers (SMs), proposed are/will be available to work on the Contract if your firm is selected for award. An “intention to hire” in and of itself, is not sufficient. The Offeror must provide resumes and letters of commitment demonstrating that the key personnel you propose are committed to the program.

For subcategories below, the Offeror must include a short resume (no more than one [1] page) for each person describing his/her education, background, recent technical and management experience and accomplishments, and direct supervisory and project management experience if pertinent to the proposed position. Also include the experience these individuals have had in resolving the kinds of



problems that can be expected under the program, and in particular, in their respective positions. Finally, provide at least three (3) professional references for each person.

The Offerors must identify personnel with experience in the areas listed in Table 3. The experience of these personnel will be evaluated as part of the Technical Proposal (see the capability of proposed resources evaluation factor from **Section 6.2**).

### 3.10.3 Key Personnel Identified

For the Contract, the following positions to be identified in the Technical Proposal will be considered Key Personnel and shall be required to meet the qualifications stated in **Section 3.10** and **Table 5**.

- A. Project Managers (PMs): State the pertinent managerial and technical training and experience of the individual(s) selected as the PM(s). The resume should demonstrate the individual's capabilities for managing and controlling large and technically complex projects. The resume should also highlight related technical experience in the investigation and remedy of CHS and petroleum contaminated sites, the management of CHS wastes and petroleum, and construction management. Briefly state the pertinent managerial and technical qualifications and experience of individuals within the Program Management Office, corporate headquarters, and the offices of subcontractors designated as key personnel within the offer. The resume should demonstrate the individual's capabilities for fulfilling the position for which he/she is proposed. The resume should also demonstrate the individual's pertinent managerial and technical experience in conducting investigations and RAs at CHS and petroleum contaminated sites, or related experience in the management and disposal of CHS and petroleum.
- B. Candidate Site Managers (SMs): Identify five (5) candidate SMs who are representative of your team's capabilities to manage and oversee site assessments, RAs, and manage subcontractor personnel during the implementation of site assessments and RAs at uncontrolled CHS and petroleum sites. You should provide brief resumes (no more than one [1] page) for each candidate demonstrating the individual's pertinent technical and managerial capabilities to successfully complete all assigned work. These individuals will be evaluated on a collective basis.

### 3.10.4 Labor Categories

- A. The Labor Categories are identified and described below. The following are definitions for MDE's four (4) professional and two (2) technician levels. Table 4 identifies the Professional Disciplines typically included in Professional Level 1 through 4. Offerors are specifically instructed to identify their labor categories in a manner that readily corresponds with these professional and technician levels as described in Tables 5 and 6. To be responsive to this RFP, Offerors must be capable of providing personnel meeting the minimum requirements for all the labor categories listed. Offerors shall submit a Financial Proposal Form (**Attachment B**) that provides labor rates for all labor categories for all Contract years (Year 1 through Year 5). Actual resumes shall be provided only for Key Personnel as described in **Section 3.10.3**. Resumes for resources provided later shall be coordinated by the Project Officer per the Technical Proposal and, if requested in a Work Order, shall be governed by the Work Order process.
- B. Each Labor Category includes Titles, Position Description, Education and Experience (General and Specialized).
- C. Education and experience described below in the Labor Category constitute the minimum requirements for candidates performing work under this RFP. All experience required must have occurred within the most recent ten (10) years.

**Table 2: Professional Disciplines (Professional Level 4 - 1)**

Biochemist	Geologist
Geological Engineer	Civil Engineer
Environmental Engineer	Hydrogeologist/Geohydrologist
Chemical Engineer	Mechanical Engineer
Hydrologist	Chemists (analytical, environmental, organic, inorganic)
Biologist	Environmental Scientist
Earth Scientist	Toxicologist
Public Health Specialist (health specialist, industrial hygienist)	Hazardous Waste Specialist
Risk Analyst	Statistician
Water Quality/Environmental Modeler	Other professional disciplines, which are directly related to and experienced in the requirements of the SOW.

NOTE: The actual mix of professional disciplines will be determined by the nature of the work assignments issued.

**Table 5: Definition of Labor Category – Professional Classification**

Professional Classifications	Typical Title	Qualifications and Experience	Experience Factors
Level P4 – Plans, conducts and supervises projects of major significance, necessitating proven managerial skills and knowledge of hazardous waste and petroleum sites. Must demonstrate ability to originate and apply new and/or unique methods and procedures. Supplies technical advice and counsel to other professionals. Generally, operates with wide latitude for unreviewed action.	National Program Manager, Project Leader, Chief Engineer or Scientist	Ph.D. degree or equivalent, with ten (10) years or more experience. M.S. degree or equivalent, with twelve (12) years or more experience. B.S. degree with fourteen (14) years or more experience.	Technical experience in chemical waste and petroleum site investigations, or chemical cleanup activities, solid waste management, water pollution control, or other discipline directly related to the requirements of this Contract. Minimum of four (4) years experience in supervising multi-disciplinary professionals and general office management, including budgetary requirements.

<b>Professional Classifications</b>	<b>Typical Title</b>	<b>Qualifications and Experience</b>	<b>Experience Factors</b>
Level P3 – Under general supervision of a Level P4, plans, conducts and supervises assignments on a project-by-project basis. Estimates and schedules work to meet completion dates. Directs assistance, reviews progress and evaluates results; makes changes in methods, design or equipment where necessary. Responsible for safety and designing cost effective approaches to define the extent of contamination at various waste sites in an accurate manner, and to develop feasible remedial options.	Project Engineer	Ph.D. degree or equivalent, with four to ten (4-10) years experience. M.S. degree or equivalent, with six to twelve (6-12) years experience. B.S. degree with eight to fourteen (8-14) years experience.	Technical experience in chemical waste site investigations, or chemical cleanup activities, water pollution control, or other discipline directly related to the requirements of this Contract. Minimum of four (4) years or equivalent. Must have demonstrated ability to manage group of inter-disciplinary professionals.
Level P2 – Under supervision of a senior or project leader, carries out assignments associated with projects. Work assignments are varied and require some originality and ingenuity. Applies training of professional discipline to assigned projects and translates technical guidance and training received into usable data products and reports. Evaluates data associated with various projects for use in defining extent of contamination, and for developing feasibility studies for possible RA. Other duties as assigned.	Engineer, Scientist, Analyst (any of the disciplines listed in the Professional Disciplines - Table 4)	M.S. degree or equivalent, with two to six (2-6) years experience in Professional Disciplines - Table 4. B.S. degree or equivalent with three to eight (3-8) years experience in Professional Disciplines - Table 4.	Minimum of two (2) years in area directly related to Contract requirements.
Level P1 – Entry level for professional classification; works under supervision of team or project leader. Gathers and correlates basic data and performs routine tasks and other duties as assigned. Makes recommendations on work assignments and on variables that affect field operations. Assists field operations as directed, including manual tasks of equipment set-up and maintenance. Performs other duties as assigned.	Junior, Associate (Biologist, Ecologist, Earth Scientist, or any discipline listed in the Professional Disciplines - Table 4.))	B.S. degree or equivalent with zero to three (0-3) years experience.	No experience required.

**Table 3: Definition of Labor Category – Technician Classification**

<b>Technician Classifications</b>	<b>Typical Title</b>	<b>Normal Qualifications and Experience</b>	<b>Experience Factors</b>
Level 2 – Performs non-routine and complex tasks in addition to routine assignments. Works at the direction of the team or project leader. Gathers and correlates basic data and performs routine analyses. May also perform experiments or tasks that may require non-standard procedures and complex instrumentation. May construct components or subassemblies or prototype models. May troubleshoot malfunctioning equipment and make simple repairs as authorized by team or project leader.	Senior Technician	Two to six (2-6) years experience or equivalent.	None.
Level 1 – Performs non-routine and complex tasks in addition to routine assignments. Works at the direction of the team or project leader. Gathers and correlates basic data and performs routine analyses. May also perform experiments or tasks that may require non-standard procedures and complex instrumentation. May construct components or subassemblies or prototype models. May troubleshoot malfunctioning equipment and make simple repairs as authorized by team or project leader.	Technician	One (1-2) years experience or equivalent.	None

**Table 4: Experience / Qualifications Substitutions for Labor Category**

<b>Classification</b>	<b>Experience / Qualifications Substitutions</b>
Professional	<p>A B.S. Degree plus any combination of additional years of experience and graduate level study in the proposed field of experience totaling two (2) years will be an acceptable substitute for a Masters Degree.</p> <p>A B.S. Degree plus any combination of additional years of experience and graduate level study in the proposed field of expertise totaling four (4) years or a Masters Degree plus two (2) years of either additional experience or graduate level study in the proposed field of expertise will be an acceptable substitute for a Ph.D. degree.</p> <p>Additional years of graduate level study in an appropriate field will be considered equal to years of experience on a one (1) -for-one (1) basis.</p>
Technician	<p>For the technician classifications, each year of full time college level study will be considered equivalent to a year of practical experience.</p>

### **3.10.5 Contractor Personnel Maintain Certifications**

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

## **3.11 Substitution of Personnel**

### **3.11.1 Continuous Performance of Key Personnel**

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

- A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Project Officer or specified in the Contract, Key Personnel shall be assigned to the State of Maryland as a dedicated resource.
- B. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under the Contract without the prior written approval of the Project Officer.
- C. The provisions of this section apply to Key Personnel identified in any Work Order Request and Work Order, if issued.

### **3.11.2 Definitions**

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

- A. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
- B. **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

### 3.11.3 Contractor Personnel General Substitution Provisions

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

- A. The Contractor shall demonstrate to the Project Officer's satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- B. The Contractor shall provide the Project Officer with a substitution request that shall include:
  - 1) A detailed explanation of the reason(s) for the substitution request;
  - 2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
  - 3) The official resume of the current personnel for comparison purposes; and
  - 4) Evidence of any required credentials.
- C. The Project Officer may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. The Project Officer will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Project Officer will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

### 3.11.4 Replacement Circumstances

- A. Directed Personnel Replacement
  - 1) The Project Officer may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Project Officer, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, Department policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.4.A.2**.
  - 2) If deemed appropriate in the discretion of the Project Officer, the Project Officer may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Project Officer. If the Project Officer rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Project Officer within five (5) days, or in the timeframe set forth by the Project Officer in writing.
  - 3) Should performance issues persist despite an approved Remediation Plan, the Project Officer may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.

- 4) Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) If the Project Officer determines to direct substitution under **3.11.4.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Project Officer deems it necessary and in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Project Officer may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.
- 6) In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.11.4.A.1** of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

**B. Key Personnel Replacement**

- 1) To replace any Key Personnel in a circumstance other than as described in **3.11.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.11.3** to the Project Officer at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Project Officer approves the substitution in writing.
- 2) **Key Personnel Replacement Due to Sudden Vacancy**
  - a) The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1**.
  - b) Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.3** within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) **Key Personnel Replacement Due to an Indeterminate Absence**
  - a) If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Project Officer as required under **Section 3.11.3**.
  - b) However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Project Officer the Project Officer may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

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

Prior to Contract execution or within thirty (30) days after Contract execution, the Offeror may not substitute proposed Key Personnel except under the following circumstances (a) for actual



full-time personnel employed directly by the Offeror: the vacancy occurs due to the sudden termination, resignation, or approved leave of absence due to an Extraordinary Personal Event, or the death of such personnel; and (b) for any temporary staff, subcontractors or 1099 contractors: the vacancy occurs due to an Incapacitating event or the death of such personnel. To qualify for such substitution, the Offeror must demonstrate to the State's satisfaction the event necessitating substitution. Proposed substitutions shall be of equal caliber or higher, in the State's sole discretion. Proposed substitutes deemed by the State to be less qualified than the originally proposed individual may be grounds for pre-award disqualification or post-award termination.

### 3.12 Minority Business Enterprise (MBE) Reports

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

- A. Submit the following reports by the 10th of each month to the Contract Monitor and the Department's MBE Liaison Officer:
  - 1) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - 2) (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- B. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) by the 10th of each month to the Contract Monitor and the Department's MBE Liaison Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- C. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### 3.13 Veteran Small Business Enterprise (VSBE) Reports

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

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



- 1) VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3) listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - 2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.
- B. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and Department VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (**Attachment E-4**).
- C. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. At the option of the Department, upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

### 3.14 Work Orders

- A. When the need for technical assistance arises, the Department shall request a Work Order from the Contractor. Each Work Order Request shall detail the goals and objectives of the work or the specific work to be performed under the Contract and the time constraints for the work. The Work Order Request will include:
- 1) Technical requirements and description of the service or resources needed;
  - 2) Performance objectives and/or deliverables, as applicable;
  - 3) Due date and time for submitting a response to the request; and
  - 4) Required place(s) where work must be performed.
- B. A Pre-Work Order meeting may be convened between the Project Officer, the assigned Project Manager, and the Contractor to discuss the pending technical project.
- C. The Contractor will be required to develop a Work Order that consists of a Work Plan and a Time and Materials – Not to Exceed (T&M-NTE) cost estimate to fulfill the objectives of the Work Order Request.
- 1) The Work Plan will provide a Scope of Work (SOW) to be performed, equipment and materials required, subcontractors to be used, and the LOE estimate for each

task or subtask under the scope of work (i.e. the number of hours estimated). The LOE will be broken down based upon the number of hours estimated per Labor Category. The SOW shall:

- a) Detail the Contractor's understanding of the requested services and describe how they will be completed;
  - b) Present, as appropriate for the project, a work breakdown structure of tasks and subtasks to manage and complete the project;
  - c) List the proposed Contractor personnel, including any subcontractor personnel, to complete each task of the project;
  - d) Include proposed subcontractors to provide services; and
  - e) Include Contractor's expectations for State-furnished information, work site, and/or access to equipment, facilities, or personnel.
- 2) The LOE estimates and the pre-approved Labor Categories with the fully loaded labor rates proposed in **Attachment B** will serve as the basis for the Time component of the estimate and the equipment rates proposed in **Attachment B** will serve as the basis for the Materials component of the estimate. If materials or services not listed in **Attachment B** are requested by the Department or determined to be required by the Contractor, the actual amount to be paid for such goods or services as evidenced by a sales quote and the Contract approved markup amount (**Section 2.3.13**) shall serve as the basis for the estimate.
- D. The Contractor shall e-mail the Work Order to the Project Manager.
- E. Unless a shorter or longer period is deemed necessary and specifically indicated in the Work Order Request, the Contractor shall submit the Work Order, inclusive of the Work Plan and T&M-NTE cost estimate, no more than 5 calendar days after the initial request or the Pre-Work Order meeting, whichever is later.
- F. The Project Manager will review the Work Order and may contact the Contractor to obtain additional information, clarification, or revision to the Work Order.
- G. Proposed personnel on any type of Work Order shall be subject to Department approval. If proposed personnel were not included in the response to this RFP, the Contractor shall furnish resumes of the proposed personnel specifying the labor category(ies) proposed. The Department shall have the option to interview the proposed personnel and, in the event of an interview or not, shall notify the Contractor of acceptance or denial of the personnel.
- H. A Purchase Order (PO) authorizing the Work Order will be issued. No work may proceed until the PO is issued and received by the Contractor.
- I. Once the Work Plan and cost estimate is approved and a PO is issued, the assigned Project Manager will become the point of contact for that project.
- J. Performance of services under a Work Order shall commence consistent with the PO issued by the Department. The work shall be performed according to the scope of work, schedule, and cost described in the Work Order. Any variance from the approved Work Order shall be approved before the Contractor proceeds. If the variance requires additional compensation or time, the Contractor must notify the Project Manager in the form of a written cost proposal for the additional work and/or time. The Project Manager will review the cost proposal and if in agreement, will secure necessary Department approvals for a change order or a new PO. The Contractor will not be compensated for work performed or costs that have not been authorized by a PO.

- K. The Contractor will be compensated based upon the submission of an invoice reflecting time expended by each professional category, equipment, and other services. Payment will be made upon invoice receipt and approval of the deliverables as described under the Work Order. Invoices shall include detailed description of all work activities performed during the invoice period and shall include receipts for materials and services not listed in **Attachment B**. In addition, all invoices shall contain the Site name, State-assigned Contract control number, the Contractor's federal tax identification number, the PO number and the percentage of each Task completed. All invoices must also include a completed Invoice Certification Form. Billing shall be due within (30) thirty days after the Department has received and accepted the work product described in the Work Order and may be submitted monthly for ongoing projects.
- L. MDE is not obligated by the Contract to issue any Work Order Requests to the Contractor. The Department expressly reserves the right to solicit offers outside of this Contract for the same or similar work as that proposed or contemplated under this Contract.
- M. A Work Order may be requested and approved by a PO for fixed price pricing. However, such estimates and approvals shall be based upon the rates proposed in **Attachment B**. For any fixed price Work Orders, invoices shall be submitted only after the Work Order is fulfilled (i.e. the project is complete) and is accepted by the Department. The exception to this is if there are set milestone achievements in the Work Order with set dollar amounts to be invoiced upon completion.

### 3.15 Additional Clauses

The Contractor shall be subject to the requirements in this section and shall flow down the provisions of **Sections 3.15.1 – 3.15.2** (or the substance thereof) in all subcontracts.

#### 3.15.1 Purchasing and Recycling Electronic Products

This section does not apply to this solicitation.

#### 3.15.2 The State of Maryland's Commitment to Purchasing Environmentally Preferred Products and Services (EPPs)

[Maryland's State Finance & Procurement Article §14-410](#) defines environmentally preferable purchasing as "the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose." Accordingly, Bidders are strongly encouraged to offer EPPs to fulfill this contract, to the greatest extent practicable.

#### 3.15.3 No-Cost Extensions

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

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## 4 Procurement Instructions

### 4.1 Pre-Proposal Conference

- 4.1.1 A Pre-Proposal conference (Conference) via Google Meet will be held at the date and time indicated on the Key Information Summary Sheet.
- 4.1.2 Participation in the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. MBE subcontractors are encouraged to participate in the Conference to market their participation to potential prime contractors
- 4.1.3 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 eMMA**).
- 4.1.4 Attendees should obtain a copy of the solicitation in order to adequately follow along during the conference.
- 4.1.5 Please e-mail the Pre-Proposal Response form (Attachment A) to the Procurement Officer at least two (2) Business Days prior to the pre-proposal conference. The Procurement Officer will provide additional information on how to attend the web conference to all that submit the Pre-Proposal Response form by the time noted above. In addition, if there is a need for sign language interpretation or other reasonable accommodations due to a disability, please notify the Procurement Officer at least four (2) Business Days prior to the Conference date.

### 4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to [emma.maryland.gov](http://emma.maryland.gov), click on "New Vendor? Register Now" to begin the process, and then follow the prompts.

### 4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (BPM023283 - Environmental Consulting Services), and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.

- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMMA.
- 4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the Department unless it issues an amendment in writing.

#### 4.4 Procurement Method

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

#### 4.5 Proposal Due (Closing) Date and Time

- 4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2 Requests for extension of this date or time shall not be granted.
- 4.5.3 Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- 4.5.4 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.
- 4.5.5 Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.
- 4.5.6 Potential Offerors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

#### 4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

#### 4.7 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror's Proposal to meet the requirements of this RFP.

#### 4.8 Public Information Act Notice

- 4.8.1 The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP **Section 5.3.2.B** "Claim of Confidentiality"). This information should be identified by page and section number and placed after the Title Page and

before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

- 4.8.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

## 4.9 Award Basis

A Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering technical and financial evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP **Section 6** for further award information.

## 4.10 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Oral presentations are considered part of the Technical Proposal. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal. The Procurement Officer will notify Offerors of the time and place of oral presentations.

## 4.11 Duration of Proposal

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

## 4.12 Revisions to the RFP

- 4.12.1 If the RFP is revised before the due date for Proposals, the Department shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.
- 4.12.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal.
- 4.12.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4.12.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.
- 4.12.5 Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.



#### 4.13 Cancellations

- 4.13.1 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.
- 4.13.2 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.13.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.13.4 If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

#### 4.14 Incurred Expenses

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

#### 4.15 Protest/Disputes

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

#### 4.16 Offeror Responsibilities

- 4.16.1 Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.
- 4.16.2 All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see **Section 4.26** "Minority Participation Goal" and **Section 4.27** "VSBE Goal").
- 4.16.3 If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization,

stating that the parent organization will guarantee the performance of the subsidiary.

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

#### 4.17 Acceptance of Terms and Conditions

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

#### 4.18 Proposal Affidavit

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

#### 4.19 Contract Affidavit

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

#### 4.20 Compliance with Laws/Arrearages

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

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

#### 4.21 Verification of Registration and Tax Payment

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



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

#### 4.22 False Statements

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

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

- A. Falsify, conceal, or suppress a material fact by any scheme or device.
- B. Make a false or fraudulent statement or representation of a material fact.
- C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

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

4.22.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

#### 4.23 Payments by Electronic Funds Transfer

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

4.23.1 Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

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

[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf).

#### 4.24 Prompt Payment Policy

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

<http://www.gomdsmbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

## 4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.25.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:
  - A. The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:
    - 1) The RFP;
    - 2) Any amendments and requests for best and final offers;
    - 3) Pre-Proposal conference documents;
    - 4) Questions and responses;
    - 5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
    - 6) Notices of award selection or non-selection; and
    - 7) The Procurement Officer's decision on any Proposal protest or Contract claim.
  - B. The Offeror or potential Offeror may use e-mail to:
    - 1) Submit Proposals;
    - 2) Ask questions regarding the solicitation;
    - 3) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;
    - 4) Submit a "No Proposal Response" to the RFP.
  - C. The Procurement Officer, the Contract Monitor, the Project Officers, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this

subsection, utilizing e-mail or other electronic means if authorized by the Procurement Officer or Contract Monitor.

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

- A. Submission of initial Proposals, except through eMMA;
- B. Filing of protests;
- C. Filing of Contract claims;
- D. Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
- E. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

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

## 4.26 MBE Participation Goal

### 4.26.1 Establishment of Goal and Subgoals

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

Notwithstanding any subgoals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

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

**An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 implies that it is requesting a full or partial waiver for the remainder of the MBE goal or subgoals as applicable and, if recommended for award, shall submit documentation supporting its good faith efforts to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP may result in the State's rejection of the Offeror's Proposal.**

### 4.26.2 Attachments.

- A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
  - 1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
  - 2. Attachment D-1B Waiver Guidance

3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
  4. Attachment D-2 Outreach Efforts Compliance Statement
  5. Attachment D-3A MBE Subcontractor Project Participation Certification
  6. Attachment D-3B MBE Prime Project Participation Certification
  7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
  8. Attachment D-4B MBE Prime Contractor Report
  9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
- B. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
  2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
  3. The Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

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

***If the Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award, unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.***

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

- 4.26.4 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.
- A. Outreach Efforts Compliance Statement (**Attachment D-2**);
  - C. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
  - D. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.
  - E. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

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

- 4.26.5 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 4.26.6 The Offeror that requested or implied to request a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 4.26.7 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M, Section 2.1**).
- 4.26.8 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M, Liquidated Damages for MBE, section 39**)
- 4.26.9 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm

performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

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

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Refer to MBE forms (**Attachment D**) for additional information.

## 4.27 VSBE Goal

### 4.27.1 Purpose

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

**4.27.1 A certified Veteran-Owned Small Business Enterprise (VSBE) must be verified by the State Department of Veterans Affairs or US Department of Veteran's Affairs Vets First Verification Program (VetBiz) and registered as a VSBE on the State's eProcurement platform, eMaryland Marketplace Advantage (eMMA). The listing of VSBEs is available through the "Vendor Search" on eMMA.**

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

### 4.27.3 VSBE Goal

- B. A VSBE participation goal of the total Contract dollar amount has been established for this procurement as identified in the Key Information Summary Sheet.
- C. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

### 4.27.4 Solicitation and Contract Formation

- A. In accordance with COMAR 21.11.13.05 C (1), this solicitation requires Offerors to:
  - 1) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
  - 2) Solicit VSBEs before Proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;



- 3) Attempt to make personal contact with the VSBES solicited and to document these attempts;
  - 4) Assist VSBES to fulfill, or to seek waiver of, bonding requirements; and
  - 5) Attempt to attend preProposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBES.
- B. The Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Offeror:
- 1) Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
  - 2) Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBES at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.
- C. As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.
- D. In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.
- E. Within 10 Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer:
- 1) VSBE Project Participation Statement (**Attachment E-2**);
  - 2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
  - 3) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

*If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not reasonably susceptible of being selected for award.*

#### 4.28 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it

paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.

- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
  - 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier (enter "1" or "2," depending on where the majority of the service recipients are located) Contract.
  - 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
  - 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
  - 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- E. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- F. The Offeror shall identify in the Proposal the location from which services will be provided.
- G. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage.



#### **4.29 Federal Funding Acknowledgement**

This Contract does not contain federal funds.

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

- 4.30.1 The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal.
- 4.30.2 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.30.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under individual Work Orders issued under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4 Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

#### **4.31 Non-Disclosure Agreement**

##### **4.31.1 Non-Disclosure Agreement (Offeror)**

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

##### **4.31.2 Non-Disclosure Agreement (Contractor)**

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

#### **4.32 HIPAA - Business Associate Agreement**

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

#### **4.33 Nonvisual Access**

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

#### **4.34 Mercury and Products That Contain Mercury**

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

#### **4.35 Location of the Performance of Services Disclosure**

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

Services under this Contract must be performed in the United States.

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

This solicitation does not require a DHS Hiring Agreement.

#### **4.37 Small Business Reserve (SBR) Procurement**

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

#### **4.38 Maryland Healthy Working Families Act Requirements**

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

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## 5 Proposal Format

### 5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

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

### 5.2 Proposal Delivery and Packaging

- 5.2.1 Proposals delivered by facsimile and e-mail shall not be considered.
- 5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.
- 5.2.3 Offerors may submit Proposals through the State’s internet based electronic procurement system, eMMA.
- 5.2.4 The Procurement Officer must receive all electronic Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.
- 5.2.5 Offerors shall provide their Proposals in two separate envelopes through eMMA following the [Quick Reference Guides](#) (QRG) labelled “**5 - eMMA QRG Responding to Solicitations (RFP)**” for double envelope submissions.
- 5.2.6 Two Part (Double Envelope) Submission:
  - H. Technical Proposal consisting of:
    - 1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater,
    - 2) Technical Proposal in searchable Adobe PDF format,
    - 3) a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.8**), and
  - I. Financial Proposal consisting of:
    - 1) Financial Proposal entered into the price form spreadsheet within eMMA and all supporting material in <<xxxx>> format,
    - 2) Financial Proposal in searchable Adobe PDF format and Excel in addition to the Adobe format,
    - 3) a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

### 5.3 Volume I - Technical Proposal

NOTE: Omit all cost information (e.g. labor and unit rates) from the Technical Proposal (Volume I). Include cost information (e.g. labor and unit rates) **only** in the Financial Proposal (Volume II).

- 5.3.1 In addition to the instructions below, responses in the Offeror’s Technical Proposal shall reference the organization and numbering of Sections in the RFP

(e.g., “Section 2.2.1 Response . . .; “Section 2.2.2 Response . . .”). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”).

- 5.3.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

A. Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

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

Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 “Public Information Act Notice”**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.

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

The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and time. Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.

D. Executive Summary (Submit under TAB C)

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” State in succinct terms your understanding of the services required by this RFP. Describe your approach to environmental site characterization and remediation.

Provide a brief description of the Offeror’s principal business activities. In addition, the Summary shall identify parent organizations, subsidiaries, and affiliates of the Offeror, describe how any of these entities will participate in the performance of the Contract, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).

Identify the types of services the Offeror can perform and those that the Offeror intends to subcontract.

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

E. Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in **Section 1.1**. If references are required in **Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1.1** and **Section 5.3.2.I**.

- F. Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)
- 1) The Offeror shall address each RFP requirement (**Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order and shall contain a cross reference to the requirement.
  - 2) Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
  - 3) The Offeror shall discuss in detail the approach for providing program and project management under this on-call contract. The description shall include an outline of the overall management concepts employed by the Offeror and a program management plan.
  - 4) Graphically illustrate the management team proposed for the Contract and the communication links. Describe the responsibilities for each person and position identified. The Department prefers a dedicated contact that will interact with each Project Officer, although the dedicated contacts are not required to be unique, regarding overall contract administration. A single Contractor contact will interact with the Project Manager on each Work Order / PO. The Offeror may propose an alternative approach to this management structure. If this is the case, the Offeror shall discuss the alternate management structure in the proposal, explaining the advantages of the approach and how it will result in successful performance of the Contract.
  - 5) The Offeror will discuss procedures to be used for managing project assignments (i.e. Work Orders). The discussion should describe how work assignments will be made and monitored and the procedures for supervising and overseeing performance in all work undertaken. The Offeror will describe the project planning process, including how schedules and cost estimates are prepared. The Department's expectation is that project management tasks for a project shall not exceed 12% of the project's estimated LOE. The Offeror shall describe cost control procedures to be used, to include procedures for identifying, reviewing, and correcting cost and schedule variances.
  - 6) The Offeror shall describe the management information systems that will be used to schedule, estimate, and track project costs and performance. The Offeror will discuss how these systems support project control procedures. Describe the capability of the systems to track costs at the project task level and the ability to provide the reports and invoices. Provide a description of capabilities of providing electronic reports on project statuses to the Department.

- 7) The Offeror shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- 8) Non-Compete Clause Prohibition:  

The Department seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements of **Section 3.10** working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.

G. Experience and Qualifications of Proposed Staff (Submit under TAB F)

As part of the evaluation of the Proposal for this RFP, Offerors shall propose exactly three (3) key resources and shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the Department. All other planned positions shall be described generally in the Staffing Plan and may not be used as evidence of fulfilling company or personnel minimum qualifications.

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in **Section 3.10.2**. Specifically, the Offeror shall:

- 1) Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
- 2) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.
- 3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Offerors should be aware of restrictions on substitution of Key Personnel prior to RFP award (see Substitution Prior to and Within 30 Days After Contract Execution in Section 3.11.5).
- 4) Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
- 5) If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.

H. Offeror Qualifications and Capabilities (Submit under TAB G)

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in **Section 3.10.1**. The Offeror shall describe its qualifications and how its organization can meet the requirements of this RFP and shall also include the following information:

- 1) The number of years the Offeror has provided the similar goods and services;
- 2) The number of clients/customers and geographic locations that the Offeror currently serves;
- 3) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under the Contract;
- 4) The Offeror's process for resolving billing errors; and
- 5) An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.
- 6) The Offeror shall describe the health and safety program used by the company. At a minimum, the description will identify the personnel responsible for the program, the medical monitoring program, the training and refresher programs, and a list of standard operating procedures. The Offeror will provide its OSHA recordable injury and illness incident rate (based on 200,000 hours) and its workers compensation experience modification rate (EMR) for the past two (2) years. The Offeror will also list the PPE levels for which it is qualified to work under.
- 7) The Offeror will detail its QA/QC program. Provide a list of your QA/QC standard operating procedures.

**I. References (Submit under TAB H)**

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP **Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:

- 1) Name of client organization;
- 2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- 3) Value, type, duration, and description of goods and services provided.

The Department reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

**J. List of Current or Prior State Contracts (Submit under TAB I)**

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

- 1) The State contracting entity;
- 2) A brief description of the goods and services provided;
- 3) The dollar value of the contract;
- 4) The term of the contract;



- 5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- 6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

**K. Financial Capability (Submit under TAB J)**

The Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

- 1) Dun & Bradstreet Rating;
- 2) Standard and Poor's Rating;
- 3) Lines of credit;
- 4) Evidence of a successful financial track record; and
- 5) Evidence of adequate working capital.

**L. Certificate of Insurance (Submit under TAB K)**

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

**M. Subcontractors (Submit under TAB L)**

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.

**N. Legal Action Summary (Submit under TAB M)**

This summary shall include:

- 1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- 2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- 3) A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and

- 4) In instances where litigation is ongoing and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

O. Economic Benefit Factors (Submit under TAB N)

- 1) The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3).
- 2) Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
- 3) Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.
- 4) As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.
- 5) In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:
  - a) generic statements that the State will benefit from the Offeror's superior performance under the Contract;
  - b) descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
  - c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
- 6) Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.
- 7) Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:
  - a) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**
  - b) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave.

If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;

- c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- d) Subcontract dollars committed to Maryland small businesses and MBEs; and
- e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)

- 1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.
- 2) Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror's services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.
- 3) For each service, hardware, or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.
- 4) A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
  - i) Third-party POC name and alternate for verification
  - ii) Third-party POC mailing address
  - iii) Third-party POC telephone number
  - iv) Third-party POC email address
  - v) If available, a Re-Seller Identifier

## 5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all labor and unit rate information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself, including all supporting sheets. Do not amend, alter, or leave blank any items on the Financial Proposal Form, including supporting sheets, or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the Department.

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## 6 Evaluation and Selection Process

### 6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The Department reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

### 6.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.

#### 6.2.1 Offeror's Technical Response to Requirements and Work Plan (See RFP § 5.3.2.F)

The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

#### 6.2.2 Experience and Qualifications of Proposed Staff (See RFP § 5.3.2.G)

#### 6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.H)

#### 6.2.4 Economic Benefit to State of Maryland (See RFP § 5.3.2.O)

### 6.3 Financial Proposal Evaluation Criteria

After Technical Proposal evaluations have been performed and minimum evaluation criteria have been met, Qualified Offerors (see **Section 6.5.2.D**) will be ranked based on the Total Proposal Cost within the stated guidelines set forth in this RFP and as submitted on **Attachment B** – Financial Proposal Form and also based on additional cost analyses derived from the unit rates submitted in **Attachment B**. Based upon these cost analyses, the ranking of each Financial Proposal will result in the highest ranked proposal providing the most advantageous cost to the State.

### 6.4 Reciprocal Preference

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

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;

- C. The other state gives a preference to its resident businesses through law, policy, or practice; and
- D. The preference does not conflict with a federal law or grant affecting the procurement Contract.

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

## 6.5 Selection Procedures

### 6.5.1 General

- A. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for Contract award or potentially so. However, the State reserves the right to make an award without holding discussions.
- B. With or without discussions, the State may determine the Offeror to be not responsible or the Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

### 6.5.2 Selection Process Sequence

- A. A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal.
- B. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- C. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- D. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- E. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. **Offerors may only perform limited substitutions of proposed personnel as allowed in Section 3.11 (Substitution of Personnel).**

### **6.5.3 Award Determination**

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, including reference checks, each qualified Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight to financial factors.

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

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – RFP Attachments and Appendices**.

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## 7 RFP ATTACHMENTS AND APPENDICES

### Instructions Page

A Proposal submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as “with Proposal” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Proposal:

1. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

**Table 5: RFP ATTACHMENTS AND APPENDICES**

Attachments			
Applies?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
Y	With Proposal	D	MBE Forms D-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>IMPORTANT:</b> If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal.

Attachments			
Applies?	When to Submit	Label	Attachment Name
Y	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>IMPORTANT:</b> Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.
Y	As directed in forms	D	MBE Forms D-4A, D-4B, D-5 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> )
Y	With Proposal	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> ) <b>IMPORTANT:</b> If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.
Y	5 Business Days after recommended award	E	VSBE Forms E-1B, E-2, E-3 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> ) <b>IMPORTANT:</b> Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.
Y	With Proposal	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )

Attachments			
Applies?	When to Submit	Label	Attachment Name
Y	With Proposal	L	Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a> )
Y	5 Business Days after recommended award	M	Sample Contract (included in this RFP)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf</a> )

Appendices			
Applies?	When to Submit	Label	Appendix Name
Y	n/a	1	Abbreviations and Definitions (included in this RFP)
Y	With Proposal	2	Offeror Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf</a> )
Y	With Proposal	3	Labor Resume Form (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-xx-Labor-Resume-Form.dotx">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-xx-Labor-Resume-Form.dotx</a> )

Additional Submissions			
Applies?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy

**Attachment A. Pre-Proposal Conference Response Form**

**Solicitation Number# BPM023282**

Environmental Consulting Services

A Pre-Proposal conference will be held on Monday, March 29, 2021 at 10am EST via Google Meet.

Please return this form by March 26, 2021 at 5pm EST advising whether or not your firm plans to attend. The completed form should be returned via e-mail below. You will receive both the link to the Google Meet along with the telephone number to dial into the conference.

Shareda Holifield  
MDE  
E-mail: shareda.holifield@maryland.gov

Please indicate:

\_\_\_\_\_ Yes, the following representatives will be in attendance.  
Attendees (Check the RFP for limits to the number of attendees allowed):  
1.  
2.  
3.  
\_\_\_\_\_ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 “Pre-Proposal conference”):

Offeror:

\_\_\_\_\_  
*Offeror Name (please print or type)*

By:

\_\_\_\_\_  
*Signature/Seal*

Printed Name:

\_\_\_\_\_  
*Printed Name*

Title:

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

Date:

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

## Attachment B. Financial Proposal Instructions & Form

### B. Financial Proposal Instructions

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this RFP, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the rates entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Offeror's Total Proposal Cost. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All labor and unit rates and extended costs must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All labor and unit rates must be the actual rate per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, e.g., \$0.344 shall be \$0.34 and \$0.345 shall be \$0.35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the unit rate, if appropriate, and extended cost with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the labor or unit rates. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the labor and unit rates included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total costs agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03.F and may cause the Proposal to be rejected.
- H) The option year, if exercised by the Department, will be at Year 5 rates for labor and laboratory costs and all other unit rates will remain unchanged. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised.
- I) All Financial Proposal unit rates are to be fully loaded rates that include all costs, expenses, and profit associated with the provision of goods and services as required by the RFP. The Financial Proposal labor rates shall also be fully loaded and include, but are not limited to: direct labor, profit, overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the RFP and as detailed in **Section 3.3.5**. No other amounts will be paid to the Contractor. No overtime amounts will be paid.

- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.
- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

**B. Financial Proposal Form**

The Financial Proposal Form shall contain all labor rate, unit rate, and cost information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter, or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit rates for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

See separate Excel Financial Proposal Form labeled “Attachment B Financial Proposal Form and Supporting Sheets.xlsm”, which includes the following worksheets:

ATTACHMENT B: FINANCIAL PROPOSAL FORM  
ATTACHMENT B1: LABOR SHEET  
ATTACHMENT B2: WELL DRILLING SHEET  
ATTACHMENT B3: DIRECT-PUSH SHEET  
ATTACHMENT B4: FIELD SUPPLIES, EQUIPMENT, SERVICES, AND VEHICLES SHEET  
ATTACHMENT B5: LABORATORY ANALYSIS SHEET

Submitted by:

Offeror:

Offeror Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address



<b>Attachment C.      Proposal Affidavit</b>
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See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf).

## Attachment D. Minority Business Enterprise (MBE) Forms

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>.

This solicitation includes a Minority Business Enterprise (MBE) participation goal of 22 percent and all of the following subgoals:

2 % percent for Hispanic American-owned MBE firms;

3% percent for Asian American-owned MBE firms;

10% percent for Women-owned MBE firms.

**Attachment E. Veteran-Owned Small Business Enterprise (VSBE) Forms**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf>.

This solicitation includes a VSBE participation goal of 1%.

**Attachment F. Maryland Living Wage Affidavit of Agreement for Service Contracts**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

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

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

<b>Attachment G.      Federal Funds Attachments</b>
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This solicitation does not include a Federal Funds Attachment.

<b>Attachment H.      Conflict of Interest Affidavit and Disclosure</b>
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See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>



**Attachment I. Non-Disclosure Agreement (Contractor)**

This solicitation does not require a Non-Disclosure Agreement.

<b>Attachment J.      HIPAA Business Associate Agreement</b>
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This solicitation does not require a HIPAA Business Associate Agreement.

<b>Attachment K.      Mercury Affidavit</b>
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This solicitation does not include the procurement of products known to likely include mercury as a component.

<b>Attachment L.</b>	<b>Location of the Performance of Services Disclosure</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

**Attachment M. Contract**

DEPARTMENT OF THE ENVIRONEMNT (MDE)

“Environmental Consulting Services”

BPM023283

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF THE ENVIRONEMNT (“MDE” or the “Department”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**1. Definitions**

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_, whose Federal Employer Identification Number or Social Security Number is \_\_\_\_\_, and whose eMaryland Marketplace Advantage vendor ID number is \_\_\_\_\_.
- 1.3 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_.
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for Environmental Consulting Services, Solicitation #BPM023283 and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated \_\_\_\_\_, as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

**2. Scope of Contract**

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

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

Exhibit C – The Technical Proposal

**Exhibit D – The Financial Proposal**

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

**3. Period of Performance**

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until \_\_\_\_\_ ("Initial Term").
- 3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for One, 1-Year renewal option (a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

**4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed individual Purchase Order amounts or the Total Contract Amount.

The total payment under a fixed price Purchase Order issued under this Contract or the fixed price element of a combined fixed price – time and materials Purchase Order issued under this Contract shall be the firm fixed price submitted by the Contractor in its Work Order.

For time and materials Purchase Orders issued under this Contract, Indefinite Quantity (IDIQ) Purchase Orders issued under this Contract, or Purchase Orders issued under this Contract that include either or both a time and materials or IDIQ element(s), total payments to the Contractor pursuant to this Contract for the time and materials and IDIQ portion(s) may not exceed the NTE Amount approved by the Purchase Order.

In no case can the total of all Purchase Orders issued under this Contract, regardless of type, and subsequent payments to the Contractor exceed \$7,500,000 (the "Total Contract Amount"), which includes the Initial Term and the Renewal Term.

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the Total Contract Amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult and work in good faith with the Department to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete State-defined critical work in progress prior to the date the Total Contract Amount will be reached; and (b) when applicable secure work as agreed to with the Project Officers.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by RFP section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

## **5. Rights to Records**

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



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

- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

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

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is

- provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 7.4. Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5. Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6. Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

- 7.7 The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

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

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract.
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

## **9. Loss of Data**

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.7**.

## **10. Indemnification and Notification of Legal Requests**

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's,

or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

- 10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.

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

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

#### **12. Disputes**

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

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

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, Work Order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

**14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**15. Contingent Fee Prohibition**

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

**16. Non-Availability of Funding**

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

**17. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**18. Termination for Convenience**

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



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

**19. Delays and Extensions of Time**

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

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

**21. Pre-Existing Regulations**

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

**22. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$200,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

## **24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent, and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

## **25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the Department has the right to audit such subcontractor(s).

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

## 27. Cost and Price Certification

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

## 28. Subcontracting; Assignment

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

## 29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 "Patents, Copyrights, Intellectual Property"** of this Contract;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
  - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 10 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

## 30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal



to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

### **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 to the Contractor;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the 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 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. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.Verification shall include a review of:
    - i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
    - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - (b) If the 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.
  - (c) 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.
  - (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

## **32. Living Wage**

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the Department may withhold payment of any invoice or retainage. The Department may

require certification from the Commissioner on a quarterly basis that such records were properly submitted.

**33. Use of Estimated Quantities**

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

**34. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

**35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

**36. Miscellaneous**

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g. and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**37. Contract Monitor and Procurement Officer**

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract

Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.

- 37.2 The Procurement Officer has responsibilities as detailed in the Contract and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

### **38. Notices**

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

If to the State:

Dorothy Hall  
Department of the Environment (MDE)  
1800 Washington Boulevard  
Baltimore, MD 21230  
Phone Number: (410) 537-3862  
E-Mail: dorothy.hall@maryland.gov

With a copy to:

Shareda Holifield  
Department of the Environment (MDE)  
1800 Washington Boulevard  
Baltimore, MD 21230  
Phone Number: (410) 537-3075  
E-Mail: shareda.holifield@maryland.gov

If to the Contractor:

(Contractor's Name)  
(Contractor's primary address)  
Attn: \_\_\_\_\_

Parent Company Guarantor

Contact: \_\_\_\_\_  
Attn: \_\_\_\_\_

### **39. Liquidated Damages for MBE**

- 39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge

- and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$<<insert value>> per day until the monthly report is submitted as required.
  - (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$<<insert value>> per MBE subcontractor.
  - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
  - (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
  - (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$<<insert appropriate rate following calculation instructions from GOSBA>> per day until the undisputed amount due to the MBE subcontractor is paid.
- 39.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

#### **40. Parent Company Guarantee (If applicable)**

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

**41. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law**

HIPAA clauses do not apply to this Contract.

**42. Limited English Proficiency**

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

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland

DEPARTMENT OF THE ENVIRONMENT  
(MDE)

By:

By:

June Dwyer,  
Deputy Director  
Operational Services Administration

Date

PARENT COMPANY (GUARANTOR) (if  
applicable)

By:

\_\_\_\_\_

\_\_\_\_\_

By:

Date

\_\_\_\_\_

Date

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

\_\_\_\_\_

Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_

(Date)

(BPW Item #)

<b>Attachment N.</b>	<b>Contract Affidavit</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>



**Attachment O. DHS Hiring Agreement**

This solicitation does not require a DHS Hiring Agreement.

## Appendix 1. – Abbreviations and Definitions

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

1. ASTM – American Society for Testing and Materials.
2. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
3. CAD – Computer Assisted Design.
4. CHS – Controlled Hazardous Substance.
5. CLP – Contract Laboratory Program.
6. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
7. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
8. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
9. Contractor – The selected Offeror that is awarded a Contract by the State.
10. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
11. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
12. Department or MDE – Department of the Environment.
13. DRO – Diesel Range Organics.
14. ECD – Electron Capture Detector.
15. EDD – Electronic Data Deliverable.
16. EFT – Electronic Funds Transfer.
17. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
18. EPA – U.S. Environmental Protection Agency.
19. FAR – Federal Assessment and Remediation Division.
20. FID – Flame Ionization Detector.
21. GRO – Gasoline Range Organics.
22. HASP – Health and Safety Plan.

23. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
24. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Sections 3.10**.
25. LMA – Land and Materials Administration.
26. LOE – Level of Effort. Means the number of hours needed to complete a Work Order or subtask of a Work Order. The LOE is broken down by labor category.
27. LPC – Laboratory Point of Contact.
28. LRP – Land Restoration Program.
29. 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.
30. MS/MSDM – Matrix Spike/Matrix Spike Duplicate.
31. 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.
32. NCP – National Contingency Plan.
33. NFG – National Functional Guidelines.
34. Normal State Business Hours – Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
35. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, or Work Order is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
36. NPL – National Priorities List.
37. NTE – Not to Exceed.
38. NTP Date – The date specified in a NTP for work on Contract, project, or Work Order to begin.
39. OCP – Oil Control Program.
40. Offeror – An entity that submits a Proposal in response to this RFP.
41. PID – Photoionization Detector.
42. PM – Project Manager.
43. PO – Purchase Order. The formal Notice to Proceed from the Department authorizing a Work Order and payment under the Contract.
44. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**) and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

45. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
46. PRP – Potentially Responsible Party.
47. QA/QC – Quality Assurance/Quality Control.
48. RA – Remedial Action.
49. RD – Remedial Design.
50. Request for Proposals (RFP) – This Request for Proposals issued by the Department of the Environment (Department), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
51. RI/FS – Remedial Investigation/Feasibility Study.
52. ROD – Record of Decision.
53. SAR – State Assessment and Remediation Division.
54. SARA – Superfund Amendment and Reauthorization Act.
55. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
56. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
57. Sensitive Data – Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
58. SOP – Standard Operating Procedures.
59. State – The State of Maryland.
60. TAT – Turn Around Time.
61. T&M – Time and Materials.
62. T&M-NTE – Time and Materials with a Not to Exceed amount.
63. Total Proposal Price – The Offeror’s total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.
64. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
65. Work Order – A subset of work proposed by the Contractor that the Department may review and approve, which will be performed under the general scope of this RFP. and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Work Order.

66. Work Order Request – A formal request from the Department to the Contractor for services to be performed under this Contract. The Work Order Request will include the details of the requested scope of work and the schedule constraints in which the work will need to be performed. The Contractor will respond to the Work Order Request with a Work Order.

## Appendix 2. – Offeror Information Sheet

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder\\_OfferorInformationSheet.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf).

### Appendix 3. – Labor Resume Form

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-xx-Labor-Resume-Form.dotx>.