



STATE OF MARYLAND

**DEVELOPMENTAL DISABILITIES ADMINISTRATION (DDA) AND
OFFICE OF LONG-TERM SERVICES AND SUPPORT (OLTSS)**

REQUEST FOR PROPOSALS (RFP)

FINANCIAL MANAGEMENT AND COUNSELING SERVICES (FMCS)

RFP NUMBER 21-19022

ISSUE DATE: MAY 28, 2021

NOTICE TO OFFERORS

SMALL BUSINESS RESERVE PROCUREMENT

This RFP is not designated as a Small Business Reserve Procurement.

NOTICE

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace (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: Financial Management and Counseling Services (FMCS)
Solicitation No: 21-19022**

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:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

STATE OF MARYLAND
DEVELOPMENTAL DISABILITIES ADMINISTRATION (DDA)
KEY INFORMATION SUMMARY SHEET

| | |
|---|--|
| Request for Proposals | Services – Financial Management and Counseling Services (FMCS) |
| Solicitation Number: | 21-19022 |
| RFP Issue Date: | May 28, 2021 |
| RFP Issuing Office: | Maryland Department of Health (MDH) Developmental Disabilities Administration (DDA) |
| Procurement Officer: e-mail: Office Phone: | Queen Davis, CPPB Acting Director Office of Procurement and Support Services (OPASS) 201 W. Preston Street Baltimore, MD 21201 Queen.davis@maryland.gov 410-767-5335 |
| Contract Officer | Jessica Fields Office of Procurement and Support Services Jessica.fields1@maryland.gov |
| Contract Monitors | Natoya Mitchell Developmental Disabilities Administration Natoya.mitchell@maryland.gov Marlana R. Hutchinson Office of Long Term Services and Supports Marlana.hutchinson@maryland.gov |
| Procurement Coordinator | Monica Hariri Developmental Disabilities Administration |
| Proposals are to be sent to: | Proposals will be accepted through the State's eMaryland Marketplace Advantage (eMMA) e-Procurement system. Instructions on how to submit proposals electronically can be found at: https://procurement.maryland.gov/wp-content/uploads/sites/12/2019/08/5-eMMA-QRG-Responding-to-Solicitations-Double-Envelope-v2.pdf |

| | |
|--|---|
| Pre-Proposal Conference: | <p>June 9, 2021 10:00 AM Local Time</p> <p>Link: meet.google.com/nqx-rpsh-ask</p> <p>Phone (US)+1 570-818-2141</p> <p>Pin: 646 643 892#</p> <p>See Attachment A for instructions.</p> |
| Questions Due Date and Time | <p>July 5, 2021 2:00 PM Local Time</p> <p>MDH.solicitationquestions@maryland.com</p> |
| Proposal Due (Closing) Date and Time: | <p>July 12, 2021 2:00 PM Local Time</p> <p>Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page iv).</p> |
| MBE Subcontracting Goal: | 20% with no subgoals |
| VSBE Subcontracting Goal: | 3% |
| Contract Type: | Indefinite quantity with fixed unit prices |
| Contract Duration: | Three (3) year base period with two (2) one-year option periods |
| Primary Place of Performance: | As proposed by Offeror |
| SBR Designation: | No |
| Federal Funding: | Yes |

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1 Minimum Qualifications

1.1 Offeror(s) Minimum Qualifications

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

- 1.1.1** The Offeror(s) must not be on the Health and Human Service (HHS) Office of the Inspector General's List of Excluded Participants and Entities (LEIE) or the federal General Services Administration System for Award Management (SAM).

Required Documentation: As proof of meeting this requirement, the Offeror(s) must provide a letter of self-certification with its Proposal that it is not on the LEIE or SAM lists. Links to the LEIE and SAM lists are as follows: https://oig.hhs.gov/exclusions/exclusions_list.asp and <https://www.sam.gov/SAM/>. (If the SAM link creates problems, copy the link and manually insert into the address bar.)

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

2.1.1 The Maryland Department of Health's (MDH) Developmental Disabilities Administration (DDA) and the Office of Long-Term Services and Support (OLTSS) are issuing this Request for Proposals (RFP) to provide the establishment and implementation of a statewide contract for Financial Management and Counseling Services to include billing and claims, Electronic Visit Verification (EVV) per the federal Centers for Medicare Services and Medicaid (CMS) requirements for Personal Support Services, consulting and training for individuals self-directing their services. The most complete general information about the programs that will have Self-Directed Services (SDS) options and therefore require Financial Management Services and Counseling Services can be located here:

<http://dda.health.maryland.gov/Pages/community%20pathways.aspx>

<https://mmcp.health.maryland.gov/longtermcare/Pages/Community-First-Choice.aspx>

2.1.2 It is the State's intention to obtain goods and services, as specified in this RFP, from Contracts between the selected Offerors and the State.

2.1.3 The Department intends to make multiple awards as a result of this RFP. See **RFP Section 4.9 Award Basis** for more Contract award information.

2.1.4 Offerors, 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 Offerors (the Contractors) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

2.2 Background, Purpose and Goals

2.2.1 The Developmental Disabilities Administration and the Office of Long-Term Services and Support, divisions of the Maryland Department of Health, are issuing this solicitation to obtain multiple Contractors to provide both the Financial Management and Counseling Services (FMCS) required for Self-Directed Services. The Contractors will be designated as an Organized Health Care Delivery System (OHCDS). As an OHCDS, the Contractors may subcontract with Medicaid and Non-Medicaid Providers to support program Participants to receive services approved in their Person-Centered Plan (PCP)/Plan of Service (POS) and budget in the manner which best suits their needs.

Participants will be able to hire, fire, and supervise their chosen Provider(s) as the sole employer. DDA and OLTSS case managers will share information regarding FMCS providers available. Participants will select their chosen Provider which will be noted in the LTSSMaryland by the case worker. Provider services will be subject to federal and State tax employment withholdings as domestic workers working for household employers as well as quality assurance measures to protect the Individual's health, safety, welfare and prevent fraud; therefore, the Department is seeking the services of multiple (minimum of two and a maximum of 10 awards) Contractors that can fulfill two (2) simultaneous and synergistic activities to include the following:

- a. **Financial Management Services:** The Contractor shall provide the following Financial Management Services (FMS): (1) managing employment taxes and insurance; (2) managing payroll processing; (3) tracking and reporting of Individual/Participant budget balances and expenditures; (4) processing of invoices for goods and services; and (5) for

the Community First Choice (CFC) and Community Personal Assistance Services (CPAS) programs only, the preauthorization of services on the POS.

- b. **Counseling Services:** The Contractor shall provide the following Counseling Services: (1) aiding prospective and enrolled Participants to develop a personalized budget based on his or her PCP/POS; (2) offering assistance with recruiting, hiring, managing, and dismissing employees, and (3) training Individuals, their designated representative, authorized representatives, and direct service workers. Note: For DDA Programs, Counseling Services include a review of all personalized budgets prior to submission within the PCP. Counseling Services related to assistance with recruiting, hiring, managing, and dismissing employees; and training Individuals, their designated representative, authorized representatives, and direct service workers are only applicable to DDA programs only if a person opts out of having a Support Broker indicated in their Person Centered Plan (PCP); the counseling services do not supplant or replace the Support Broker service in the DDA programs.

2.2.2 The self-directed services give Participants and families greater control over the services they receive, how they receive them, and who provides them. At the same time, people who Self-Direct (SD) must be willing to take on the responsibility of managing their services. For services they choose to SD, they have additional responsibility including, but not limited to:

- a. Control of their budget that is determined by their PCP or POS, which is a fixed dollar amount for the purchase of services and supports available under the program or waiver;
- b. Selection and arrangement for the services, as supported in their PCP or POS;
- c. Accountability for using their budget to more effectively meet needs and more efficiently use public dollars;
- d. Being the employer of record; and
- e. Hiring, training, and firing employees.

2.2.3 The Contractor shall provide Financial Management and Counseling Services to include payroll services on an as needed basis. The DDA and OLTSS estimates, but do not guarantee, that financial management and payroll services may be needed for approximately 1,655 Participants or guardian/legal representatives participating in SDS. The DDA and LTSS anticipate the estimate to grow by 10% annually. FMS assists the Participant or guardian/legal representative to:

- a. Manage and direct the disbursement of funds contained in the Participant-directed budget;
- b. Facilitate the employment of staff by the Participant or authorized representative, by performing as the Participant's agent such employer responsibilities as verifying Provider qualifications, processing payroll, withholding Federal, State, and local tax, making tax payments to appropriate tax authorities; and
- c. Perform fiscal accounting and make expenditure reports to the Participant or authorized representative and State authorities

2.3 Scope of Work - Requirements

2.3.1 General Operations

The Contractor will verify Provider qualifications, execute and hold Provider agreements, and keep records available for inspection by the Department. When a Participant, authorized representative, or Guardian /Legal Representative chooses to participate in SDS, the Contractor shall assist the Participants with counseling and financial management services. The Contractor

shall develop and implement separate Financial Management Services and Counseling Services Divisions to carry out the tasks in this RFP. The Contractor must perform all FMS tasks directly and shall not delegate any of the FMS tasks to a reporting agent or other third-party. The Contractor may subcontract Counseling Services and other logistical services to other entities upon approval from the Contract Monitors. Other entities not initially identified in the Contractor's Technical Proposal upon approval will also need to be approved by the Contract Monitor.

The Contractor shall provide the following for Financial Management Services as well as Counseling Services:

- a. Provide materials to the Individual/Participant (or Representative) employers in an alternate format as requested. The Contractor must contract with a telephone interpreter service and provide in-person sign language interpreter services upon request by the Individual/Participant or their representative, with advanced notice in compliance with Section 1557 of the Patient Protection and the Affordable Care Act;
- b. Provide written notice to Individual/Participant (or representative) employers receiving services of changes related to member rights, advance directives, grievances, reconsideration or State fair hearings at least twenty (20) business days in advance of the intended effective date;
- c. Maintain internet e-mail capability. The Contractor must provide access to its internet e-mail address to Individual/Participant (or Representative) employers and must respond to inquiries within one (1) Business Day; and
- d. Review all informational materials intended for distribution throughout the Contract and implementation period and obtain the Contract Monitors approval at least thirty (30) Business Days prior to the use of the materials.

2.3.2 Financial Management Services and Counseling Services

2.3.2.1 Financial Management Services

- a. **Location.** The Contractor shall maintain a local office in the State of Maryland for access of self-directed and Counseling Services.
- b. **Employer Agent.** The Contractor shall become an enrolled Maryland Medicaid Provider by the Go-Live Date. The Contractor shall act as the Employer Agent by performing the following duties:
 - 1) Receive referrals solely from the Department of the Participants who are approved for Self-Directed Services and wishing to employ their own staff. For each Participant, the Department shall also notify the selected Contractor of the budget authorized by MDH for the Participant. The Department shall notify the Contractor of any updates to such information (e.g. increase/decrease to the authorized budget, termination of services, etc.) throughout the effective period of the Contract.
 - 2) After the Contractor's receipt of the Participant's referral, assist the Participant in completing their enrollment packets. The Department is not responsible for assisting in the completion of the enrollment packets or reviewing/approving the completed enrollment packets. Once the selected Contractor has obtained completed enrollment packets from the Participants, the selected Contractor shall begin providing Financial Management Services for the Participant.

- 3) Demonstrate that it has a separate Federal Employer Identification Number (FEIN) specifically to file IRS (Internal Revenue Service) Form 2678 and certain federal employment tax forms and to make federal payments on Participant's behalf.
 - This FEIN must only be used for processing wages and federal forms and taxes for the Participants it represents as an agent and not for processing wages and related federal forms and taxes for employees of parent organization or sub-entities.
 - This FEIN must be obtained in addition to the selected Contractor's organization corporate FEIN.
- 4) Submit direct invoices to both DDA and OLTSS Contract Monitors for administrative billing, as necessary.
- 5) Investigate and resolve denied billing claims as per programs guidance. Disputes related to administrative claims shall be resolved in accordance with Maryland State Finance and Procurement Code Annotated 15-216 through 15-221.1 and Maryland Commercial Law Code 12-511.
- 6) Ensure that each new Individual/Participant has appointed the Contractor as their Fiscal Intermediary by completing the Employer Appointment of Agent form, IRS Form 2678.
- 7) Prepare and submit a signed IRS Form 2678 for each Participant it represents. Must maintain documentation (copy of IRS Form 2678, Request for Approval Letter, and IRS Notification of Contractor's Approval) in each participant/authorized legal representative's file and on file in the Contractor's office which shall be made available to the Contract Monitors upon request.
- 8) Obtain written agent authorization from the IRS to be the agent for each Individual/Participant (or legal representative) Employer it represents through the receipt of an approval letter from the IRS in response to the filed Form 2678, for each Participant/authorized representative-employer. The Contractor must maintain a copy of the IRS approval letter, in each participant/authorized legal representative's file.
- 9) Obtain approval from the IRS to become the Participant's Fiscal Intermediary, as described in above.
- 10) Obtain a FEIN for each Participant it represents and assist current and prospective Individuals/Participants in completing and submitting the necessary forms to secure the FEIN and establish themselves as the employer of record with the State and federal government.
- 11) Maintain copies of the Participants' FEIN, IRS FEIN notification (e.g. IRS Form CP 575 or 147c letter, if applicable), and Form SS-4 in the Participant's file.
- 12) Revoke the IRS Form 2678 for each Participant it no longer represents in accordance with IRS requirements and maintain documentation in each Participant's file.
- 13) File a signed IRS Form 8821 for each Participant it represents and maintain copies of the Form in each Participant's file, if necessary. The Contractor will be responsible for explaining to the Participant why the form is needed and document the explanation.

- 14) Renew IRS Form 8821 for each applicable Participant at the appropriate time and maintain copies of the renewals in each Participant's file, if necessary
- 15) Revoke the IRS Form 8821 when it no longer represents the Participant and maintain documentation in each Participant's file, if necessary.
- 16) File the IRS Form 8822-B if the participant/employer needs to change their employer address or assign a new responsible party.
- 17) Submit all required reports, withholding and payment actions in accordance with federal and State tax laws and regulations. The Contractor will be responsible for all late payments, penalties, and/or interest.
- 18) Report an Individual's/Participant's employees' income annually to the IRS with distribution of all appropriate copies to the appropriate Individuals/Participants.
- 19) Provide written information to an Individual's/Participant's employees concerning the Federal Earned Income Credit (EIC) according to Federal requirements.
- 20) Make authorized payments on behalf of the Individual/Participant in accordance with the Participant's authorized individual budget, services (i.e., Support Broker and other authorized Medicaid/Waiver services), and units as specified in their PCP or POS.
- 21) Verify expenditures are authorized in the PCP/POS budget *before* making any payment.
- 22) Submit claims for waiver services to the Medicaid Management Information System in accordance with the schedule provided by the Contract Monitors.
- 23) Generate reports for Individuals/Participants and Department showing expenditures and Individual/Participant budget information.
- 24) Manage all employer tax and insurance responsibilities using federal and State regulations governing domestic workers; assist the Individual/Participant and/or representative in developing and updating their independent service agreements.
- 25) Consult with IRS personnel to resolve any questions about IRS procedures or requirements pertaining to the reporting of household employees. Provide services to an Individual/Participant authorized by the Department.
- 26) Provide Participants with Participant/representative employer orientation and initial and remedial training in accordance with the philosophy of the self-direction on an on-going basis and/or as needed.
- 27) Document and report the relationship between the participant, Support Broker (if applicable), and any paid provider in the following categories:
- 28) Withhold, file and pay applicable federal, State and local income taxes, employment and unemployment taxes, and worker's compensation.
- 29) Pay workers for authorized services rendered within authorized timeframes according to the Participants' PCP/POS and approved budget.
- 30) Develop and implement procedures to facilitate the resolutions of any disputes regarding payment to workers for services rendered.

- 31) Train Participants in managing and monitoring payments to workers, and in identifying and training new workers.
- 32) Assist Participants in exercising employer and budget authority to include: ensuring that Participants and their authorized representatives understand billing and documentation responsibilities; process payroll and perform related duties (e.g. withhold and file federal, state, local or unemployment taxes); facilitate purchases of worker's compensation or other forms of insurance for the Participant; collect and process employee benefits; issue payroll checks; process invoices and make payment for approved Participant directed-goods and services; track and monitor Participant budget expenditures; and identify expenditures that are over or under the budget.
- 33) Assist Participants in the management of public funds (i.e. Medicaid, State, Social Security) to include receiving, disbursing and tracking the public funds in accordance with federal and State requirements. The Department may at any time, and at its discretion, audit the utilization reports inclusive of claims and expenditure information.
- 34) Manage the access to the Health Risk Screening Tool (HRST) database containing the Participant Health Information of the Participant in SDS. The selected Contractor will serve as the gatekeeper for the FMS agency to allow access for their staff to monitor the HRST status and payment if indicated.

c. Federal, State and Local Regulations

The Contractor shall abide by all federal, State and local regulations. The U.S. Department of Labor rules prohibit the Workers from being treated as independent selected vendors and require all Workers be treated as employees. The participant, authorized representative, or guardian/legal representative who wants to SD their services becomes the common law employer of records for the Workers they hire. The Contractor shall manage all employer tax and insurance responsibilities using federal, State and local regulations governing domestic workers by:

- 1) Assisting the Participant and/or representative in developing and updating service agreements.
- 2) Assisting Participants who choose to SD their services with a Counseling and Financial Management Services provided by the Coordinator of Community Services (CCS).
- 3) Ensuring compliance with federal, State and local tax, federal, state and local labor, and State workers' compensation insurance laws including updating forms and procedures as necessary.
- 4) Cooperate with appeal hearings in response to any appeal filed by a Participant regarding any action taken by MDH, its representatives or federal officials.
- 5) Provide additional information upon request from the local, State or federal representatives. Information requests may stem from, but not be limited to, unusual or unexpected circumstances related to an enrolled Individual/Participant.
- 6) Participate in required weekly calls with the State and be present for stakeholder meetings (in person or by phone), when invited.

d. Customer Service System

The Contractor shall establish prior to the Go-Live Date and maintain operation through the duration of the contract a customer service system that effectively serves Participants, representative-employers, qualified direct care Workers of the Participants, directed goods and services and traditional case managers (Coordinators of Community Services and Supports Planners) as applicable, and Support Brokers in an efficient manner.

The system shall provide and maintain a toll-free number to be given to the Participants in the Enrollment Packets, as well as be available to Participants for Counseling Services.

- 1) All communications must be compliant with the Americans with Disabilities Act, including Section 508 compliance, accessibility and access to alternate formats.
- 2) Provide materials and directions to assist Applicants and Individuals/Participants to understand the financial documents and forms required for participation in the Program, written at a 5th grade or lower reading level and in 12 point or greater font. The material(s) may be used by counselors, the Contract Monitors or designee, Department staff, and any entity authorized by the MDH to assist Applicants and Individuals/Participants.
- 3) Must coordinate and communicate with the Support Broker and traditional case management/CCS in all possible methods of communication such as email, phone, face-to-face meetings, webinars, etc. based on the Participants need or request.
- 4) The Contractor shall, throughout the effective period of the Contract, provide technical assistance to the Department, Participants, and Participant's authorized representative(s) and employees, Coordinator of Community Services/Support Planner, and Support Brokers regarding the Participant accounts, forms, and documents necessary to set up such accounts, and submission and approval of timesheets. Technical assistance may be provided via email, phone, face-to-face meetings, webinars, etc. based on the need or request.
- 5) The Contractor shall respond to all requests as indicated in this Section 2.3.3.d for assistance by the end of the next Business Day and shall track requests to ensure timely responses. Upon request by the Contract Monitors, the Contractor shall submit a tracking report. The report will have the following:
 - a) Name of Participant;
 - b) Date of request for assistance
 - c) Assistance requested; and
 - d) Contractor's response and response date.
- 6) The Contractor shall provide a customer service system that includes:
 - a) A telephone system with initial call answering within four (4) rings by a live operator or automated answering or interactive voice response system. If a live operator is not used for the initial call, answer within three (3) minutes. A live operator must be available during Normal State Business Hours

- b) Customer service training to Contractor's employees; the Department shall determine the sufficiency of the Contractor's customer service training periodically throughout the term of the Contract.
- c) Sufficient training to all Individuals, Participants and their delegated Representatives at enrollment and as necessary, to ensure the Individual/Participant/Representative knows how to use the Financial Management Service. The Contract Monitors shall determine the efficiency of the training by the feedback from the Individuals, Participants and the representatives' use of the Financial Management System.
- d) Internet/email communication with Individuals/Participants.
- e) Receiving, returning, and tracking calls from Individuals/Participants, their representatives, and their staff/workers both during Normal State Business Hours and after hours.
- f) A method for receiving, responding to, and tracking complaints from Individuals/Participants, Representatives, and workers within the established time. Upon request by the Department, the Contractor shall submit a complaint tracking report, which will have the following:
 - a) Name of Participant;
 - b) Program;
 - c) Date of complaint;
 - d) Nature of the complaint; and
 - e) Contractor response and response date.
- 7) The Contractor shall establish a website that provides access for Individuals/Participants and their staff/workers to web-based information regarding account status, budget balances, and payment history that is up-to-date within one (1) business day.
- 8) The Contractor shall provide access to translation and interpretation services in accordance with the Department's Limited English Proficiency policy (See 2.3.3.3.a and link to policy here: <https://health.maryland.gov/Documents/01.02.05%20LEP%20Policy%20%20-%2023-22-16.pdf>) as well as provision of materials in alternate formats (e.g., large print, use of telecommunication devices for hearing and speech impaired, languages other than English).
- 9) The Contractor shall notify the Contract Monitors in writing a minimum of twenty (20) Business Days prior to making change(s) to the customer service system which may affect the ability of the Program, Individuals/Participants, or employees to contact the Contractor. The notification shall include:
 - (1) How the Contractor will ensure that there will be no interruption in its ability to be contacted; and
 - (2) That there shall be no additional time or cost incurred by the Contract Monitors, employees, Individuals/Participants or Representatives.

If the Contract Monitors are not satisfied with the Contractor's explanation to ensure constant access that is equivalent to the access in place prior to the proposed change, the Contractor may not implement the change unless and until the Contract Monitors provide written approval of the proposed change(s) and of the means to ameliorate any impact of the change.

e. Purchasing

Participants self-directing services will have the ability to make approved purchases of items and services detailed in their PCP/POS. The Contractor shall ensure that the process of conducting transactions complies with Departmental regulation and policy. The Contractor shall also:

- 1) Maintain the Individual's/Participant's PCP/POS and budget in a centralized repository.
- 2) Maintain documented policies, procedures, and internal controls that address maintenance of historical documents, version control, and change verifications/approvals and shall be approved by the Contract Monitors.
- 3) Prior to making transactions, verify that:
 - a) Participant is eligible under the Program using the LTSS Maryland, or otherwise confirming with the Department; and
 - b) Charges for the service or item are Usual, Reasonable and Customary.
- 4) The Contract Monitors shall approved the system to assure compliance with Generally Accepted Accounting Principles (GAAP):
 - a) Track Medicaid funds budgeted, received, disbursed, and remaining on an individual and aggregate basis;
 - b) Provide reimbursement to employees, providers, and Vendors;
 - c) Disburse payment for transactions within forty-eight (48) hours when requested to secure housing or maintain Individual/Participant health and safety in the community;
 - d) Disburse payments for all other transactions within 10 business days; and
 - e) Provide balance and payment information to Individuals/Participants via the Contractor's customer service system.
- 5) Directly purchase Vendor products or services approved on the PCP/POS and authorized by the counselor, Participant, Support Broker or authorized representative and provide invoices within three (3) business days for the purchases to the Department. Examples of these purchases include but are not limited to assistive technology, items that substitute for human assistance, transition services, personal emergency response systems (PERS), and environmental modifications.
- 6) Utilize a software budget and planning tool to track SDS including staffing costs, items that substitute for human assistance, and transition services for Participants. The Contract Monitors or their designees will give feedback on the tool and also provide final approval. The tool must be approved by the Contract Monitors or their designees no fewer than five (5) Business Days prior to the Contract Go-Live Date.
- 7) Submit a monthly report to the Contract Monitors and their designees, if applicable, Participants, and Support Planner/Coordinator of Community Services, and Support Brokers detailing by Program:

- a) All payments made on behalf of Individuals/Participants, broken down by dollar amount;
- b) The item(s) or service(s) purchased;
- c) The date of purchase(s);
- d) The payment method(s); and
- e) The Vendor(s) to whom payment was made.

The report format and content must be approved by the Contract Monitors or their designees no fewer than five (5) Business Days prior to the Contract-Go-Live date.

- 8) Keep records of Vendor transactions and provide them to the Department upon request.
- 9) Participate in audits and/or reviews of payments conducted by the Contractor Monitors. The Contractor shall be financially liable for any Transactions found to be unallowable including, but not limited to:
 - a) Items purchased that are expressly prohibited;
 - b) Items not on an approved PCP or POS;
 - c) Items purchased for an ineligible Individual/Participant;
 - d) Items that are missing receipts; or
 - e) Payments to ineligible employees.

f. Payroll

For each employee processed for payroll, the Contractor shall withhold, file, and pay applicable federal, State and local income taxes, employment and unemployment taxes, and worker's compensation as well as maintain documentation in its files of all forms listed in this section and perform the following duties, including:

- 1) Collect and process IRS Form W-4, for the Individual/Participant's employee;
- 2) Assist Individuals/Participants in verifying the employee's citizenship and alien status by collecting a completed US Citizenship and Immigration Services (US CIS) Form I-9.
- 3) Secure background checks, as required for each program for all current and prospective employees and Support Broker of an eligible Individual/Participant (or Applicant) under the Contractor's Agency Authorization number in order to maintain records and receive updates regarding employee background status.
- 4) Verify and document employee qualifications if requested by the Applicant, Individual/Participant, counselor, or the Contract Monitors or their designee.
- 5) Prohibit prospective employees from being hired if they have a conviction which prevents employment in a health-care setting, or if they do not meet the training requirements established by the State.
- 6) In compliance with the United States Department Health and Human Services Office of the Inspector General, prohibit employees from being hired if on the List of Excluded Individuals and Entities. (LEIE <https://oig.hhs.gov/exclusions/background.asp>)

- 7) Verify each employee's Social Security Number.
- 8) Verify each employee's State of residence.
- 9) Ensure employees are paid in compliance with federal and State Department of Labor wage and hour rules for regular pay.
- 10) Report new hires per Maryland State Directory of New Hire and Federal requirements. Maryland Directory of New Hire can be found at <https://newhire-reporting.com/md-newhire/default.aspx>, the website also has information on the Federal requirements.
- 11) Develop and/or utilize an Electronic Visit Verification (EVV) system for monitoring the delivery of tracking employee services, collecting information about the corresponding employee's billing of claims and presenting the timesheets to Individuals/Participants or their representative for their signature representing approval. The EVV must be developed and compliant with all State and federal requirements including the 21st Century Cures Act and enact all operational readiness and create all key performance indicators as designed and required by CMS. See link for details. <https://www.medicaid.gov/medicaid/data-systems/outcomes-based-certification/electronic-visit-verification-certification/index.html>. A demonstration, sample, or detailed description of how the monitoring process will be carried out shall be included with the response to this RFP.
- 12) Pay the Individual's/Participant's employees in full for net wages earned for services rendered, not to exceed the authorized duration or allotment of services approved on the PCP/POS and budget.
- 13) Pay employees within the time period required by the State of Maryland (<https://www.dlr.state.md.us/labor/wagepay/>) and maintain documentation in each employee's file.
- 14) Develop and implement a system for notifying Individual/Participant (or representative) employers and the Contract Monitors in a timely manner in the event a payroll is processed and will be distributed over five (5) business days late.
- 15) Process employee's direct deposit and maintain documentation in the employee's file.
- 16) Prepare, file, and distribute IRS Forms W-2 for employees per IRS instructions for agents, for electronic filing when processing 250 or more IRS Forms W-2 and maintain documentation in the employee's file.
- 17) Meet the requirements of Medicaid Management Information System (MMIS) for transactions, confidentiality, and security through the duration of the Contract.
- 18) Utilize a database for tracking, reporting, and responding to occurrences of timesheet overbilling and timesheets that cannot be paid due to missing or erroneous information.
- 19) Determine if any employees are exempt from paying into FICA, FUTA, and SUTA, and process them accordingly.

- 20) Withhold FICA and federal income tax withholding for all Individuals/Participants it represents and their employees per payroll period.
- 21) File FICA and federal income tax withholdings using an IRS Form 941 quarterly and in the aggregate with its separate FEIN for all Individuals/Participants and employees it represents.
- 22) Deposit FICA and federal income tax withholdings in the aggregate for all Individuals/Participants it represents using the Contractor's separate FEIN, in accordance with IRS depositing rules.
- 23) Withhold Federal Unemployment Tax (FUTA) for all Individuals/Participants it represents per payroll period.
- 24) File FUTA using an IRS Form 940 annually in the aggregate using the Contractor's separate FEIN for all Individuals/Participants it represents.
- 25) Deposit FUTA in the aggregate using the Contractor's separate FEIN quarterly for all represented Individuals/Participants and maintain documentation in its files.
- 26) Manage Federal Advanced Earned Income Credit (EIC) for each eligible employee and maintain documentation in its files.
 - a) File and deposit Out-of-State income tax withholdings, as required by the State or requested by the employee, for employees who reside outside of Maryland.
 - b) Manage the application of all garnishments, levies and liens on employee payroll checks.
 - c) Process information requests from federal and state agencies and other qualified entities and maintain documentation and correspondence in the employee's file.
 - d) Establish a payment processing system that includes the endorsement of all checks by two (2) employees of the Fiscal Intermediary.
 - e) Establish a payment processing system that assures that staff members responsible for endorsements do not handle deposits.

g. Enrollment Packets

Referral Process – for both Financial and Counseling Services

- 1) Referrals from the DDA will be made through the DDA Regional Offices. Referrals may be made through electronic mail, facsimile, or other mail delivery service. Future referrals may also be via an alert in the LTSSMaryland system.
- 2) Referrals from the LTSSMaryland will be made via an alert in the LTSSMaryland system. Referrals may also be made by LTSSMaryland through electronic mail, facsimile or other mail delivery service.
- 3) The Contractor shall develop and provide Enrollment Packets (based on standards provided by DDA and OLTSS) and submit to the Contract Monitor for approval at least 20 business days prior to the Go-Live date. The Enrollment Packets will be provided by the Contractor to new or incoming Individuals/Participants within two (2) Business Days of receiving the Individual/Participant referral for the SD program. The Enrollment Packet shall include.

- a) A brochure containing information about the Contractor's Financial Management and Counseling Services.
- b) Hours of operation.
- c) Toll-free number.
- d) Key Contractor staff and contact information.
 - 1) Mailing address;
 - 2) Web address.
- d) An Individual/Participant contact information form, including emergency Contact information to be filled out by the Individual/Participant.
- e) Federal and State forms that the Individual/Participant must complete Including:
 - 1) IRS Form SS-4, 2678, and, if necessary, 8821;
 - 2) Service agreement forms;
 - 3) Other applicable consent and agreement forms;
 - 4) Worker's Compensation Insurance Coverage (e.g. description of coverage, how to file claims);
 - 5) Payment schedule;
 - 6) Timesheet submittal information;
 - 7) Rate sheet; and
 - 8) Instruction and Sample Payroll Report.
- 4) The forms shall be partially populated in advance where appropriate in order to assist Participants in their accurate completion.
- 5) Offer an online option via a program-specific web portal as referenced in Section 2.3.3.d.7. Printable paper versions of all documents, as well as a form to request hard copies, shall be made available. The ideal response to this section will include a sample or detailed description of how this material will be distributed and/or accessed. A sample may be included in hardcopy or in an alternate format (e.g. links to an existing setup for another similar program managed by the Contractor) with the response to this RFP.
- 6) The Contractor shall complete the Participant enrollment within five (5) Business Days after receiving notice from the Contract Monitors or their designee that the Participant is approved to participate in self-directed services. The Contractor shall notify the Individual/Participant if any paperwork is missing or incomplete. If the Individual/Participant is required to submit additional/corrected information, the Contractor must process this information within two (2) Business Days from the date of receipt of the new paperwork. Ideally, the new information should be processed immediately upon receipt. The Contractor must report to the Contract Monitors any Participant enrollment taking more than five (5) Business Days and shall specify the reason why the enrollment is taking longer than five (5) Business Days.

2.3.2.2 Counseling Services

- a. The Contractor shall develop an Incoming Employer Implementation Plan (IEIP) within twenty (20) Business Days from the Go-Live Date to be approved by the Contract Monitor. The IEIP is for collecting information on, and following-up with, Individuals/Participants (or their representatives) who are enrolled in the DDA Waivers, CFC or CPAS, those enrolled in Medicaid but not in one of the programs, and those who

are not yet enrolled in Medicaid but who have expressed an interest in Self-Directed Services. For CPAS and CFC Applicants and Participants who self-direct, the Contractor shall review and preauthorize their CPAS or CFC Plan of Service (POS) within fifteen (15) Business Days of submission. For DDA applicants and participants, the Contractor shall review all personalized budgets within five (5) Business Days of submission. For DDA applicants and participants, the Contractor shall review all personalized budgets within five (5) Business Days of submission.

- b. The IEIP must be submitted by the contractor to the DDA and LTSS Contract Monitor for approval within twenty (20) Business Days from the Go-Live Date. The Contractor shall implement all decisions and revisions made by the Contract Monitor within five (5) Business Days.
- c. Within forty (40) Business Days of the project launch meeting, the Contractor shall contact each Program Individual/Participant, identify itself as the new Program Contractor, and explain that it will become the Program Individual's/Participant's new FMS and Counseling Service Provider. During this period, it shall be the Contractor's responsibility to provide for the following:
 - 1) Assign and identify a counselor to each Program Individual/Participant;
 - 2) The Contractor's FMS Division shall distribute for signature to each Program Individual/Participant an IRS form 2678, Employer Appointment of Agent form, which designates the Contractor as the new fiscal agent for the Program Individual/Participant and file the completed IRS form 2678 with the IRS for each Program Individual/Participant;
 - 3) Provide each Individual/Participant with the telephone number at which they may contact the Contractor to answer questions; and
 - 4) Have at least one (1) staff member available during the Contract start-up period to receive phone calls should Individual/Participants call the Contractor before the program is formally transferred, to redirect the caller to the incumbent contractor or appropriate authority for service.
- d. Provide the Individuals/Participants with employer orientation and training in accordance with the philosophy of SD upon referral from the Department. The Contractor's Counseling Division shall develop and provide an Individual/Participant (or their representative) employer orientation and skills training, subject to the Contract Monitor's approval, in a manner consistent with Participant SD, decision-making and managerial authority.
 - 1) Counselors shall orient and train Individuals/Participants (or their representative) in the operation of the Program face-to-face at the Participant's residence (or a location mutually agreed to between the Contractor and the Individual). The Counselor shall explain all aspects of the program including, but not be limited to budget management, the role of the Contractor and training that includes the management of their individualized budget.
 - 2) The Contractor will provide instructions and training to a prospective Individual/Participant on what he or she needs to do to set up services and ensure payment for approved services and supports, beginning with the development of an individualized PCP/POS (with the Counseling Division).

- 3) Results of each training session shall be electronically stored by the Contractor on their data system per 2.3.6. The Contractor shall provide data for DDA/OLTSS system upon request.

2.3.3 Training

- a. When a new Individual/Participant begins participating in the SDS program, the Contractor shall provide training to the Individual regarding completion of the required forms and submission and approval of timesheets prior to the first timesheet submission. The Contractor shall make training available at a location mutually agreed to between the Contractor and the Individual.
- b. The primary trainer representing the Contractor will work with the Contract Monitors to develop and finalize the training program in preparation for full staff training and should be finalized and approved by the Contract Monitors ten (10) Business Days prior to the Go-Live date. The training program upon approval of the Contract Monitors will be objective-based. Trained counselors are expected to assess an Individual's/Participants (or their representatives) knowledge of each session's learning objective. Prior to the counselor establishing a date the POS may begin for a Participant, each counselor will evaluate the Participant's understanding of each objective and be prepared to formally attest to his or her full understanding of the requirements necessary to perform the role of an employer and abide by programmatic requirements. Results of each training session must be electronically stored. Once finalized, the training program may be modified if approved by the Contract Monitors. Contractor shall also be available by telephone to answer questions and provide additional training to Participants.
- c. As of the Go-Live Date, all Contractor and Subcontractor staff are required to have completed the standard Policy on Reportable Incidents (PORII) training as well as informing the Participants, guardians/legal representative and Support Brokers of the PORII process. DDA provides PORII training on an ongoing basis via the DDA training calendar on the DDA's website. The Contract Monitor will coordinate with the Contractor as necessary to ensure this training is available.
- d. The Contractor shall develop (based on standards provided by DDA and OLTSS) and distribute a Participant Employer Handbook to all Individuals/Participants (or representatives). The Contractor shall update this handbook as needed. The handbook and any updates must be approved by the Contract Monitors within thirty-five (35) Business Days of the Contract Commencement. Any requested revisions or updates shall be approved by the Contract Monitors prior to distribution and use with the Programs. The Contractor will be responsible for the developing, printing, revision, distribution and replenishing of the handbook in electronic and hardcopy format throughout the Contract.
- e. The Contractor shall submit a proposed Participant Employer Handbook within thirty-five (35) Business Days of the Contract Commencement. Any requested revisions by the Contract Monitor or designee must be resubmitted within ten (10) Business Days of receipt for final approval by the Contract Monitors or designee. The approved Participant Employer Handbook shall be available to the individuals/Participants no later than seventy (70) Business Days after the Contract Commencement Date. The Contractor shall provide the Contract Monitors with one (1) electronic copy of the approved handbook. The handbook shall include at the following minimum information on the Contractor's roles and responsibilities:
 - 1) Recruiting workers and the process for hiring employees;

- 2) Managing employees;
 - 3) Terminating employees;
 - 4) Goods and services;
 - 5) Complaints and how to resolve them;
 - 6) Simple instructions on how to complete required documentation, where to find the documents and easy-to-follow samples.
- f. The Contractor must develop Employment Materials and provide them to prospective employees of Individuals/Participants. The Employment Materials shall include, but not be limited to the following:
- 1) Contractor contact information;
 - 2) Submission information, instructions, and answers for frequently asked questions;
 - 3) A one-page Employment Application (which shall also be available for completion, submission, and revision online);
 - 4) Criminal Background Authorization form;
 - 5) Payment information (e.g. direct deposit, mailed check), agreements and documents to enroll employee in the Contractor's payroll system; and
 - 6) Federal and State forms and instructions including:
 - a) IRS Form W-4, Employee's Withholding Allowance Certificate with instructions and completed example; IRS Notice 797;
 - b) MW-507, Employee's Maryland withholding exemption certificate. This allows the employer to withhold the correct amount of Maryland income tax from the employee's pay.
- g. The Contractor shall submit the proposed Employment Materials within thirty-five (35) business days of the Contract commencement. Any requested revisions by the Contract Monitor or designee must be resubmitted within ten (10) Business Days of receipt for final approval by the Contract Monitors or designee. The approved Employment Materials shall be available to the employees no later than seventy (70) Business Days after the Contract Commencement Date.
- h. The Contractor must process the employee's paperwork within four (4) Business Days and notify the Participant of the employee's hire status. The Contractor is responsible for ensuring the employee meets the qualifications set by the Program before clearing an employee for hire and/or processing payment for the employee on behalf of the Participant.
- i. The Contractor must describe how counselors are trained and how both counselors and the training program are evaluated prior to and during the counselor assuming counseling duties. The Contractor shall accept Self-Direction (or Person-Centered Planning) training & training materials from the Maryland Department of Disabilities (MDOD) or other entity designated by the Department. The training program and any related materials provided to a Medicaid beneficiary must be submitted for approval to the Contract Monitors twenty (20) Business Days prior to the Go-Live Date. Orientation and training of counselors must be open to State representatives. The Contractor is required to keep records of attendance and training materials along with the evaluations. Training's are to occur quarterly and be reported in the monthly report in which they occur.

- 1) Train the Staff, the Contract Monitors, Individuals/Participants and Workers on the completion of State and Federal Forms. Examples of required skill training objectives include:
 - a) Financial management and payroll;
 - b) Documentation required for employee/provider
 - c) Distribution of training materials for proper timekeeping; and
 - d) Self-direction policies, procedures and guidance.
- 2) Develop, implement, and maintain current Orientation and Skills Training Courses for Individuals/Participants and representatives and employees. All elements of the Orientation and Skills Training must be approved by the Contract Monitors prior to implementation. If the Contractor has previously developed similar training materials, samples of this material should be provided in response to this RFP to demonstrate the Contractor's capabilities;
- 3) Make the Orientation and Skills Training Course materials available online to Individuals/Participants and employees as of the Go-Live Date;
- 4) Develop, implement, and maintain a competency-based online examination for Individuals/Participants or designee and employees to cover the information presented in the online training courses. The online examination should automatically provide the Individuals/Participants or designee and employees with a score and allow them to print a completion certificate;

2.3.4 Data Systems

- a. The Contractor shall maintain its own data system to accomplish the functions listed throughout this Section 2.3.
- b. The Contractor's proposed system shall have capability of exporting data in standard data format for the purpose of importing that data into MDH's LTSS system web service.
- c. The Contractor shall establish secure connectivity with MDH for the purpose of performing data exchange.
- d. The Contractor shall apply data encryption to protect State data, especially personal identifiable information, from improper disclosure or alteration. For State data the Contractor manages or controls, data encryption should be applied to State data in transit over networks and, where possible, at rest; as well as to State data when archived for backup purposes. Encryption algorithms which are utilized for this purpose must comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-3.
- e. The Contractor shall utilize LTSSMaryland to fulfill its functions for CFC and CPAS Participants.

2.3.5 Policy and Procedural Manual

- a. The Contractor shall have written policies and procedures (based on standards provided by DDA and OLTSS), internal controls, and a computerized system in place for:
 - 1) Producing and distribution of the Individual's/Participant's file;
 - 2) Collecting and processing the information contained in the Individual/Participant Enrollment Packet; and
 - 3) Maintaining documentation in each Individual/Participant file;

- b. The Contractor shall provide a copy of its specific policies and procedures in the form of a manual to the Contract Monitors (to include electronic format) within forty (40) Business Days of the Go-Live Date of the Contract. This manual shall contain the Contractor's policies and procedures to include the following information:
 - 1) Specific to Maryland and stay up-to-date with Federal, State, and local rules and regulations.
 - 2) The manual must delineate all tasks related to this project and identify those tasks that a reporting agent or subagent will perform.
 - 3) This manual must also include what monitoring will occur between the selected Contractor and the reporting agent or subagent.
 - 4) A disaster recovery plan in place for all electronic program information. See Section 3.5
- c. The Contractor must develop and implement, prior to the Go Live date, written policies, procedures and internal controls to report incidents as per the program's incident reporting policy, monitor participants and representatives' performance as common law employers, identify remediation and additional training needed, and recommend termination from the self-direction services option for participants/representatives as needed.
- d. Establishing and maintaining files and documentation including procedures and internal controls for establishing and maintaining current and archived files and documentation for participants/representatives in a confidential and secure manner for the time period required by the applicable federal and State requirements.
- e. All requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) must be met.

2.3.6 Quality Assurance and Performance Reports

- a. The Contractor shall have a system of written policies and procedures and internal controls to prepare and submit required reports to the Contract Monitors in a timely manner. All report formats must be approved by the Contract Monitors and must be available electronically in an Excel format or hard copy, if requested. All reports, unless otherwise specified, shall be due to the Contract Monitors by the 15th of the month for the previous month's activities. Types of applicable reports are as follows:
 - 1) Employee Training Reports: Specify the Participant, name of the Participant and Worker, waiver/program training by type and expiration dates.
 - 2) Payroll Reports: Will be provided to the Participant and the Contract Monitors or their designee. The payroll report shall include the type of program/waiver, number of hours the Participant has available for the prior authorization period, the number of hours used, number of hours remaining for use, hours worked by employee, check date, amount, number, and taxes by employee, and any vendor payments.
 - 3) Errors Reports: Include delayed payments with information related to the Participant, services, cause, and corrective action plan if applicable.
 - 4) Participant Reports: With current and archived listing of Participants and Workers, which includes all applicable enrollment and termination dates, program/waiver, address, telephone numbers, and social security numbers encrypted and adhere to HIPPA requirements.

- 5) Monthly and Historical Reports: consist of the Participant's budget, authorized services, service provider, paid claims, and claims that have not been adjudicated. These reports must include:
- a) Name and identification number of each Individual/Participant;
 - b) Program/waiver enrollment date;
 - c) Program/waiver eligibility date;
 - d) Type of program/waiver;
 - e) Monthly budgeted amount;
 - f) Monthly expenses;
 - g) Amount approved and disbursed for each service code compared to the amount billed;
 - h) Year budgeted amount (by service);
 - i) Year to date expenses (by service);
 - j) Projected expenditures for the remainder of the fiscal year;
 - k) Number of personal assistance day, and employment service hours the Individual/Participant had available for the prior authorization period;
 - l) Number of hours used with rate listed;
 - m) Number of hours remaining for use;
 - n) Hours worked by employee(s);
 - o) Check date, amount, and number;
 - p) Any Vendor payments. The reports have to be done on the basis of the State fiscal year, July 1 to June 30. The reports will be submitted with the invoices required by section 2.3.9.a.2.
 - q) All claims submitted to the selected vendor for payment, but not paid, and the reason, for each Individual/Participant for the current month and cumulatively (Pending Report);
 - r) Overtime paid (40+ hours); Taxes and insurances paid (as applicable) for the current month and cumulatively;
 - s) Details of all funds disbursed for each Individual/Participant for the Items that Substitute for Human Assistance, and Transition Services, including: the number of Participants served, number of transactions per Participant, and number of Vendors, utilized, the time frames between the request for payment and actual payment to the Vendor.
 - t) Self-direction enrollment timeliness report that indicates the date that contractor was notified of Participant's approval for self-direction by Contract Monitor, their status (enrolled, pending, declined) and the date of enrollment, if applicable; and
 - u) Other data elements may be added at the discretion of the Contract Monitors.
- 6) Participant Budgets: Must inform the Contract Monitors or designees within thirty (30) Business Days of Participants who are projected to exceed their budget allowance and identification of Participants. The Contractor must also inform the Contract Monitors no less three (3) Business Days when it is estimated that Individuals/Participants will incur no expenses in a given month.
- 7) POS Timeliness Report: Specify the Applicant/Participant, name of the Applicant/Participant, program type, date of POS submission, date POS decision was rendered. Note: this report applies only to LTSS programs.

- b. The Contractor will develop a streamlined, outcomes-based approach to EVV implementation that focuses on the business outcomes embodied in the Cures Act and CMS requirements on Key Performance Indicators (KPIs). See link for requirements needed to be included in the contractor's response to the RFP. <https://www.medicaid.gov/medicaid/data-systems/outcomes-based-certification/electronic-visit-verification-certification/index.html>. The Contractor will ensure all four KPI data can be provided to the Medicaid Provider Service Team on a quarterly basis.
- c. The Contractor will identify trends and patterns of excessive billing or unusual circumstances, such as the following indicators that must be documented and reported to the Contract Monitors quarterly, following the first full quarter of collected data. The Contractor shall give to the Contract Monitors an indication of what would be considered an over the limit flag:
 - 1) Participant self-directing their services;
 - 2) Approving extensively more hours than allocated;
 - 3) High fees to Vendors (based on established quality indicators); and
 - 4) Other similar instances and/or situations such as:
 - a) Indications that the financial benefit to the family is the driving factor, instead of providing quality supports to the Participant.
 - b) Especially when the self-advocate is more isolated from the community, by the family member (s) serving as staff or the Support Broker.
 - c) Besides situations like these being abusive and ones of exploitation, they are Medicaid Fraud, and necessary reporting is required.
- d. The Contractor shall have a notification system in place to alert the Contract Monitors of situations identified as potential misuse of authorized funds immediately upon discovery through a formal report submitted via electronic mail followed by a telephone call the next Business Day.
- e. The Contractor shall develop and distribute a Quality Satisfaction Survey that shall be approved by the Contract Monitors ten (10) Business Days prior to the Go-Live Date of the Contract. Distribution of the survey shall be completed upon services rendered to the Participant. The results of the satisfaction survey shall be reported to the Contract Monitors on a quarterly basis following the first full quarter of collected data. The survey will use a 10% sample to review, including a sample of timesheets for accuracy and timeliness findings. The Contract Monitors reserve the right to change reporting requirements and request reasonable ad-hoc reports.
- f. The Contractor shall participate in ongoing quality management and evaluation activities of Participants and Participants' workers including a readiness review for individuals who choose Self-Directed Services in DDA's Community Pathways Waiver.
- g. The Contract Monitors reserve the right to conduct performance evaluations at any time throughout the year to provide assurance that the federal requirements as set forth in 42 CFR 441.301 and 441.302 are satisfied.
- h. The Contractor shall prepare an Annual Report identifying the activities participated (to include but not limited to payrolls completed, training provided, and surveys conducted) throughout the year due to the Contract Monitor twenty (20) Business Days following the end of the Contract year.

- i. The Contractor is responsible for the following to ensure quality assurance with their services according to the Contract Monitors' best practices. For Reportable Events, determine and understand the scope and applicability of the reporting (abuse, neglect) to the proper authorities such as:
 - 1) The police;
 - 2) Developmental Disabilities Administration;
 - 3) Office of Healthcare Quality (OHCQ) for instances related to COMAR 10.22.02.01; and
 - 4) Adult Protective Service (APS) for instances related to COMAR 10.07.14.62; and
 - 5) Child Protective Services (CPS).
- j. Develop and implement a Quality Assurance Plan and adhere to performance standards review to include program plan of corrections, freeze of new enrollments, terminating contracts based on the severity of the findings of the reviews according to DDA Quality Assurance plan (COMAR 10.22.02.14 A-E), responsible for demonstrating how it complies with the general administrative requirements and standards developed by the State to assure the provision of ongoing service quality according to COMAR 10.22.01.
- k. The Contractor shall be responsible for successfully complying with the general administrative requirements and tasks developed by MDH to assure ongoing service quality for Participants who choose Self-Directed Services in LTSS's DDA Family Supports Waiver, Community Supports, Community Pathways waiver, Community First Choice and Community Personal Assistance Services programs. The Contractor shall participate with the Contract Monitors in several required quality assurance and management activities consistent with the State's 1915 (k) and 1915 (c) quality management strategies, including but not limited to the following reporting to MDH and quality checks:
 - 1) Use of the Reportable Events Module in LTSS-Maryland;
 - 2) Reporting criminal background checks for Participants and Contractor staff;
 - 3) Reporting service utilization (POS, budgets, authorized services, paid claims and unpaid claims);
 - 4) Reporting over and underutilization;
 - 5) Identification of changes in support needs and ensuring services are being provided in a manner consistent with the POS;
 - 6) Reporting and redressing Participant complaints;
 - 7) Maintaining and reporting telephone records;
 - 8) Participating in and passing a Fiscal Intermediary and Counseling Services Readiness Review prior to the Contract Go-Live Date. The Contract Monitors will notify the Contractor if the results of the review require a corrective action plan. Based on the results of the Readiness Review, if necessary, the Contractor must develop a written corrective action plan within ten (10) Business Days of notice for approval by the Contract Monitors. The corrective action plan must satisfy any outstanding issues identified during the Readiness Review. Upon approval from the Contract Monitors, the Contractor must implement the corrective action plan.
- l. The Quality Assurance Monitoring Plan is subject to the Contract Monitors' approval. The Quality Assurance Monitoring Plan approval process will be as follows:

- 1) The Contractor shall develop a preliminary Quality Assurance Monitoring Plan that covers both the individuals who choose Self-Directed Services in DDA's Community Pathways Waiver and Participants who choose Self-Directed Services in LTSS's Community First Choice (CFC) and Community Personal Assistance Services (CPAS) programs.
 - 2) Provide a preliminary Quality Assurance Monitoring Plan submitted with its Proposal and develop a final Quality Assurance Monitoring Plan,
 - 3) Submit the final Quality Assurance Monitoring Plan, based on the decisions and recommendations of the Contract Monitors, for approval within five (5) Business Days of Project Launch Meeting. The Contractor shall submit one (1) electronic copy of the Plan and must not proceed until approval of the plan has been obtained by the Contract Monitors; and
 - 4) Implement the completed Quality Assurance Monitoring Plan within 120 calendar days from the Project Launch Meeting.
 - 5) Provide all information as requested by the Contract Monitors regarding the Quality Assurance Monitoring Plan approval process. The general administrative requirements and standards that comprise the Quality Assurance Monitoring Plan will consist of the requirements contained in the Contract resulting from this RFP. The Contractor shall cooperate with and participate in additional reviews as applicable if Individual/Participant (or representative) employers report concerns, or State quality assurance or auditing systems present suspected problems. The Contract Monitors will notify the Contractor if the results of the review require a corrective action plan. Based on the results of the FMS and Counseling Services Quality Assurance Monitoring Plan's review, if necessary, the Contractor shall develop and implement a written corrective action plan that satisfies any outstanding issues that have been identified during the Contract Monitors' Review.
- m. Contractor shall have seventy (70) Business Days from the Contract commencement date to complete a Readiness Review conducted by the Contract Monitors and other MDH staff for Financial Management Services and Counseling Services. The Contract Monitors will be considering the items discussed and outlined at the Project Launch/Orientation Meeting. A successful review will be determined by the Contractor's ability to demonstrate that it has successfully assumed the tasks and subtasks detailed in the Scope of Work. The evaluation will include confirmation of the following, but is not limited to:
- 1) Demonstrated that the Contractor has met or otherwise contacted each enrolled Individual/Participant pursuing Self-Directed Services in their respective programs, identified itself as the new Contractor and explained that it will become the Program Individual's/Participant's new fiscal management entity (including Financial Management Services and Counseling Services);
 - 2) Obtained all required authorization/vendor registration to function as a fiscal management entity (including Fiscal Management Services and Counseling Services) for this Contract;
 - 3) Established Individual/Participant accounts;
 - 4) Established payroll and withholding records;
 - 5) Created an Employer Handbook;

- 6) Established ability to electronically invoice MMIS via a Medicaid provider number;
 - 7) Established personnel in place in accordance with Staffing Requirements (See section 3.10);
 - 8) Obtained approval from the Contract Monitors on the final Incoming Employer Implementation Plan;
 - 9) Established and implemented a fully operational phone number and response process for customer service inquiries;
 - 10) Established and implemented a fully operational Program website and web portal;
 - 11) Obtained approval from the Contract Monitors for all created requisite forms and survey tools and all created Contractor policies and procedures;
 - 12) Trained all counselors;
 - 13) Developed the Enrollment Packet; and
 - 14) Developed the Policy and Procedure manual.
- n. The Contract Monitors will determine the readiness of the Contractor. The Contract Monitors will notify the Contractor if the results of the review require a Corrective Action Plan. Should the Contractor not be determined to meet readiness requirements, they will be required to submit a corrective action plan within ten (10) Business Days of receipt of deficiencies. The corrective action plan shall include remedies to all deficiencies and timeframes for implementation of each remedy.

2.3.7 Records

- a. All Participant and Provider records at all times shall remain the sole property of the Department and must be returned to the Department upon termination of the Contract. During such time as the records are in its possession, the Contractor shall establish and maintain current and archived Participant, Provider, and Contractor files in a secure and confidential manner as required by federal and State rules and regulations (e.g., meet any applicable HIPAA requirements).
- b. Maintain client confidentiality when multiple Individuals'/Participants' names also appear in excess of the individuals'/Participants' file. For example, the approval letter from the IRS in response to a filed Form 2678 will occasionally include multiple Individuals'/Participants' names. The Contractor shall black out any name other than the Individual/Participant and should be done using a redaction black marker. Note: The submitted IRS Forms 2678 and 8821 should be sufficient and it is not necessary to wait to receive the IRS approval letter in order to provide services.
- c. Have a functional Disaster Recovery Plan for electronic and hard copy files in place and documented. See Section 3.5.
 - 1) Describe the hardware backup used if management information systems are disabled;
 - 2) Describe the process for allowing the continuation of budget allowance disbursements;
 - 3) Assure the rapid return to limited operation;
 - 4) Provide for a complete backup of all non-software data sets at the end of each Business Day;
 - 5) Store the resultant information in an external secure site;

- 6) Utilize a server designed to employ a method of redundancy for operational integrity and production;
 - 7) Provide that all workstations attached to the network have sufficient processing capability to be used interchangeably and the ability to backup one another until repair or replacement can be affected on a failed workstation; and
 - 8) Have a system in place, written policies and procedures, and internal controls documented for testing and updating the Disaster Recovery Plan for electronic and hard copy files.
- d. The Contractor shall provide for a sixty (60) Business Day transition period and describe the transition plan. The transition plan shall include the following:
- 1) If the Contract is awarded to the incumbent Contractor, a detailed description of how the Contractor will incorporate new or modified review requirements into its operations; or
 - 2) If the Contract is awarded to an entity other than the incumbent Contractor, a detailed description of how the Contractor will work with the incumbent Contractor and MDH to acquire appropriate documents, databases, and other information deemed necessary by MDH, in order to ensure a smooth transition and uninterrupted services during the start-up period.
 - 3) The Contractor shall obtain the Contractor Monitor's or designee's approval of the transition plans ninety (90) Business Days before implementation.
- e. The Contractor shall develop and implement processes to support Participants in maintaining documentation of service delivery to support payments for services provided and bi-weekly monitor such documentation.
- f. The Contractor shall develop and implement processes to support Participants if they want to change a Provider. Provide all necessary contact information and customer service line information to Participants. Participants will notify their case manager when they want to change Providers. The Contractor shall in maintaining documentation to support changing Providers provide the following:
- 1) Monitor notices/alerts from LTSSMaryland of Provider service referrals of the change.
 - 2) Changes must be effective the first of the month following the change alert.
 - 3) Provide a Participant status report providing information sharing from the current Provider to the new Provider.
 - 4) Facilitating IRS forms 2678 and 8821 in accordance with applicable policies and procedures.
- g. The Contractor will submit to the Contract Monitors:
- 1) Its annual audited financial statement, within four (4) months of the close of the Contractor's fiscal year.
 - 2) A hard copy of any IRS notification of late payment, penalty and/or interest within five (5) days of receipt.
 - 3) Independent assessments performed of the Contractor's security controls that provide assurance that adequate security controls, as required in Section 3.2, are in place and operating properly to ensure Sensitive Data, such as Personally Identifiable Information (PII), is adequately protected from disclosure. Such independent assessments of the Contractor's security controls may include a SOC-1 Type-2 audit, a SOC-2 Type-2 audit, ISO 27001 certification, or a HIPAA Compliance Audit.

- g. The Contractor will cooperate with all State and federal auditors and assist with gathering information during the audit process.

2.3.11 Performance Audits

This section is separate from Section 3.9, SOC-2 Type-2 Audit Report and is applicable for invoice submission, see Section 3.3.

- a. The Contractor shall obtain an annual performance audit by an independent Certified Public Accountant (CPA) or independent CPA firm. The Contractor shall have the right to employ, at its own expense, a qualified accountant or firm of its own selection for the purpose of verifying the activities under the general service requirements of the Contractor and its subcontractors relating to all aspects of this Contract. The independent audit shall assess at least 10% of the population of clients serviced by the Contractor through a random selection process of statewide services for the State's previous Fiscal Year which runs July 1 through June 30.
- b. An audit report shall be written, attested to by the independent auditor, and submitted to each Contract Monitor or designee annually on each SDS program separately. The report shall be submitted no later than seventy (70) Business Days following the end of the State's fiscal year. The report must contain all findings of the audit. If the independent audit report finds a misrepresentation by the Contractor in fulfilling its duties under the requirements of this Contract, a written statement substantiating the circumstances and remedies of correction will be provided to the Contract Monitor within twenty (20) Business Days of the finding(s).
- c. If the Contractor is not in agreement with the findings of the audit report, then the Contractor shall so notify the Contract Monitor of such in writing within twenty (20) business days of the Contractor's receipt of the final audit report. The Contractor and Contract Monitor will then jointly appoint (within a period of twenty (20) Business Days and at the Contractor's expense) an independent qualified accountant to validate the findings of the Contractor's independent auditor. The decision of said independent auditor shall be final.

2.4 Deliverables

2.4.1 Deliverable Submission

2.4.1.1 For every deliverable, the Contractor shall request the Contract Monitor confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.

2.4.1.1.1 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 Contract Monitor's discretion, the Contract Monitor may request one hard copy of a written deliverable.

2.4.1.1.2 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.

2.4.1.1.3 For any written deliverable, the Contract Monitor 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 **Section 2.4.4 Deliverable Descriptions/Acceptance Criteria**.
- b. The Contract Monitor shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contract Monitor is responsible for coordinating comments and input from various team members and stakeholders. The Contract Monitor is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.
- c. The Contract Monitor will issue to the Contractor a notice of acceptance or rejection of the deliverable in the Deliverable Product Acceptance Form (DPAF) (see online sample). Following the return of the DPAF indicating “Accepted” and signed by the Contract Monitor, the Contractor shall submit a proper invoice in accordance with the procedures in **Section 3.3**. The invoice must be accompanied by a copy of the executed DPAF or payment may be withheld.
- d. In the event of rejection, the Contract Monitor 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

In addition to the items identified in the table below, the Contractor may suggest other subtasks, artifacts, or deliverables to improve the quality and success of the assigned tasks.

Deliverables Summary Table*

| ID # | Deliverable Description | Acceptance Criteria | Due Date / Frequency |
|-------------|---|--|---|
| 2.3.3 | Financial Management Services | Location, local office in Maryland | NTP/On-going |
| 2.3.3.b | Employer Agent | Maryland Medicaid Provider | NTP/On-going |
| 2.3.3.d | Customer Service System | 1-800 toll free, customer service line | NTP/On-going |
| 2.3.4 | Counseling Services | Develop an Incoming Employer Implementation Plan (IEIP) | Within twenty (20) business days of NTP/On-going |
| 2.3.6 | Training | Individual training plan/session, handbook | Ten (10) business days prior/pending Contract Monitor Approval |
| 2.3.7 | Data Systems | Maintain a data system | Within 20 business days of NTP/On-going |
| 2.3.8 | Policy and Procedure Manual | Written, word or similar format, electronic format | Within forty (40) business days of NTP |
| 2.3.9 | Quality Assurance and Performance Reports | Reports, all formats must receive prior approval by contract Monitor | By the 15 th day/Monthly |
| 2.3.11 | Performance Audits | Annual Independent Audit by CPA | Seventy (70) business days following the end of State's fiscal year |

*The deliverables summary table may not list every contractually-required deliverable. Offerors and Contractors should read the RFP thoroughly for all Contract requirements and deliverables.

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

The Contractors shall meet with the Contract Monitors for a Project Launch/Orientation meeting at MDH in Baltimore, Maryland within ten (10) business days of award of the Contract. At a minimum, the Contractors shall be represented at the project launch meeting by their Project Manager responsible for the financial services and the Counseling Services Manager responsible for Counseling Services, under this Contract.

3.2 End of Contract Transition

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. The transition period shall begin ninety (90) days before the Contract end date, or the end date of any final exercised option or contract extension. 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 Contract.

- 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 ninety (90) 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) Security and system access review and closeout;

- 4) Any hardware/software inventory or licensing including transfer of any point of contact for required software licenses to the Department or a designee;
 - 5) Any final training/orientation of Department staff;
 - 6) Connectivity services provided, activities and approximate timelines required for Transition-Out;
 - 7) Knowledge transfer, to include:
 - a) A working knowledge of the current system environments as well as the general business practices of the Department;
 - b) Review with the Department the procedures and practices that support the business process and current system environments;
 - c) Working knowledge of all technical and functional matters associated with the Solution, its architecture, data file structure, interfaces, any batch programs, and any hardware or software tools utilized in the performance of the Contract;
 - d) Documentation that lists and describes all hardware and software tools utilized in the performance of the Contract;
 - e) A working knowledge of various utilities and corollary software products used in support and operation of the Solution;
 - 8) Plans to complete tasks and any unfinished work items (including open change requests, and known bug/issues); and
 - 9) 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, System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.
- D. The Contractor shall provide copies of any current daily and weekly back-ups to the Department or a third party as directed by the Contract Monitor as of the final date of transition, but no later than the final date of the Contract.
- E. Access to any data or configurations of the furnished product and services 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 e-mail the original of each invoice and signed authorization to invoice to the Contract Monitors, marlana.hutchinson@maryland.gov and natoya.mitchell@maryland.gov.
- 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.

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 pricing (see **Attachment B** – Financial Proposal Form) 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 annual pricing, see **Attachment B**– Financial Proposal Form, those items shall be billed in equal monthly installments for the applicable Contract year in the month following the performance of the services.

3.3.3 Deliverable Invoicing

- A. Deliverable invoices shall be accompanied by notice(s) of acceptance issued by the State for all invoices submitted for payment. Payment of invoices will be withheld if a signed DPAF is not submitted (see online example at http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf).
- B. Payment for deliverables will only be made upon completion and acceptance of the deliverables as defined in **Section 2.4**.

3.3.4 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.

3.3.5 Travel Reimbursement

Travel will not be reimbursed under this RFP.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

MBE liquidated damages are identified in Attachment M.

3.4.2 Liquidated Damages other than MBE

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3.5 Disaster Recovery and Data

The following requirements apply to the Contract:

3.5.1 Redundancy, Data Backup and Disaster Recovery

- 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, Contractor's processing capability and the availability of hosted services, in each case 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 robust contingency and disaster recovery (DR) plans 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.
 - 1) The Contractor shall furnish a DR site.
 - 2) The DR site shall be at least 100 miles from the primary operations site, and have the capacity to take over complete production volume in case the primary site becomes unresponsive.
- C. The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.
- D. The Contractor shall test the contingency/DR plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one (1) annual test shall include backup media restoration and failover/fallback operations at the DR location. The Contractor shall send the Contract Monitor a notice of completion following completion of DR testing.
- E. Such contingency and DR plans 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.
- F. 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 - of \$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.

- B. Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
 - C. 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.”
 - D. Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars (\$10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the State’s claimants or employers is processed or stored.
 - 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 one million dollars (\$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. The Contractor shall obtain from each individual assigned to work on the Contract a statement permitting a criminal background check. The Contractor will obtain a criminal background check for each individual using a source of its choosing. The Contract Monitor reserves the right to reject any individual based upon the results of the background check.
- B. The Contractor shall obtain criminal background checks on candidates it sends for employment at the Department. At a minimum, these checks must contain convictions and probation before judgment (PBJ) pleadings within the State of Maryland. 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. Contractor Personnel with access to systems supporting the State or to State data who have been convicted of a felony or of a crime involving telecommunications and electronics from the above list of crimes shall not be permitted to work on State premises under the Contract; Contractor Personnel who have been convicted within the past five (5) years of a misdemeanor from the above list of crimes shall not be permitted to work on State premises.
- G. 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)

- A. For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State's conditions and queries are satisfied.
- 1) Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.
 - 2) Some State sites, especially those premises of the Department of Public Safety and Correctional Services, require each person entering the premises to document and inventory items (such as tools and equipment) brought onto the site, and to submit to a physical search of his or her person. Therefore, Contractor Personnel shall always have available an inventory list of tools being brought onto a site and be prepared to present the inventory list to the State staff or an officer upon arrival for review, as well as present the tools or equipment for inspection. Before leaving the site, the Contractor Personnel will again present the inventory list and the tools or equipment for inspection. Upon both entering the site and leaving the site, State staff or a correctional or police officer may search Contractor Personnel. Depending upon facility rules, specific tools or personal items may be prohibited from being brought into the facility.
- B. Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the Department may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the Department.
- C. Further, Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that controls the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default.

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.doit.maryland.gov – keyword: Security Policy.
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

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 – 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 (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
- 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) Establish separate production, test, and training environments for systems supporting the services provided under the Contract and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section 3.7.5**.
 - 2) 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.

- 3) Ensure that State data is not commingled with non-State data through the proper application of compartmentalization Security Measures.
- 4) 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.
- 5) For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
- 6) Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), "Security Requirements for Cryptographic Modules", FIPS PUB 140-3:
<https://csrc.nist.gov/publications/detail/fips/140/3/final>
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
- 7) Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology's Information Security Policy.
- 8) Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor's performance to confirm the effectiveness of these measures for the services being provided under the Contract.
- 9) Ensure system and network environments are separated by properly configured and updated firewalls.
- 10) Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
- 11) By default "deny all" and only allow access by exception.
- 12) Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.

- 13) 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 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.
- 14) 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.
- 15) Ensure State data is not processed, transferred, or stored outside of the United States ("U.S."). The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
- 16) 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.
- 17) 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.
- 18) Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the

performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

3.7.6 Security Logs and Reports Access

- A. For a SaaS or non-State hosted solution, the Contractor shall provide reports to the State in a mutually agreeable format.
- B. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to the Contract.

3.7.7 Security Plan

- A. The Contractor shall protect State data according to a written security policy (“Security Plan”) no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.
- B. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.

3.7.8 Security Incident Response

- A. The Contractor shall notify the Department in accordance with **Section 3.7.8A-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;
 - 2) notify the Department within two (2) hours if there is a threat to Contractor’s Solution as it pertains to the use, disclosure, and security of State data; and
 - 3) provide written notice to the Department within one (1) Business Day after the 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.

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.

3.7.9 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.

3.7.10 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.

3.7.11 Provisions in **Sections 3.7.1 – 3.7.9** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Sections 3.7.4-3.7.9** (or the substance thereof) in all subcontracts.

3.8 Problem Escalation Procedure

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

- 3.8.2** The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.
- 3.8.3** The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- A. The process for establishing the existence of a problem;
 - B. Names, titles, and contact information for progressively higher levels of personnel in the Contractor’s organization who would become involved in resolving a problem;
 - C. For each individual listed in the Contractor’s PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor’s PEP;
 - D. Expedited escalation procedures and any circumstances that would trigger expediting them;
 - E. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
 - F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
 - G. A process for updating and notifying the Contract Monitor of any changes to the PEP.
- 3.8.4** Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

3.9 SOC 2 Type 2 Audit Report

- 3.9.1** A SOC 2 Type 2 Audit applies to the Contract. The applicable trust services criteria are: Security, Confidentiality, and Privacy.
- 3.9.2** In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor’s handling of Sensitive Data or the Department’s critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas related to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the “Information Functions and/or Processes.” Such audits shall be performed in accordance with audit guidance: Reporting on an Examination of Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- A. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Audit” or “SOC 2 Report”). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.
- B. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.7**, relevant to the trust services criteria identified in 3.9.1: as defined in the aforementioned Guidance.
- C. The audit scope of each year’s SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services criteria of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year’s SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- D. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the Department under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.
- E. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the Department.
- F. The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- G. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department will determine in consultation with appropriate State government technology and audit authorities whether the Contractor’s current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- H. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.9.2.A**, the Department shall have the right to retain an

independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.

- I. Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

3.10 Experience and Personnel

3.10.1 Preferred Offeror Experience

The following experience is expected and will be evaluated as part of the Technical Proposal (see the capability of proposed resources evaluation factor from **Section 6.2**):

The Contractor must have:

- A. At least three (3) years' experience within the last ten (10) years providing Financial Management Services (FMS) for large scale projects for at least two (2) public entities and have operated under various State and Federal laws and regulations. Offerors with this experience will be evaluated more highly than those without this experience.
- B. At least one (1) year of experience within the past five (5) years utilizing an electronic tracking and reporting system to provide Financial Management Services. Offerors with this experience will be evaluated more highly than those without this experience.
- C. At least one (1) year experience within the past five (5) years providing Counseling Services to the people it serves. Offerors with this experience will be evaluated more highly than those without this experience.
- D. Have provided, in accordance with Generally Accepted Accounting Principles (GAAP), Financial Management Services to recipients and their families of at least one (1) self-directed benefits program for at least two (2) years. Offerors with this experience will be evaluated more highly than those without this experience.

As proof of meeting these requirements, the Offeror shall provide with its Proposal, two (2) letters of reference documenting their experience.

2.3.8 Personnel Experience

The following experience is expected and will be evaluated as part of the Technical Proposal (see capability of proposed resources evaluation factor from **Section 6.2**):

The Contractor shall update its organizational chart (including any sub-contractors) as submitted in its Technical Proposal and submit to the DDA and LTSS Contract Monitors at least ten (10) business days prior to Go-Live Date of the Contract. All Contractor and subcontractor staff must be at least eighteen (18) years of age and US citizens or documented immigrants. Additionally, the Contractor shall have:

- A. Management and staff who are knowledgeable and have experience in providing for and serving Participants with developmental disabilities and their representatives as the

common law employer (performing services for an employer who has the right to control and direct the results of the work and the way in which it is done).

- B. At least one (1) staff member with a bachelor's degree in accounting and four (4) years of applicable experience or a master's degree in accounting and two (2) years of applicable experience. It is preferred that the accountant have at least twenty-four (24) months of experience with Medicaid information systems.
- C. At least one (1) system analyst with a bachelor's degree in Computer Science or a related field with a minimum of four (4) years of experience with various database management systems, programming languages and with auditing system edits and data integration procedures. A Master's Degree in Computer Science or a related field is preferred with at least twenty-four (24) months of experience with Medicaid information systems.
- D. Provide the names of four (4) employees authorized to issue checks on behalf of the Fiscal Intermediary. The Contractor shall provide the Contract Monitor verbal or written notification of when any of the aforementioned names are internally changed.
- E. Maintain an adequate administrative organizational structure and support staff sufficient to perform its contractual responsibilities. One staff member may fulfill multiple roles described below. This structure or a suitable alternative proposal that shall be approved by the Contract Monitor shall include:

3.10.2 Key Personnel identifier

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 below:

- A. **Project Director**. Shall have authority to manage all operations of the FMS and Counseling Divisions. The Project Director shall be available to the Contract Monitors by telephone during Normal State Business Hours. The Contractor must provide an administrative telephone number that will enable the Contract Monitors to reach the Project Director directly.
- B. **Project Manager for FMS Services Division**. Shall have experience managing FMS operations.
- C. **Account Manager for FMS Services**. Shall have experience with accounts, financial quality control, and managing public funds.
- D. **Payroll & Invoice Manager**. Shall have experience processing timesheets, payroll, maintaining bank accounts, acting as a billing agent, paying invoices for provider services, as well as Self-Directed goods and services.
- E. **Pre-Authorization Manager**. Shall have experience reviewing Person-Centered Plans, consulting with community and health professionals if necessary, comparing requested services to budgets, and issuing pre-authorizations, clarifications, or denials of service.
- F. **Customer Service Manager**. Shall have experience with call center/customer service operations and working with aged and/or disabled individuals.

- G. **Project Manager for Counseling Services Division.** Shall have experience managing counseling operations, public services, social services, and Self-Direction.
- H. **Enrollment Manager.** Shall have experience managing the enrollment and disenrollment of individuals, developing supporting materials for enrollment, and skills training for individuals/participants and/or representatives.

3.10.3 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 Contract Monitor 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 Contract Monitor.
- C. The provisions of this section apply to Key Personnel identified in any Task Order proposal and agreement, if issued, and 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 Contract Monitor’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 Contract Monitor 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 Contract Monitor 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 Contract Monitor 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 Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

3.11.4 Replacement Circumstances

- A. Directed Personnel Replacement
- 1) The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, 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 at the discretion of the Contract Monitor, the Contract Monitor 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 Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.
 - 3) Should performance issues persist despite an approved Remediation Plan, the Contract Monitor 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 Contract Monitor 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 Contract Monitor deems it necessary and in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor 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 Contract Monitor at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor 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 Contract Monitor 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 Contract Monitor the Contract Monitor 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 10th 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.
- F. 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**).
- G. 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.
- H. 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.
- I. 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

THIS SECTION IS INAPPLICABLE TO THIS RFP.

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 – 3.15.5** (or the substance thereof) in all subcontracts.

3.15.1 Custom Software

- A. As described in the sample Contract (**Attachment M**), the State shall solely own any custom software, including, but not limited to application modules developed to integrate with a COTS, source-codes, maintenance updates, documentation, and configuration files, when developed under the Contract.
- B. Upon a Contractor's voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, Contractor's dissolution, Contractor's discontinuance of support of any software or system, the Contractor shall convey to the State all rights, title, and interests in all custom software, licenses, software source codes, and all associated System Documentation that comprises any solutions proposed as a part of the Contract. These rights include, but are not limited to, the rights to use, and cause others to use on behalf of the State, said software, software documentation, licenses, software source codes, and System Documentation.

3.15.2 Custom Source Code

- A. For all custom software provided to the State pursuant to any Contract, the Contractor shall either provide the source code directly to the State in a form acceptable to the State, or deliver two copies of each software source code and software source code documentation to a State-approved escrow agent at no additional cost to the State following the terms set forth in the sample contract (**Attachment M**) and in **Section 3.15.3** below.
- B. The State shall have the right to audit custom software source code and corresponding software source code documentation for each software product that comprises the solution as represented by the Contractor. This audit shall be scheduled at any time that is convenient for the parties to be present. The State shall be provided with software or other tools required to view all software source code.
- C. The Contractor shall provide the current source code and documentation for all custom software to the State at the time of Contract termination.

3.15.3 Purchasing and Recycling Electronic Products

This section does not apply to this solicitation.

3.15.4 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 Virtual Teleconference

- 4.1.1 A Pre-Proposal Virtual Teleconference (Conference) via Google Meets will be held at the date and time as indicated on the Key Information Summary Sheet. Participation in the virtual teleconference shall be permitted upon receipt of an email and calendar invitation from the Procurement Officer only.
- 4.1.2 Attendance at the virtual Teleconference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.
- 4.1.3 It is highly recommended that ALL Prime Contractors encourage their intended subcontractors, including MBE subcontractors, to attend the virtual Conference to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4 MBE subcontractors are encouraged to attend the Teleconference to market their participation to potential prime contractors.
- 4.1.5 Following the virtual Teleconference, the participation/sign-in record (consisting of the list of all calendar invitees) and summary of the Virtual Teleconference will be distributed via the same mechanism described for amendments and questions (see Section 4.2.1 eMMA).
- 4.1.6 In order to participate in the Virtual Teleconference, all interested parties shall e-mail the Pre-Proposal Virtual Teleconference Response Form (Attachment A) to Contract Officer Jessica Fields at Jessica.fields1@maryland.gov no later than two (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, 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 (21-19022 - Financial Management and Counseling Services (FMCS)), 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** The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address indicated on the Key Information Summary Sheet.
- 4.5.5** 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.
- 4.5.6** Proposals may not be submitted by facsimile. Proposals will not be opened publicly.
- 4.5.7** 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 minimum of Two and a maximum of 10 awards will be made to the responsible Offeror(s) submitting the Proposal that have been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP, for providing the goods and services as specified in this RFP. See RFP **Section 6** for further award information. The Contractor with the most advantageous proposal to the State will be given the right of first refusal to provide the requested services of the RFP. The Contractor will have 48 hours to respond to a service request before a request is made to the next Contractor with the most advantageous proposal to the State.

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(s) 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/GA_DX10Form20150615.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 virtual teleconference 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(s) or potential Offeror(s) may use eMMA 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, 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. Filing of protests;

- B. Filing of Contract claims;
- C. Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
- D. 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:
- C. 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
- D. 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.
- E. 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.

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**);
- B. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
- C. 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.
- D. 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**.
- B. A certified Veteran-Owned Small Business Enterprises (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 VSBE Goal

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

4.27.3 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 workforce 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 1 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

- 4.29.1** There are programmatic conditions that apply to the Contract due to federal funding (see **Attachment G**).
- 4.29.2** The total amount of federal funds allocated for the Maryland Department of Health is \$737,066,545 in Maryland State fiscal year FY21. This represents 52.10% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 4.29.3** The Contract contains federal funds. The source of these federal funds is: Medicaid. The CFDA number is: 93.778/2600. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment G**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment G** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions, which are part of the Contract.

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 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)

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

4.32 HIPAA - Business Associate Agreement

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardees shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Offeror with the next highest overall-ranked Proposal.

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.

4.36 Department of Human Services (DHS) Hiring Agreement

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 DHS Hiring Agreement. A copy of this Agreement is included as **Attachment O**. This Agreement must be provided within five (5) Business Days of notification of recommended award.

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 website 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 Proposal delivered by facsimile 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:

A. 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

B. Financial Proposal consisting of:

- 1) Financial Proposal entered into the price form spreadsheet within eMMA and all supporting material in excel format,
- 2) Financial Proposal in searchable Adobe PDF format,
- 3) a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

5.2.7 Offerors may submit Proposals by electronic means as described.

Electronic means includes e-mail to the Procurement Officer address listed on the Key Information Summary Sheet.

5.2.8 E-mail submissions

A. All Proposal e-mails shall be sent with password protection.

- B. The Procurement Officer will not accept submissions after the date and exact time stated in the Key Information Summary Sheet. The date and time of submission is determined by the date and time of arrival in the Procurement Officer's e-mail box. Time stamps on outgoing email from Contractors shall not be accepted. 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.
- C. The State has established the following procedure to restrict access to Proposals received electronically: all Proposal documents must be password protected, and the password for the Technical Proposal must be different from the password for the Financial Proposal. Offerors will provide these two passwords to MDH upon request or their Proposal will be deemed not susceptible for award. Subsequent submissions of Proposal content will not be allowed.
- D. The Procurement Officer will only contact those Offerors with Proposals that are reasonably susceptible for award.
- E. Proposals submitted via e-mail must not exceed 25 Mb. If a submission exceeds this size, split the submission into two or more parts and include the appropriate part number in the subject (e.g., part 1 of 2) after the subject line information below.
- F. The e-mail submission subject line shall state the RFP 21-19022 and either "Technical" or "Financial."

5.2.9 Two Part Submission:

- A. 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
- B. Financial Proposal consisting of:
 - 1) Financial Proposal and all supporting material in excel format,
 - 2) Financial Proposal in searchable Adobe PDF 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 **pricing information** from the Technical Proposal (Volume I). Include pricing information 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. A 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.”

In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, 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”**).

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 RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 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 (RFP **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 give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP **Section 2**, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
 - 4) Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal.
 - 5) 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.
 - 6) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.8**.
 - 7) The Offeror shall provide a Backup solution/strategy recommendation as part of its Proposal.
 - 8) Disaster Recovery and Security Model description - For hosted services, the Offeror shall include its DR strategy, and for on premise, a description of a recommended DR strategy.
 - 9) The Offeror shall include a deliverable description and schedule describing the proposed Deliverables as mapped to the State SDLC and the Deliverables table in **Section 2.4.4**. The schedule shall also detail proposed submission due date/frequency of each recommended Deliverable.
 - 10) Description of technical risk of migrating from the existing system.

11) 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 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.

12) Product Requirements

- a) Offerors may propose open source software; however, the Offeror must provide operational support for the proposed software.
- b) Details for each offering: The Offeror shall provide the following information for each offering:
 - i. Offering Name;
 - ii. Offeror relationship with manufacturer (e.g., manufacturer, reseller, partner);
 - iii. Manufacturer;
 - iv. Short description of capability;
 - v. Version (and whether version updates are limited in any way);
 - vi. License type (e.g., user, CPU, node, transaction volume);
 - vii. Subscription term (e.g., annual);
 - viii. License restrictions, if any;
 - ix. Operational support offered (e.g., customer support, help desk, user manuals online or hardcopy), including description of multiple support levels (if offered), service level measures and reporting;
 - x. Continuity of operations and disaster recovery plans for providing service at 24/7/365 level;
 - xi. Ability of the offering to read and export data in existing State enterprise data stores. Offerors in their Proposals shall describe the interoperability of data that can be imported or exported from the Solution, including generating industry standard formats;

- xii. Any processing or storage of data outside of the continental U.S;
- xiii. Any limitations or constraints in the offering, including any terms or conditions (e.g., terms of service, ELA, AUP, professional services agreement, master agreement) – see also **Section 5.3.2**;
- xiv. Compatibility with the State’s existing single sign-on system, SecureAuth or other single sign-on approaches;
- xv. APIs offered, and what type of content can be accessed and consumed;
- xvi. Update / upgrade roadmap and procedures, to include: planned changes in the next 12 months, frequency of system update (updates to software applied) and process for updates/upgrades;
- xvii. Frequency of updates to data services, including but not limited to, datasets provided as real-time feeds, and datasets updated on a regular basis (e.g., monthly, quarterly, annually, one-time);
- xviii. What type of third party assessment (such as a SOC 2 Type II audit) is performed, the nature of the assessment (e.g., the trust services criteria and scope of assessment), and whether the results of the assessment pertinent to the State will be shared with the State. See also **Section 3.9**;
- xix. Offeror shall describe its security model and procedures supporting handling of State data. If more than one level of service is offered, the Offeror shall describe such services. Include, at a minimum:
 - (1) procedures for and requirements for hiring staff (such as background checks),
 - (2) any non-disclosure agreement Contractor Personnel sign,
 - (3) whether the service is furnished out of the continental U.S. (see security requirements in **Section 3.7**),
 - (4) Certifications such as FedRAMP,
 - (5) Third party security auditing, including FISMA,
 - (6) Published Security Incident reporting policy, and
 - (7) Cybersecurity insurance, if any, maintained.

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

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 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.

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 price 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. Do not amend, alter, or leave blank any items on the Financial Proposal Form 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. Refer to Section 5 Proposal Format, ensure that all the required information per tab has been included in both the Technical and the Financial Offer. All tabs have been fulfilled and all required attachments have been submitted. Failure to complete all tabs and the required attachments could cause the loss of a contract. Also refer to Section 6.6.

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) Offerors with the indicated experience and qualifications as attested to by references, licenses, and certifications will receive a higher evaluation within this category.

6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.H) Offerors with the indicated experience as attested to by references will receive a higher evaluation within this category.

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

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

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, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offerors 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 with 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 e-mail submissions, submit one (1) copy of each with signatures.
2. 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 1: RFP ATTACHMENTS AND APPENDICES

| Applies? | When to Submit | Label | Attachment Name |
|----------|--|-------|---|
| Y | Before Proposal | A | Pre-Proposal Teleconference Response Form |
| Y | With Proposal | B | Financial Proposal Instructions and Form |
| Y | With Proposal | C | Bid/Proposal Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf) |
| Y | With Proposal | D | MBE Forms D-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) |
| Y | 10 Business Days after recommended award | D | MBE Forms D-1B, D-1C,D-2, D-3A, D-3B (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) Important: Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award. |

| Applies? | When to Submit | Label | Attachment Name |
|----------|--|-------|--|
| Y | As directed in forms | D | MBE Forms D-4A, D-4B, D-5 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) |
| Y | With Proposal | E | Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) |
| Y | 5 Business Days after recommended award | E | VSBE Forms E-1B, E-2, E-3 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) Important: 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 http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf) |
| Y | With Proposal | G | Federal Funds Attachments (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf) |
| Y | With Proposal | H | Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf) |
| Y | 5 Business Days after recommended award – However, suggested with Proposal | I | Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf) |
| Y | 5 Business Days after recommended award – However, suggested with Proposal | J | HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPABusinessAssociateAgreement.pdf) |

| Applies? | When to Submit | Label | Attachment Name |
|-------------------------------|--|-------|---|
| N | With Proposal | K | Mercury Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf) |
| Y | With Proposal | L | Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf) |
| 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 https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf) |
| Y | 5 Business Days after recommended award | O | DHS Hiring Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf) |
| Appendices | | | |
| Applies? | When to Submit | Label | Attachment Name |
| Y | n/a | 1 | Abbreviations and Definitions (included in this RFP) |
| Y | With Proposal | 2 | Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf) |
| Additional Submissions | | | |
| Applies? | When to Submit | Label | Document Name |
| Y | 5 Business Days after recommended award | 3 | Evidence of meeting insurance requirements (see Section 3.6); 1 copy |
| Y | 10 Business Days after recommended award | 4 | PEP; 1 copy |

| Applies? | When to Submit | Label | Attachment Name |
|----------|-------------------|-------|---|
| Y | With deliverables | 5 | Deliverable Product Acceptance Form (DPAF) (see online at http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf) |

Attachment A. Pre-Proposal Teleconference Response Form

Solicitation Number 21-19022

Financial Management and Counseling Services (FMCS)

A Pre-Proposal conference will be held on **June 9, 2021 10:00 AM Local Time** via the web-ex info below:

meet.google.com/nqx-rpsh-ask

Phone: [+1 570-818-2141](tel:+15708182141) (PIN: 646643892)

Please return this form by June 1, 2021 advising whether or not your firm plans to attend. The completed form should be returned via e-mail to the Contract Officer at the contact information below:

Jessica Fields
E-mail: Jessica.fields1@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-1 Financial Proposal Instructions

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, 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 prices entered on the Financial Proposal Form.

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

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this 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., .344 shall be .34 and .345 shall be .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 Price, if appropriate, and Extended Price 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 prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices 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) If option years are included, Offerors must submit pricing for each option year. 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. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the 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-1 Financial Proposal Form

The Financial Proposal Form shall contain all price 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 pricing 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-2 FINANCIAL PROPOSAL FORM.XLS."

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Attachment C. Proposal Affidavit

See link at 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 20 percent with no subgoals.

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 3 percent.

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.

Attachment G. Federal Funds Attachments

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

Attachment H. Conflict of Interest Affidavit and Disclosure

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)

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

Attachment J. HIPAA Business Associate Agreement

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

Attachment K. Mercury Affidavit

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

Attachment L. Location of the Performance of Services Disclosure

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

Attachment M. Contract

Developmental Disabilities Administration (MDH DDA)
Financial Management and Counseling Services (FMCS)
21-19022

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 20__ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND Developmental Disabilities Administration (“MDH DDA” 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 (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.3 “Financial Proposal” means the Contractor’s [pick one: Financial Proposal or Best and Final Offer (BAFO)] dated _____ (Financial Proposal date or BAFO date).
- 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 Financial Management and Counseling Services (FMCS), Solicitation # 21-19022, 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. _____ (Technical Proposal date), 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:

A. Exhibit A – The RFP

- B. Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)
 - C. Exhibit C – The Technical Proposal
 - D. 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 two (2), successive one-year renewal options (each 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 prices 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 the Contracted amount.

For time and materials Contracts, IDIQ Contracts, or Contracts which 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”), which includes \$_____ for the Initial Term and \$_____ for the Renewal Term(s).

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the NTE 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 NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

- 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.
- A. 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.
 - B. 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.
 - C. 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.
 - D. 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, task 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.

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.

30.2 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.

30.3 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 subcontractor 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:

Patricia Sastoque
Developmental Disabilities Administration
201 W. Preston Street
Baltimore, MD 21201
Phone Number: (410) 767-5567
E-Mail: patricia.sastoque@maryland.gov

With a copy to:

Marlana R. Hutchinson
Office of Long Term Services and Support
201 W. Preston Street
Baltimore, MD 21201
Phone Number: (410) 767-1443
E-Mail: marlana.hutchinson@maryland.gov

With a copy to:

Queen Davis
Office of Procurement and Support Services (OPASS)
201 W. Preston Street
Baltimore, MD 21201
Phone Number: (410) 767-
E-Mail: Queen.davis@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): \$35.00 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): \$85.00 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: \$100.00 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)

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.

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

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

of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

42. Compliance with Federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

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

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

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

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

43. Hiring Agreement

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

43.2 The Hiring Agreement provides that the Contractor and DHS will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

44. 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.

45. Maryland's Green Purchasing Reporting Requirements

The State of Maryland reserves the right to request from the Contractor quarterly sales data over the life of this contract. This information must include details about the recycled content, third-party sustainability certifications, and other environmental attributes of products and services sold on this price agreement per the contract specifications.

This information will enable Maryland State agencies to comply with Article §14-405 of the Annotated Code of Maryland and COMAR 21.13.01.14, effective October 1, 2014, which requires Maryland state agencies to report to the Department of General Services on their procurement of environmentally preferable products and services.

To facilitate consistent reporting on targeted contracts, the Contractor will be provided with a VENDOR GREEN SALES REPORT template by the Maryland Department of General Services.

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland
Maryland Department of Health
(MDH)

By:

By: _____, Secretary

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 #)

Attachment N. Contract Affidavit

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf>.

Attachment O. DHS Hiring Agreement

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

Appendix 1. – Abbreviations and Definitions

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

- A. Acceptable Use Policy (AUP) - A written policy documenting constraints and practices that a user must agree to in order to access a private network or the Internet.
- B. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
- C. Application Program Interface (API) – Code that allows two software programs to communicate with each other.
- D. Authorized Representative – An individual or entity authorized to assist the applicant or participant in applying for and requesting services pursuant to COMAR 10.01.04.12.
- E. 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).
- F. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- G. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- H. 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.
- I. Contractor – The selected Offeror that is awarded a Contract by the State.
- J. 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.
- K. Coordination of Community Services – Targeted case management services provided pursuant to and in accordance with COMAR 10.09.48 that assist participants in requesting DDA-funded services.
- L. Coordinator of Community Services or “CCS” – An individual who provides Coordination of Community Services either as an employee or contractor of a DDA provider licensed or certified/approved to provide Coordination of Community Services.
- M. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- N. Designated representative – An individual who acts on behalf of the participant in managing the participant’s services under the self-directed services delivery model in accordance with applicable requirements.

- O. Developmental Disabilities Administration or (DDA).
- P. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- Q. Enterprise License Agreement (ELA) – An agreement to license the entire population of an entity (employees, on-site contractors, off-site contractors) accessing a software or service for a specified period of time for a specified value.
- R. Go-Live/Go-Live Date - The earliest date, agreed by the Contractor and Contract Monitor, upon which the deliverable/requirement is made available for use in a real time.
- S. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- T. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
- U. 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**.
- V. Legally Responsible Person – An individual who has a legal obligation under the provisions of Maryland law to care for another individual. Under Maryland law, this may include a parent (either natural or adoptive), legal guardian, or individual otherwise legally responsible for the care of a minor (e.g., foster parent or relative appointed by court).
- W. 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.
- X. LTSSMaryland - An electronic information system, developed and supported by the Maryland Department of Health for home and community based service program to create, review, and maintain records regarding an individual’s eligibility status and PCP/POC.
- Y. Medicaid Management Information System (MMIS) – A mechanized claims processing and information retrieval system that State Medicaid programs must have to be eligible for Federal funding.
- Z. 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.
- AA. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- BB. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order 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.
- CC. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- DD. Offeror – An entity that submits a Proposal in response to this RFP.

- EE. Person-Centered Plan or “PCP” – A written plan that is developed by a planning process driven by the individual with a developmental disability in order to:
- 1) Identify the goals and preferences of the individual with a developmental disability;
 - 2) Identify services to support the individual in pursuing the individual’s personally defined outcomes in the most integrated community setting;
 - 3) Direct the delivery of services that reflect the individual’s personal preferences and choice; and
 - 4) Identify the individual’s specific needs that must be addressed to ensure the individual’s health and welfare.
- FF. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- GG. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After a 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.
- HH. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- II. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- JJ. Request for Proposals (RFP) – This Request for Proposals issued by the Developmental Disabilities Administration (Department), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- KK. 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.
- LL. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- MM. 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.

- NN. Service Level Agreement (SLA) - Commitment by the Contractor to the Department that defines the performance standards the Contractor is obligated to meet.
- OO. SLA Activation Date - The date on which SLA charges commence under this Contract, which may include, but to, the date of (a) completion of Transition in, (b) a delivery, or (c) releases of work.
- PP. Software - The object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. Software also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.
- QQ. Software as a Service (SaaS) - A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of this RFP, the terms SaaS and PaaS are considered synonymous and the term SaaS will be used throughout this document.
- RR. Solution - All Software, deliverables, services and activities necessary to fully provide and support the RFP scope of work. This definition of Solution includes all System Documentation developed as a result of this Contract. Also included are all Upgrades, patches, break/fix activities, enhancements and general maintenance and support of the Solution and its infrastructure.
- SS. State – The State of Maryland.
- TT. Source Code – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.
- UU. System Availability – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.
- VV. System Documentation – Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:
- 1) Source Code: This includes source code created by the Contractor or subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract;
 - 2) All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;
 - 3) All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;
 - 4) All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer’s notes and other documentation;
 - 5) A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software);
 - 6) All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides; and

- 7) Operating procedures.
- WW. Task Order – A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, 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 Task Order.
- XX. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.
- YY. Third Party Software – Software and supporting documentation that;
- 1) are owned by a third party, not by the State, the Contractor, or a subcontractor;
 - 2) are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and
 - 3) are specifically identified and listed as Third Party Software in the Proposal.
- ZZ. 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.
- AAA. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
- BBB. 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.
- CCC. Work Order – A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, 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.

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Appendix 2. – Offeror Information Sheet

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf.