



DEPARTMENT OF GENERAL SERVICES

REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. MDDGS31011337

Issue Date: October 23, 2013

INDEFINITE DELIVERY CONTRACT (IDC)

TO PROVIDE PROJECT MANAGEMENT, ENERGY AUDIT, ENGINEERING, CONSTRUCTION, FINANCING, MAINTENANCE SERVICES AND MEASUREMENT & VERIFICATION TO DEVELOP AND IMPLEMENT COMPREHENSIVE ENERGY EFFICIENCY AND GUARANTEED SAVINGS PROGRAMS AT STATE FACILITIES

I.D. NO. DGS-07-EPC-IDC-7.0

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

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

Title: INDEFINITE DELIVERY CONTRACT (IDC)
Solicitation No: MDDGS31011337

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

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

**STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES
RFP KEY INFORMATION SUMMARY SHEET**

Request for Proposals: INDEFINITE DELIVERY CONTRACT (IDC)

Solicitation Number: MDDGS31011337

RFP Issue Date: October 22, 2014

RFP Issuing Office: Department of General Services

Procurement Officer: Debbie Pecora, CPPB
Department of General Services
301 W. Preston Street, Room M-10
Baltimore, MD 21201
Phone: 410-767-4945 Fax: 410-333-5164
E-mail: Debbie.pecora@dgs.State.md.us

Contract Monitor: Lauren T. Buckler, P.E., CEM, LEED AP
Department of General Services
Office of Energy Performance and Conservation
301 W. Preston Street, Room 703
Baltimore, MD 21201
Phone: 410-767-3174 Fax: 410-333-5026
E-mail: Lauren.Buckler@dgs.state.md.us

Proposals are to be sent to: Department of General Services
Management Support/BPW
301 W. Preston Street, Room M-6
Baltimore, MD 21201
Attention: Debbie Pecora

Pre-Proposal Conference: November 13, 2013 at 10:00 a.m. Local Time
Executive Conference Room 1402
301 W. Preston Street
Baltimore, MD 21201

Closing Date and Time: December 9, 2013 at 2:00 p.m. Local Time

MBE Subcontracting Goal: 30% (sub-goals assigned on a project-by-project basis)

VSBE Subcontracting Goal: Assigned on a project by project basis

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

The primary purpose of this solicitation is to select a qualified list of Energy Service Companies (ESCOs) who have the capability to develop and implement comprehensive energy efficiency and guaranteed savings programs to assist various State agencies in achieving mandated reductions in energy consumption. The State plans to enter into indefinite quantity contracts (IDC's) pursuant to Title 12, Subtitle 3 of the SFP, Energy Performance Contracts.

1.2 Abbreviations and Definitions

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

- A. **Approved Equal** - those supplies or services, or compatible items of construction whose quality, design, or performance characteristics are functionally equal or superior to an item specified.
- B. **Certified Energy Manager** – A certification from the Association of Energy Engineers (AEE).
- C. **Change Order** - a written order signed by the responsible Procurement Officer, directing a Contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Contractor.
- D. **Code** - the Annotated Code of Maryland.
- E. **COMAR** - Code of Maryland Regulations available on-line at www.dsd.state.md.us
- F. **Consulting engineer** - the State's designated representative for design and engineering oversight.
- G. **Contract** - the written agreement executed between the State and the successful Offeror, as a result of this RFP, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price.
- H. **Contractor** - the person or organization having direct contractual relation with the State for the execution of the "Work." If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- I. **Contract Documents** - this RFP, the Proposal and all amendments /addenda thereto, the Offeror's Phase I proposal and Phase II proposal, plans and specifications and construction drawings developed by the Contractor, other documents that may be referenced in the RFP or written contract, and the written contract, contract forms and bonds, notice to proceed, and any supplemental agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof.
- J. **Contract Monitor (CM)** - The State designated 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.

- K. **Contract Price** - the amount payable to the Contractor under the Contract terms.
- L. **Contract Time** - the number of calendar days shown in the contract documents indicating the time allowed for the completion of the work contemplated in the contract.
- M. **Cost Avoidance** - the difference between current and baseline cost, baseline cost being what current cost would have been had no energy efficiency measures been implemented. Baseline cost also reflects variation in weather severity, occupancy, equipment loads, operating patterns, and energy rates.
- N. **Critical Path Method (CPM)** - a scheduling/management tool showing a network of work elements or activities for a construction project.
- O. **Day** - calendar day unless otherwise designated.
- P. **Department** - the Department of General Services, State of Maryland.
- Q. **DGS** - the Department of General Services, State of Maryland.
- R. **ECM** - Energy Conservation Measures.
- S. **eMM** - E Maryland Marketplace
- T. **Employee** - all employees of the State of Maryland, whether classified, unclassified, or employed under a personal services contract of employment. It does not include independent contractors or successful Offerors.
- U. **Energy** - electricity, natural gas, propane, fuel, chilled water, steam and water, purchased or generated on-site.
- V. **EPC** – Energy Performance Contract.
- W. **ESCO** - Energy Service Company.
- X. **Financial Proposal** – the Offeror’s Financial Proposal pursuant to this RFP.
- Y. **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.
- Z. **MEA**- Maryland Energy Administration.
- AA. **Notice to Proceed** - a written notice to the Contractor of the date on or before which they shall begin the prosecution of the Work to be done under the Contract.
- BB. **Offeror** – An entity that submits a Proposal in response to this RFP.
- CC. **Operations Costs** - costs of personnel labor, maintenance materials and contract services, directly associated with operating and maintaining building lighting, HVAC and other energy consuming systems.
- DD. **OPL** - the Office of Procurement and Logistics of the Maryland Department of General Services.
- EE. **Owner** - the State of Maryland or that Agency of the State administrating the contract.
- FF. **Payback Period** - the amount of time, in years, that the State will need to pay for the cost of the project, including all planning, engineering, design, construction, start-up, training, on-going maintenance, and interest for the length of the loan period.

- GG. **Payment Bond** - the security in the form approved by the Department and executed by the Contractor and its surety, subject to Title 17 of the SFP.
- HH. **PDF** - portable data files
- II. **Performance Bond** - the security in the form approved by the Department and executed by the Contractor and the surety, guaranteeing complete performance of the Contract.
- JJ. **Phase I Contract** - the written agreement executed between the State and the successful Offeror, to conduct the work included in Phase 1, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price.
- KK. **Phase I Proposal** – The proposal completed during Pre-Phase I for the work to be accomplished during Phase 1, includes as appropriate either or both of an Offeror’s Technical or Financial Proposal.
- LL. **Phase II Contract** - the written agreement executed between the State and the successful Offeror, to conduct the work included in Phase II, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price. Phase II’s contract includes Phase II and Phase III’s scope of work.
- MM. **Phase II Proposal** - The proposal completed during Phase I for the work to be accomplished during Phase II and III, includes as appropriate either or both of an Offeror’s Technical or Financial Proposal.
- NN. **Plans and Specifications** - the official construction drawings and specifications developed by the Contractor and approved by the State.
- OO. **Procurement Officer** - that person described by the SFP and COMAR, and designated by the Secretary to make decisions with respect to the administration of the work when a project is administered by DGS. When a project is being administered by the Using Agency, that particular Agency will designate its procurement officer. The procurement officer will be identified at the job initiation conference.
- PP. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal in response to this IDC.
- QQ. **Repair** - to restore after injury, deterioration, or wear, to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth, in compliance with contract or warranty, and fully serviceable; and upon completion of such repair, unless otherwise stated to be in such conditions as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish to be applied without extra cost to the State. When the word “repair” is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient and ready for normal use for which it was intended originally.
- RR. **RFP** - the Request for Proposal in response to this IDC.
- SS. **Secretary** - the Secretary of the Department of General Services, State of Maryland.
- TT. **SFP** – State Finance and Procurement Article of the Annotated Code of Maryland.
- UU. **State** - the State of Maryland, which includes its agencies, departments, units, and its officials and employees

when acting within the scope of their authority and in the course of their official duties.

VV. **State's Approval** - it is approved in writing by a DGS or Using Agency.

WW. **Subcontractor** - only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the "Work." It excludes one who merely finishes material not so worked. It also includes those supplying architectural, engineering, or other design services to the Contractor.

XX. **Substantial Completion** - is the date on which the project can be occupied and used for its intended purpose.

YY. **Successful Offeror** - the entity to whom a contract is awarded as a result of this RFP.

ZZ. **Technical Proposal** – the Offeror's Technical Proposal pursuant to this RFP.

AAA. **Surety** - the corporate body bound as required by law for the full and complete performance of the contract by the Contractor or for the payment by the Contractor to subcontractors and suppliers.

BBB. **Using Agency** – The Agency pursuing, awarding or using a Phase I or Phase I proposal or contract.

CCC. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Title 14 of SFP and COMAR 21.11.13.

DDD. **Work** - the furnishing of all labor, materials, equipment, services, utilities, architectural/engineering and other design services, financing, cost savings guarantee, maintenance, training, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.

EEE. **Written Notice** - notice in writing if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or delivered by registered mail, or other means permitted by law, including email, to the last business address. For purposes of written notice required to be delivered or served on the State, its agency (ies), department(s), unit(s), employee(s), or officer(s), delivery by electronic means, including email and facsimile, shall not be considered "written notice."

In the RFP, such terms as "proposer", "developer", and "offeror" are used interchangeably to refer to the offeror prior to selection of the successful offeror. Similarly, such terms as "selected developer", "selected contractor", "selected offeror", or "successful offeror" are used interchangeably to refer to the successful offeror or list of approved offerors subsequent to selection.

1.3 Contract Type

1.3.1 This RFP is a "Performance Specification" and not a "Design Specification." This contract is not a "construction" contract, nor is it a contract for architectural or engineering services, even if, in the course of performance, the Contractor or its Subcontractors and/or sub-consultants may perform some construction or architectural/engineering services. This contract is an "energy performance contract" as defined in Section 11-101(h) of the SFP of the Code.

1.3.2 CONTRACT WITH GOVERNMENT ORGANIZATIONS OTHER THAN DGS

- A. Pursuant to Article 41, Section 18-201 of the Annotated Code of Maryland, except as provided in (b), the following entities may purchase materials, supplies, and equipment under this contract:
1. A county or Baltimore City;
 2. A municipal corporation;
 3. A governmental agency in the State with Primary Procurement Authority;
 4. A public or quasi-public agency that:
 - a. receives State money; and
 - b. is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
 5. A private elementary or secondary school that:
 - a. either has been issued a certificate of approval from the state Board of Education or is accredited by the Association of Independent Schools; and
 - b. is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code; or
 - c. A non-public institution or higher education under Section 17-106 of the Education Article.
 - d. A government unit outside Maryland may use this contract if the qualified contractor extends such to them.
- B. A private elementary or secondary school or a nonpublic institution of higher education may not purchase religious materials under this contract.
- C. The right to purchase under this section shall be in addition to, but not in substitution for, the applicable purchasing power granted to any of the listed entities pursuant to any statutory or charter provision.
- D. All purchases under this contract by any such entity which is not a unit or agency of the State of Maryland for which the State of Maryland may be held liable in contract (1) shall constitute a purchase or contract between the Contractor and that entity only, (2) shall not constitute a purchase or contract of the State of Maryland, (3) shall not binding or enforceable against the State of Maryland or any of its units or agencies, and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. Contractor bears the risk of determining whether or not any entity from which the Contractor receives an order under the contract is a unit or agency of the State of Maryland such that the contract may be enforced against the State of Maryland.

1.4 Contract Duration

This agreement will be effective following BPW approval and full execution for a period of 24 months effective July 1, 2014 with the unilateral option for two additional 12 month periods. If a qualified ESCO completes Phase I after the contract period has expired, the ESCO must continue to perform its contractual obligations until such time as it may be awarded the Phase II work for that specific project.

1.5 Procurement Officer

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

Debbie Pecora, CPPB
Procurement Officer
Department of General Services
301 W. Preston Street, Room M-10
Baltimore, MD 21201
Phone Number: 410-767-4945
Fax Number: 410-333-5164
E-mail: Debbie.pecora@dgs.State.md.us

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

1.6 Contract Monitor/Program Manager

The Contract Monitor is:

Lauren T. Buckler, P.E., CEM, LEED AP
Department of General Services
Office of Energy Performance and Conservation
301 W. Preston Street, Room 703
Baltimore, MD 21201
Phone: 410-767-3174 Fax: 410-333-5026
E-mail: Lauren.Buckler@dgs.state.md.us

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

1.7 Pre-Proposal Conference

A Pre-Proposal Conference will be held on November 13, 2013, beginning at 10:00 a.m. Local Time, in the 14th Floor Conference Room at 301 W. Preston Street, Baltimore, MD 21201. All prospective Offerors are encouraged to attend the Conference in order to facilitate better preparation of their Proposals.

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to 410-333-5164 the Pre-Proposal Conference Response Form to the attention of the Procurement Officer no later than 4:00 p.m. Local Time on (final date for submission of Attachment E). The Pre-Proposal Conference Response Form is included as Attachment E to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer no later than (final date for request for special accommodations). The Department will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

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

eMM is an electronic commerce system administered by the Maryland Department of General Services and the only means to obtain the RFP documents. Offeror questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

1.9 Questions / Discrepancies

- 1.9.1** Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: Debbie.pecora@dgs.State.md.us. Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.
- 1.9.2** Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer (see above email address) in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least fourteen (14) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.
- 1.9.3** Additional information, clarifications, and amendments desired by a prospective Offeror regarding the RFP shall be requested only in writing from the Procurement Officer no later than ten (10) calendar days prior to the proposal due date. Requests shall include the RFP number and name of project, and shall be directed to the Procurement Officer. **ORAL EXPLANATIONS OR INSTRUCTIONS WILL NOT BE BINDING AND WILL NOT CHANGE THE TERMS OF THIS RFP.** Written addenda will be binding. Any addenda resulting from these requests or amendments will be mailed to all listed holders of the RFP. The Offeror shall acknowledge the receipt of all addenda in its Technical Proposal.
- 1.9.4** The State reserves the right to amend the RFP at any time prior to preliminary award. Amendments will be incorporated into and handled as addenda. If the time and date for receipt of proposals does not permit incorporation of addenda, the due date will be delayed accordingly, and noted as such within the addenda; or, if necessary, by FAX, Certified Mail or Telephone, and confirmed by the addenda.

1.10 Procurement Method

- 1.10.1** The procurement method being utilized in the conduct of this project is Competitive Sealed Proposals in accordance with COMAR 21.05.03.
- 1.10.2** Selection of ESCOs under this IDC will be made to those successful Offerors whose Technical Proposals are determined to be the most advantageous to the State. Proposals shall be evaluated based on the evaluation criteria listed in Sections 5 of this RFP.

1.10.3 Proposals will not be opened publicly, but shall be opened in the presence of the DGS Proposal Evaluation Committee. The register of Proposals will be open to public inspection only after final award of the Contract.

1.10.4 A maximum of eight (8) ESCO may be selected based on the highest ranked firms.

1.11 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in Section 4.2 “Proposals” must be received by the Procurement Officer at the address listed on the Key Information Summary Sheet, no later than 2:00 p.m. (local time), November 20, 2013 to be considered.

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

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in this section for receipt of Proposals.

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

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

1.12 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

1.13 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. Technical proposal shall be double sided with divider tabs.

1.14 Public Information Act Notice

An 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., State Government Article, Title 10, Subtitle 6. (Also, see RFP Section 4.4.3.2 “Claim of Confidentiality”). This 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. 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.

1.15 Award Basis

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering the evaluation factors set forth in this RFP, and for providing the services as specified in this RFP. See RFP Section 5 for further information.

1.15.1 Phase I Contracts will be awarded based on selection criteria as specified in Section 3.3, of this RFP.

1.15.2 Phase I Contracts (Section 3.3) awarded under this agreement may not exceed \$250,000. Phase II contracts have no dollar limit, but must be approved by the Board of Public Works.

1.15.3 The State's selection of successful Offerors under this RFP does not bind the State or the Offeror to enter into any Phase I or Phase II contracts.

1.16 Oral Presentation

Offerors reasonably susceptible for award or potentially so will be requested to make an oral presentation to the evaluation committee. 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 and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations. Presentations must be made by the Offeror in person, at a time and location to be determined by the Procurement Officer

The State will furnish a laptop computer, electronic projector, screen and internet connection for Offeror's use. Presentation will be limited to 90 minutes per Offeror.

1.17 Duration of Proposal

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

1.18 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for Proposals, the Department shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the Department's procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.

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. 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. 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.

1.19 Cancellations

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, to waive or permit the cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without discussions or negotiations.

1.20 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, in providing a demonstration, or in performing any other activities related to this solicitation.

1.21 Protest/Disputes

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

1.22 Offeror Responsibilities

1.22.1 The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must 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) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals.").

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, minimum qualifications, and 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 that the parent organization will guarantee the performance of the subsidiary.

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

1.23 Substitution of Personnel

A. Continuous Performance of Key Personnel

Unless substitution is approved per paragraphs B-D of this section, key personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified 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 this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

B. Definitions

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

Extraordinary Personal Circumstance – means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

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.

Sudden – means when the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any key personnel working under the Contract.

C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph D of this section.

- a. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute key personnel have qualifications at least equal to those of the key personnel for whom the replacement is requested.
- b. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
 - i. A detailed explanation of the reason(s) for the substitution request;
 - ii. The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - iii. The official resume of the current personnel for comparison purposes; and
 - iv. Any evidence of any required credentials.
- c. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract 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 requested key personnel replacement.

D. Replacement Circumstances

- a. Voluntary Key Personnel Replacement

To voluntarily replace any key personnel, the Contractor shall submit a substitution request as described in paragraph C of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph D.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

b. Key Personnel Replacement Due to Vacancy

The Contractor shall replace key personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section D.1 of this section.).

Under any of the circumstances set forth in this paragraph D.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C of this section 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.

c. Key Personnel Replacement Due to an Indeterminate Absence

If any key personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance 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 or items to the Contract Monitor as required under paragraph C of this section.

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, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

d. Directed Personnel Replacement

- i. The Contract Monitor may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, Agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal. In circumstances of directed removal, the Contractor shall, in accordance with paragraph C 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.
- ii. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately 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.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will 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 personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the key personnel at issue.

Replacement or substitution of 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.

1.24 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Sample Contract, attached herein as **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 4.4.2.3).**

1.25 Bid/Proposal Affidavit

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

1.26 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award.

1.27 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 that it shall not become so in arrears during the term of the Contract if selected for Contract award.

1.28 Verification of Registration and Tax Payment

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

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

1.29 False Statements

Offerors are advised that SFP, § 11-205.1 provides as follows:

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

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

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

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

1.30 Payments by Electronic Funds Transfer

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

http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gad_x-10.pdf

1.31 Prompt Payment Policy

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

1.32 Electronic Procurements Authorized

- A.** Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B.** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.

C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bs/>), and electronic data interchange.

D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:

1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
 - (a) the solicitation (e.g., the IFB/RFP);
 - (b) any amendments;
 - (c) pre-Bid/Proposal conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
 - (a) ask questions regarding the solicitation;
 - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) submit a "No Bid/Proposal Response" to the solicitation.
3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

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

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

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

1.33 Minority Business Enterprise Goals

A minimum overall MBE subcontractor participation goal of 30% will be required. Sub-goals will be identified on a project-by-project basis.

“Liquidated Damages. This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“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 make good faith efforts to comply 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.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to 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): \$153 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): \$ 76 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/or 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 subgoal 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 this contract: \$100 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.”

1.33.1 Attachment D – Minority Business Enterprise participation, instructions, and forms are provided to assist Bidders/Offerors. A Bidder/Offeror must include with its Bid/Proposal a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1) whereby:

- (a) The Bidder/Offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- (b) The Bidder/Offeror responds to the expected degree of MBE participation, as Stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE participation schedule.

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

- 1.33.2 1.33.2 Bidders/Offerors are responsible for verifying that each of the MBE(s) selected to meet the subcontracting goal and subsequently identified in Attachment D-1 is appropriately certified and has the correct NAICS codes allowing it to perform the intended work.
- 1.33.3 Within ten (10) Working Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.
 - (a) Outreach Efforts Compliance Statement (**Attachment D-2**).
 - (b) Subcontractor Project Participation Certification (**Attachment D-3**).
 - (c) If the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.
 - (d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal.

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

- 1.33.4 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://www.mdot.State.md.us>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 1.33.5 The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:
 - (a) **Attachment D-4** (MBE Participation Prime Contract Paid/Unpaid MBE Invoice Report).
 - (b) **Attachment D-5** (MBE Participation Subcontractor/Contractor Unpaid MBE Invoice Report).
- 1.33.6 The Bidder/Offeror will be responsible for submitting the following form, if requesting a waiver, within ten (10) Working Days of recommendation for award and all documentation as required in **COMAR 21.11.03.11 - Waiver**:
 - (a) **Attachment D-6** (MBE Minority Contractor Unavailability Certificate).

1.34 Living Wage Requirements

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

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services

are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the SFP shall assign the tier based upon where the recipients of the services are located.

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

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

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

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

1.35 Federal Funding Acknowledgement

When the United States Government pays all or any portion of the cost of a project, the work shall be subject to the inspection of the appropriate Federal agency. Such inspection shall in no sense make the Federal government a party to this Contract, and will not interfere, in any way, with the rights of either party hereunder.

1.36 Conflict of Interest Affidavit and Disclosure

Bidders/Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with their Bid/Proposal. All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment I** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.37 Non-Disclosure Agreement

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

1.38 HIPAA - Business Associate Agreement

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

1.39 Nonvisual Access

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

1.40 Mercury and Products That Contain Mercury

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

1.41 Veteran-Owned Small Business Enterprise Goals

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

1.42 Conflict Minerals Notice

Offerors are advised that SFP, § 14-413 provides as follows:

- (a) (1) In this section the following words have the meanings indicated.
- (2) (i) “Conflict mineral” means a mineral or mineral derivative determined under federal law to be financing human conflict.
- (ii) “Conflict mineral” includes columbite-tantalite (coltan), cassiterite, gold, wolframite, or derivatives of these minerals.
- (3) “Noncompliant person” means a person:
 - (i) that is required to disclose under federal law information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries; and
 - (ii) for which the disclosure is not filed, is considered under federal law to be an unreliable determination, or contains false information.
- (b) A unit may not knowingly procure supplies or services from a noncompliant person.

By submitting a response to this solicitation, the Bidder/Offeror represents that it is in compliance with the disclosure requirements related to conflict minerals, as set forth in § 14-413 of the SFP.

1.43 Investment Activities in Iran

The Bidder/Offeror is required to complete the Investment Activities in Iran Certification. A copy of this Certification is included as **Attachment N**. The Certification must be provided with the Bid/Proposal.

1.44 Location of the Performance of Services Disclosure

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

1.45 Department of Human Resources (DHR) Hiring Agreement

All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder/Offeror will be required to complete a DHR Hiring Agreement. A copy of this Affidavit is included as **Attachment P**. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award.

1.46 Performance and Payment Bonds

The successful Offeror shall, prior to the execution of the Phase II portion of any assigned project, provide performance and payment bonds from a Surety company authorized to do business in the State of Maryland, properly executed in favor of the State of Maryland, each bond to be in an amount not less than 100% of the amount of the sum of the Net ECM cost.

1.47 Order of Precedence among contract documents

A. The provisions of the following documents shall take precedence in this order:

1. the Phase II Contract form signed by the parties;
2. this RFP;
3. the approved drawings and specifications; and
4. Contractor's Phase II Proposal for the specific project.
5. the Phase I Contract form signed by the parties

B. In the event of a conflict between provisions of the contract documents, the conflict shall be resolved in favor of the State in accordance with the Contractor's undertaking to be responsible for all design, investigation, site conditions, construction, financing, and maintenance, as provided in the scope of work, and in accordance with the Contractor's express agreement that Contractor shall be entitled to no payment, reimbursement, damages, costs, expenses or compensation for any reason or cause except from cost savings.

1.48 State's Right to do Work

If the Contractor should neglect to execute the Work properly or fail to perform any provision of this Contract, the State may either perform the work or procure the services and deduct the cost thereof from the funds then or thereafter due the Contractor.

1.49 Buy American Steel

Contractor shall comply with the requirements of Title 17, Subtitle 3 of the SFP and COMAR 21.11.02.

1.50 Laws to be Observed

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland 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 of Maryland, or any

department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

- 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 government approvals, if any, necessary to the performance of its obligations under this Contract.

In addition, if the Contractor observes that the drawings and specifications are at variance with any law, they shall promptly notify the State, and make any necessary changes to the drawings and specifications to bring them into compliance with the law at no extra cost to the State. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the State, it shall bear all costs arising there from.

1.51 Permits and Licenses

Contractor will file with the appropriate local authorities, drawings and specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the contract documents and Contractor shall include the cost of said fees in its financial proposal.

1.52 Patented Devices, Materials and Processes

- A. The Contractor shall pay for all royalties and license fees. They shall defend all suits or claims for infringement of any patent rights and shall save the State harmless from loss on account thereof.
- B. When a particular process or the product of a particular manufacturer or manufacturers is specified or proposed to be used that may be an infringement of a patent, the Contractor will at his option: (1) procure for the State the right to use the applicable process or product; (2) replace the process or product with a non-infringing process or product complying with the specifications; or (3) modify the process or product so it become non- infringing and performs in a similar manner to the original item.

1.53 Land, Air and Water Pollution

- A. If requested or required, the Contractor must submit evidence to the Department that the governing Federal, State, and local air pollution criteria will be, and were, met. This evidence and related documents will be retained by the Department for on-site examination.
- B. If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Procurement Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required by the State as one of the terms of this Contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor required by the terms of this Contract, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer in the administration of this Contract under the terms of the "Suspension of Work" clause of this Contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) as provided in that clause, subject to all the provisions thereof.

1.54 Assignments

The Contractor shall not assign the Contract and shall not assign any monies due or to become due to him hereunder, without the previous written consent of the State in accordance with COMAR 21.05.02.24.

1.55 Separate Contracts

- A. The State reserves the right to let other contracts in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.
- B. If any part of the Contractor's work depends on proper execution or results upon the work of any other Contractor, the Contractor shall inspect and promptly report to the State any defects in such work that render it unsuitable for such proper execution and results. Their failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to the defects which may develop in the other Contractor's work after the execution of his work.
- C. To ensure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Procurement Officer any discrepancy between the executed work and the drawings.

1.56 No Waiver of Legal Rights

- A. The State shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, or from showing that the work or materials do not in fact conform to the requirements of the Contract. The State shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment from recovering from the Contractor or his sureties, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the State, or any representative of the State, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the State shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages.
- B. The waiver by the State of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

1.57 Assignment of Anti-Trust Claims

The Contractor sells, transfers, and assigns to the State of Maryland all rights, title and interest of and in and to any causes of action arising at any time before the date of this assignment or during the performance of this Contract under the anti-trust Laws of the United States, including Section 1 of the Sherman Act, and the Antitrust Law of Maryland relating to the purchase by him or the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this agreement. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

1.58 State's Right to Terminate for its 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.

1.59 Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor in accordance with COMAR 21.07.01.11B.

1.60 Failure to Complete on Time/Liquidated Damages

- A. Time is an essential element of the Contract and it is important that the work be vigorously prosecuted until completion.
- B. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount of \$500 per day or as specified in the contract, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.
- C. The State will deduct and retain out of the monies due to or become due to the Contractor hereunder the amount of liquidated damages, and in case the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the State for the difference.

1.61 Notice to State for Labor Disputes

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.
- B. The Contractor agrees to insert the substance of this clause, including this Paragraph B., in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

1.62 Retention of Records

- A. The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.
- B. The Contractor further agrees to include in all their subcontracts hereunder a provision to the effect that the subcontractor agrees that the State or any of its duly authorized representatives shall, until the expiration of

three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract.

1.63 Non-Discrimination in Employment

A. Contractor agrees:

1. not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability;
2. to include a provision similar to subsection 1), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and
3. 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 subsection A.

B. Contractor shall be subject to and shall comply with all other requirements of Section 13- 219 of the SFP.

C. Contractor shall comply with all other applicable federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.

D. The Contractor, subcontractors, and agents of both insofar as possible, shall secure labor through the Maryland Job Service of the Maryland Department of Economic and Employment Development, except where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by the union. In that case, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland Job Service for referral of such labor as they may mutually agree shall be referred. The Contractor shall be the sole judge of the competency or fitness and for satisfactory service of any laborer referred to him by the Maryland Job Service.

1.64 Commercial Nondiscrimination Policy

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the SFP. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, martial status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall contractor retaliate against any person for reporting instances of such discrimination.

B. 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 Agreement and may result in termination of this Agreement, 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.

C. As a condition of entering into this Agreement, upon the Maryland Human Relations Commission's request, and only after the firing of a complaint against Contractor under Title 19 of the SFP, 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 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid my Contractor on each subcontract or supply contract. Contractor further agree to cooperate in any investigation conducted by the State pursuant to the State’s Commercial Nondiscrimination Policy as set forth under Title 19 of the SFP, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

1.65 Prevailing Wage Rates

- A. All contracts in the amount of \$500,000 or more shall be subject to the provisions of 17-201, et seq., of SF&P and COMAR 21.11.11, respecting prevailing wages. Where an original contract is in an amount less than \$500,000, this section shall not apply, even where subsequent change orders increase the total contract to be in excess of \$500,000 or more are attached to the specifications. Federal wage rates shall be in effect where applicable.
- B. When prevailing wage rates apply, the Contractor shall submit a copy of payroll records and the payroll records of each of his Subcontractors to the Department of Labor, Licensing and Regulation, Division of Labor and Industry, 1100 North Eutaw Street, Maryland 21201. The Contractor shall also provide to the DGS Inspector a copy of the Contractor’s and its subcontractor(s) payroll records. These payroll records must be submitted within two weeks after each payroll period, and shall contain the following employee information: name, address and social security number, work classifications, hours straight time, and overtime worked each day, total hours worked, rate of pay and gross amount earned. The Contractor shall be responsible for the submission of all subcontractors’ payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or the Subcontractor indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the contract, that the classification set forth for each workman or apprentice conforms with the work performed and that the Contractor or the Subcontractor has complied with the provisions of this section. In the event of any conflict between the Section and Title 17, Subtitle 2 of SF&P, or regulations adopted there under, the provisions of Title 17, Subtitle 2 or the regulations will prevail.

1.66 Prompt Payment of Subcontractors (COMAR 21.07.02.05-2)

- A. This contract and all subcontracts issued under this contract are subject to the provisions of SFP, §15-226, and COMAR 21.10.08. In §§A---D, the terms “undisputed amount”, “prime Contractor”, “Contractor”, and “subcontractor” have the meanings stated in COMAR 21.10.08.01.
- B. A Contractor shall promptly pay its subcontractors an undisputed amount to which a subcontractor is entitled for work performed under this contract within 10 days after the Contractor receives a progress payment or final payment for work under this contract.
- C. If a Contactor fails to make payment within the period prescribed in §B, a subcontractor may request a remedy in accordance with COMAR 21.10.08.
- D. A Contractor shall include in its subcontracts for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A---D, SFP, §15-226 and COMAR 21.10.08.

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SECTION 2 –MINIMUM QUALIFICATIONS

2.1 Offeror Minimum Qualifications

2.1.1.1 Team Qualification:

The Project Manager, Mechanical Engineer, Electrical Engineer and Structural Engineer must all be registered engineers, in good standing, in the State of Maryland at the time of proposal submittal. Designated project managers must have experience on a minimum of 2 projects valued at over \$2,000,000 each.

A Certified Energy Manager is required, certification must be active and in good standing at the time of proposal submission.

Firms must offer a qualified design team either in-house or under contract to them to provide the complete feasibility study and design services required for EPC projects, qualified maintenance personnel to provide preventive maintenance and service throughout the length of the contract, financing for all capital costs of the project, and a guarantee of energy savings throughout the life of the project financing.

2.1.1.2 Prior Project Experience:

Offeror must have experience in prime management of EPC's with capital costs of a minimum \$2,000,000. List five (5) projects within the past five years, where the construction phase is completed. Projects must have an energy guarantee, describe the guarantee type with each prior project.

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SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

- 3.1.1** The State is leading by example through the EmPOWER Maryland Act, by reducing State energy consumption by 15% by 2015. Maryland has utilized Energy Performance Contracts (EPCs) to reduce energy consumption of State entities for over a decade and through this RFP plans to continue utilizing these contracts to achieve an even greater energy reduction for the State.
- 3.1.2** The State of Maryland is issuing this Request For Proposals (RFP) to establish a list of qualified ESCOs to compete on EPC projects, projects include the following phases:
- 3.1.2.1 Provide Pre-Phase I, the initial competitive Phase I proposal. This proposal details a plan to reduce energy and energy related maintenance costs;
 - 3.1.2.2 Provide Phase I, the studies and analysis in the form of a detailed energy audit and engineering feasibility study including the Phase II proposal;
 - 3.1.2.3 Provide Phase II, the comprehensive energy efficiency and guaranteed savings program at a cost determined to be fair and reasonable by the State. This phase includes the final design and construction.
 - 3.1.2.4 Provide Phase III, the measurement & verification, energy savings guarantee. Additionally this phase can include maintenance services if accepted in the Phase II proposal.
- 3.1.3** Request For Proposal Process:
- 3.1.3.1 Responses to this RFP will be evaluated and awarded based on the criteria set forth in Section 5.
 - 3.1.3.2 Accepted Offerors under this IDC will receive notice of the Owners identified Pre-Phase I EPC projects in letters issued by the Procurement Officer. These letters will contain information on the projects and project kickoff meeting.
 - 3.1.3.3 Accepted Offerors under this IDC will provide a Phase I proposal during Pre-Phase I. These proposals will follow Section 3 Pre-Phase I. A single Offeror will be selected to proceed to Phase I.
 - 3.1.3.4 Once a Phase I contract is awarded, the successful ESCO will complete the Feasibility Study/Development of Guaranteed Savings program (Phase I) within 180 calendar days following the Notice to Proceed. This includes the Phase II proposal.
 - 3.1.3.5 Upon approval of the Phase II proposal by the State and the Board of Public Works, the successful ESCO will have up to 365 calendar days to complete the design and construction of work, unless otherwise approved by the procurement officer. The offeror performing an acceptable Phase I study will be the only firm invited to perform the Phase II work implementing the Phase I plan.
 - 3.1.3.6 Phase III must be taken into account during Phase I & Phase II, but will take full effect a the conclusion of Phase II for the duration of the guarantee period which can be up to 15 years.

3.2 Scope of Work – General Requirements

- 3.2.1** The ESCO shall, for each project:

- 3.2.1.1 Provide all necessary study, investigation, design, construction, training, monitoring and verification, and maintenance for the complete installation of ECMs under the conditions required in this RFP.
- 3.2.1.2 Provide complete construction drawings, specifications, and equipment submittals for review and approval by the State of Maryland.
- 3.2.1.3 Provide optional project financing, directly to the State that will allow the State of Maryland to pay all costs out of the savings resulting from the installation of the proposed system. Any third party financing arrangements must be made between the ESCO and the third party.
- 3.2.1.4 Provide a program that will result in guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract. Program costs include capital, maintenance services, administrative and other costs identified herein.
- 3.2.1.5 Study all possible energy conservation measures, and provide reasoning for not including any of the possible ECM.
- 3.2.1.6 Provide Certificate of Insurance, performance bond or irrevocable letter of credit prior to any funding of the projects.
- 3.2.1.7 Provide monitoring, measurement and verification of energy and cost avoidance throughout the contract period. This may require measurements to be recorded during the Phase I study phase.
- 3.2.1.8 Provide preventive maintenance and service, up to and including full replacement, for all work installed, throughout the contract period.
- 3.2.1.9 All engineering and design work shall be performed in accordance with the DGS Procedures Manual unless noted otherwise herein.
- 3.2.1.10 All energy audits, feasibility studies, plans and specifications shall be prepared under the supervision of Professional Engineers, licensed in the State of Maryland at the time of ESCO's project assignment.
- 3.2.1.11 All available construction documents, including as-built drawings of the facility, shall be made available to ESCO upon assignment of a project. The State does not guarantee the accuracy or completeness of these documents. The ESCO shall consult with the facility maintenance and operations staff and DGS, as to any conditions which might exist not shown in the drawings. The selected ESCO shall be responsible for verifying the accuracy of the information provided by the State.
- 3.2.2** The Contractor shall supervise and direct all phases of the work, using its best skill and attention. The Contractor shall be solely responsible for all feasibility studies, design and construction means methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the contract, including measurements and verification.
- 3.2.3** The Contractor shall be responsible to the State for the acts and omissions of its employees, subcontractors, and their agents and employees, and other persons performing any of the work.
- 3.2.4** The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the contract documents, and as required to maintain building operations, and shall not unreasonably encumber the site with any materials or equipment.
- 3.2.5** Cutting and Patching of Work: (Phase II only)
 - 3.2.5.1 The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.

- 3.2.5.2 The Contractor shall not damage or endanger any portion of the work or the Work of the Owner or any separate Contractor by cutting, patching, or otherwise altering any Work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any separate Contractor his consent to cutting or otherwise altering the Work.
- 3.2.6** The Contractor shall perform all Work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the contract documents or as modified by written orders, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.
- 3.2.7** Indemnification:
- 3.2.7.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense:
- 3.2.7.1.1 Is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from; and
- 3.2.7.1.2 Is caused in whole or in part by any negligent act or omission or breach of contract of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.
- 3.2.7.2 The obligations of the Contractor under this paragraph shall include the liability of its Architects, Engineers, agents, employees, subcontractors at any tier and their employees, agents and subcontractors arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving of or the failure to give directions or instruction by any of the above, or the performance of any of the work required under the Contract.
- 3.2.8** Drawings and Specifications: (Phase I and Phase II)
- 3.2.8.1 The Contractor shall do no Work without approved contract drawings, specifications, and/or instructions. For an approved project, drawings shall be provided by the Contractor as required in Section 3 - Scope of Work. Drawings shall in general be drawn to scale with major equipment and location dimensions clearly indicated, and symbols used shall indicate materials and structural and mechanical requirements. Drawings shall be in conformance with the DGS Procedures Manual for Professional Services (latest edition). When symbols are used, those parts of the drawings are of necessity diagrammatic; and it is not possible to indicate all connections, fitting, fastenings, etc., which are required to be furnished for the proper execution of the Work. Diagrammatic indications of piping, ductwork, conduit and similar items in the Work are subject to field adjustment in order to obtain proper grading, fitting, passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments, at no increased cost to the State.
- 3.2.8.2 Copies Furnished: The Contractor shall furnish the State five (5) copies of the drawings and specifications.
- 3.2.8.3 Copies at the Site: The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the State. Additionally, one set of all contract drawings shall be maintained as/built drawings. As-built drawings shall be marked upon by the Contractor in the field on a regular basis to record all changes in the Work as they occur, and the exact location of all exposed and concealed pipe runs, valves, plugged outlets, cleanouts, and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate "as-built" record. The

location of pipes or control points concealed underground, under concrete, in chases or above hung ceilings shall be dimensioned. "As-built" drawings, both hard copy and on CD, shall be delivered to the State, as a condition precedent to final acceptance of Work.

- 3.2.8.4 Ownership: All documents remain the property of the State. They must not be used on other Work. They shall be returned to the State upon its completion.
- 3.2.8.5 Dimensions: The Contractor shall carefully check all dimensions prior to execution of the particular Work. Dimensions for items to be fitted into construction conditions at the job will be taken at the job and will be the responsibility of the Contractor. No extra will be allowed by reason of Work requiring adjustments in order to accommodate the particular item of equipment.
- 3.2.8.6 Specifications: Proper CSI formatted construction specifications (1995 version) shall be produced and submitted for the State's approval.

3.2.9 Shop Drawings & Submittals: (Phase II)

- 3.2.9.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the contract documents, the Contractor shall submit to the State for review and approval, in accordance with the Contractor's schedule, shop drawings or other submittals which will bear a stamp or specific written indication that the Contractor has satisfied their responsibility under the contract documents with respect to the review of such submissions. The data on the shop drawing will be completed with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the State to review the information as required. These drawings shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.
- 3.2.9.2 All shop drawings must show the name and location of the project and the Department contract number.
- 3.2.9.3 Size of Drawings: All shop drawings and details submitted to the State for approval shall be printed on sheets of the same size as the contract drawings specified in the Department of General Services Procedures Manual for Professional Services (latest edition). When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the required drawings, this is acceptable. Sheets large than the required drawing size will not be accepted except when specifically permitted by the Department of General Services. Shop details supplied on a sheet of letter size (8-2-in. by 11-in.) are acceptable for schedules and small details.
- 3.2.9.4 Items for Which Shop Drawings Will Be Required: Shop drawings shall be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware and all heating, ventilating, piping, plumbing and electrical items requiring special fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.
- 3.2.9.5 Copies Required: Contractor shall supply five (5) copies. Two (2) copies shall be returned to the Contractor after approval.
- 3.2.9.6 Examination and Approval: The State will examine and return shop drawings with reasonable promptness, noting desired corrections, or accepting or rejecting them. The Contractor shall assume a minimum review time of two (2) weeks when submitting items for the state's approval.
- 3.2.9.7 Field Dimensions and Conditions: The State is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor. No consideration will be given to change orders due to existing field conditions.
- 3.2.9.8 Resubmission: When the State notes desired corrections, or rejects the drawings, the Contractor shall resubmit the drawings with corrective changes.

- 3.2.9.9 Contractor's Responsibility: Unless the Contractor has, in writing, notified the State to the contrary at the time of the submission, the State may assume that shop drawings and submittals are in conformity with the contract documents and do not involve any change in the Contract price or any change which will alter the space within the structure or alter the nature of the building from that contemplated by the contract documents.
- 3.2.9.10 State's Notations: Should the Contractor consider any rejection of State's notation on the shop drawings to cause a change in the cost of the work from that required by the contract documents, then the Contractor shall desist from further action relative to the item he questions and shall notify the State, in writing, within five days of the additional or less cost involved. No Work shall be executed until the entire matter is clarified and the Contractor is ordered by the State to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto. Similarly, should the State's notation or change involve less Work than is covered by the contract documents, the Contractor shall allow the State an equitable credit resulting from the change in the Work.

3.2.10 Cost and Price Certifications: (Phase II)

- 3.2.10.1 The Contractor by submitting cost or price information certifies that, to the best knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
- 3.2.10.1.1 A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement office; or
 - 3.2.10.1.2 A change order or contract modification, expected to exceed \$100,000, or smaller amount set by the procurement officer.
- 3.2.10.2 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 agreed upon between the parties, was inaccurate, incomplete, or not current.
- 3.2.10.3 The Contractor is allowed a maximum of 10% for profit and up to 15% overhead for work performed by his own forces, subject to negotiation by the State or the using agency/customer. The using agencies have the right to negotiate a lower rate particularly for projects where the subtotal cost is above \$5 million.
- 3.2.10.4 Pricing under this contract is based on Open Book Pricing. Projects assigned under this IDC shall be totally transparent and collaborative from start to finish, with full disclosure of all costs. The Contractor is required to maintain a full record of particulars of the cost of performing the obligations under this Contract; and when requested by the State, ESCO shall provide a summary of any of the costs, including details of any funds held by the Contractor specifically to cover such costs. It is specified, and compliance requires, that the Contractor to keep and have available (and to ensure that its Subcontractors keep and have available) books of account in accordance with best accountancy practice with respect to this Contract. The books of account shall be available for inspection by the State (and any expert assigned by the State) upon reasonable notice, and shall present a report of these to the State as and when requested. Contractor shall obtain multiple quotes (at least 3) from available subcontractors, and such quotes shall be available for the State to review. Showing in detail, for example:
- 3.2.10.4.1 Direct labor and indirect labor costs;
 - 3.2.10.4.2 Direct materials and Subcontract costs;
 - 3.2.10.4.3 Overhead costs analyzed to identify appropriate categories such as administration;
 - 3.2.10.4.4 Payment details to suppliers and Subcontractors including canceled checks;
 - 3.2.10.4.5 Capital expenditure and such revenue expenditure as not detailed above;
 - 3.2.10.4.6 Other available items relating to the Contractor's costs, income and profit as the
 - 3.2.10.4.7 State may reasonably require; cash flow statements of the Contractor,
 - 3.2.10.4.8 Rebates and Incentives acquired from utility companies or government programs for energy efficiency or renewables including Federal 179 D tax incentive.

3.2.10.5 Markups shall not be allowed on project contingency, bonding and insurance, taxes, material, Subcontractor OH&P or warranty costs.

3.2.11 Conditions Affecting the Work: (Phase I & Phase II)

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing the work without additional expense to the State. The Contractor agrees not to place any credence in any understanding or representation concerning conditions made by any State employee or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

3.2.12 Changes in the Work:

3.2.12.1 The Procurement Officer may, at any time, without notice to the sureties, if any, by written order designated or indicted to be a change order, make any change in the work within the general scope of the Contract.

3.2.12.2 Any other written order or an oral order (which terms as used in this paragraph shall include direction, instruction, interpretation or determination from the Procurement Officer) which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

3.2.12.3 Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

3.2.12.4 If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change of method or manner of performance of the work shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and further provided that the State shall have no liability to Contractor except from guaranteed cost savings.

3.2.12.5 If the Contractor intends to assert a claim for an equitable adjustment under this clause, it shall, within 30 days after receipt of a written change order in the drawings and specifications or the furnishing of written notice of change of method or manner of performance of the work, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice of change in the method or manner of performance of the work.

3.2.12.6 No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment (100%) under this Contract.

3.2.12.7 When changes in the work require modification of the Contract Price by change order, such modification shall be accomplished as follows: Any modifications to Phase II work or price must be approved by Procurement Officer, within the limits of their authority, or the Board of Public Works.

3.2.12.8 No modification to the contract price shall be allowed unless the Owner requests additional services, and this work is approved by the procurement officer and/or BPW. Under no circumstances shall the contract price be increased due to field conditions different than assumed by the Contractor, or additional design required due to errors or omissions of Contractor and/or architectural/engineering sub-consultants/subcontractors.

3.2.12.9 For all changes in the work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully-itemized breakdown of quantities, prices, man-hours and hourly rates which shall bear

the original signature of a representative of the subcontractor authorized to act for the subcontractor. The Contractor shall furnish a detailed explanation and justification for the proposed change. If requested by the Owner, the Contractor shall submit proposals from suppliers or other supporting data required to substantiate costs.

3.2.12.10 Modification of the Contractor Price shall be determined as follows (Phase II only):

3.2.12.10.1 When unit prices are stated in the Contract, by application of such unit prices.

3.2.12.10.2 A lump sum price, if agreed upon by both the State and Contractor. Payment to the Contractor shall be added to the project financed capital cost amount (unless capital funding is available). The revised capital cost amount will not be paid to the Contractor until the construction is 100% completed and accepted by the State.

3.2.12.10.3 If job conditions, or the extent of a nature of the change, warrant it, or if the State and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the work may be done at the State's option on the basis of a Force Account. Under these conditions, the State shall have the right to issue an order for the Work to be performed and the Contractor shall proceed as directed.

3.2.12.10.4 If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including engineering / design fees, project management, overhead and profit, however, the Contractor and the subcontractor could be allowed to retain a sum not in excess of three percent (3%) for handling.

3.2.12.10.5 If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes of the work.

3.2.12.10.6 Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with their own forces will be based upon the monetary value of the work in accordance with the following schedule (excluding items included in overhead and profit):

<u>VALUE OF WORK</u>	<u>COMBINED OVERHEAD AND PROFIT</u>
\$0 - \$100,000	15%
Over \$100,000	Negotiated but not more than 15%

3.2.12.10.7 For work performed by a subcontractor with its own forces, the contractor shall submit cost or price information and shall certify that, to the best of his knowledge, the information submitted is accurate, complete, and current in accordance with COMAR 21.06.04.

3.2.12.10.8 On all change in the work, the Contractor will be reimbursed for its expenditures for Workmen's Compensation Insurance, Social Security Taxes, and Unemployment Compensation Taxes covering persons actually engaged upon the Work and the actual increased cost of bonds.

3.2.12.10.9 The cost of foremen and superintendents may be added only when the change order makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic Contract.

3.2.12.10.10 The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the State and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors.

- 3.2.12.10.11 If the Contractor and the State cannot agree as to the extent the contract time shall be increased for extra work or the extent the Contract time shall be reduced for Work omitted by the State, the increase or decrease, as the case may be, shall be determined by the Procurement Officer. Any disagreement with this decision may be appealed by the Contractor under the Disputes Clause.
- 3.2.12.10.12 Notwithstanding any provisions in the contract documents, the State shall not be liable to the Contractor, for any Phase II work, except from guaranteed cost savings.
- 3.2.12.10.13 Force Account: The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, the following: Job supervision (project manager, construction foreman/supervisor) and field office expense if used by contractor, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, use of small tools or equipment to job location, and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly-established principal office, branch office or similar facilities.
- 3.2.12.10.14 Force Account Labor. For all labor, including design services, and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said persons are actually engaged in such work. The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.
- 3.2.12.10.15 Force Account Materials. For materials accepted by the State and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).
- 3.2.12.10.16 Force Account Equipment. For any machinery or special equipment (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Contract. For purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.
- 3.2.12.10.17 Force Account Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the State, the Contractor shall receive the actual cost of such materials and supplies used.
- 3.2.12.10.18 Force Account Bond, Insurance, and Tax. For bond premiums, property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on the force account work, the Contractor and State shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
- 3.2.12.10.19 Force Account Subcontractors. For work done solely by a subcontractor, the subcontractor's cost shall be determined as stipulated in Subparagraphs 1.) through 5.), above. The allowable percentages for combined overhead and profit for the subcontractor shall be as stipulated hereinafter under Subparagraph 8. The Contractor shall be entitled to an allowance of five percent (5%) of the subcontractor's total cost of doing the work.
- 3.2.12.11 Force Account Compensation. The compensation as set forth above shall be received by the Contractor as payment in full for the work done on a force account basis in accordance with all other provisions in the Contract respecting payment. At the end of each day, the Contractor's representative and the Procurement Officer shall compare records of the cost of work as ordered on a force account basis.

3.2.12.12 Force Account Statements. No payment will be made for work performed on a force account basis until the Contractor furnishes the Procurement Officer duplicate itemized statements of the cost of such force account work detailed as to the following:

3.2.12.12.1 Name, classification, date, daily hours, total hours, rate, and extension for such laborer, foreman.

3.2.12.12.2 Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

3.2.12.12.3 Quantities of materials, prices, and extensions.

3.2.12.12.4 Transportation of materials.

3.2.12.12.5 Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.

3.2.12.12.6 Payments of items under Subparagraphs 1.22.40.3.3 and 1.22.40.3.4 above shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices, the statement shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.

3.2.13 Unauthorized Work: (Phase II & Phase III)

The Contractor shall not be paid for any work not authorized in writing by the State.

3.2.14 Conformity with Contract Requirements: (Phase II)

3.2.14.1 All work performed and all materials furnished shall be in conformity with the Contract requirements.

3.2.14.2 In the event the Owner finds the materials or the finished product in which the materials are used for the work performed are not in complete conformity with the Contract requirements and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

3.2.14.3 In the event the Owner finds the materials or the finished product in which the materials are used are not in complete conformity with the Contract requirements, but have resulted in a satisfactory product, the Owner shall then make a determination if the work shall be accepted. In this event, the Owner will document the basis of acceptance by a Change Order which will provide for an appropriate adjustment in the Contract price. Contractor is at risk for non-compliant work. Retroactive Change Orders are not acceptable.

3.2.15 Adjacent Work: (Phase II)

3.2.15.1 The State shall have the right, at any time, to contract for and/or perform work on, near, over or under the work covered by this Contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit their own work to such other work as may be directed by the Procurement Officer.

3.2.15.2 The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent Contractors the State will act as referee and decisions made by the State will be binding. The Contractor agrees to make no claims against the State for any inconvenience, delay or loss experienced because of the presence and operations of other Contractors. State will be fully cooperative with all Contractors to resolve the matter.

3.2.16 Cooperation with Utilities: (Phase II)

- 3.2.16.1 It is understood and agreed that the Contractor has considered in its proposal all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by them due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto, if required for installation and operation of the Contractor's equipment.
- 3.2.16.2 The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- 3.2.16.3 At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. Contractor is responsible to notify the Miss Utility, prior to start of work.
- 3.2.16.4 The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- 3.2.16.5 In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

3.2.17 Authority & Duties of State Project Managers & Inspectors:

- 3.2.17.1 State inspectors and other State personnel will be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the Contract, or to approve or accept any portion of the complete project. The inspectors are authorized to call to the attention of the Contractor any failure of the work or materials to conform to the Contract. The inspectors are authorized to reject materials or suspend the work until any questions at issue can be referred to and decided by the Procurement Officer. Inspectors will perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.
- 3.2.17.2 The inspector will in no case act as foreman or perform other duties for the Contractor, or interfere with the management of the work by the latter.
- 3.2.17.3 Any advice which the inspector may give the Contractor shall not be construed as binding the State in any way, or releasing the Contractor from fulfilling all the terms of the Contract. The duty of the inspector on the project is to observe the progress of the work and to report any deviations from the requirements of the contract documents; however, should the inspector fail to report any such deviation from the Contract requirements, this does not release the Contractor from fulfilling all of the terms of the Contract. Actions of the inspectors are for the benefit of the State only.
- 3.2.17.4 Where there is disagreement between the Contractor and the inspector, the inspector will advise the Procurement officer who will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order served from the procurement officer suspending the work and explaining the reason for such shutdown. As soon as the inspector is advised of the delivery of the shutdown order, the inspector will immediately leave the site of the work and any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

- 3.2.17.5 All work, including the fabrication and source of supply, is subject to observation by the Department, and those agencies required by law to inspect specific items. The State is not responsible fiscally or legally for the actions of county, municipal, or other local officials.
- 3.2.17.6 The Contractor shall provide facilities for access and inspection as required by the State.
- 3.2.17.7 If the specifications, the Department's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the State timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the State shall be made promptly and where practicable at the source of supply. Any work covered without approval of the Department must, if required by the Department, be uncovered for examination at the Contractor's expense.

3.2.18 Removal of Defective Work: (Phase II, Phase III)

- 3.2.18.1 All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- 3.2.18.2 Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the Contract requirements or shall be remedied otherwise in an acceptable manner approved or authorized by the Procurement Officer.
- 3.2.18.3 Upon failure on the part of the Contractor to comply promptly with any order of the State, made under the provisions of this Section, the State will have the authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to cause the costs to be deducted from any monies due or to become due the Contractor under this Contract.

3.2.19 Maintenance of Work During Construction: (Phase II)

- 3.2.19.1 The Contractor shall maintain the work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- 3.2.19.2 All cost of maintenance work during construction and before final acceptance shall be included in the price proposal and the Contractor will not be paid any additional amount for such work.
- 3.2.19.3 In the event that the Contractor's work is halted by the State for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided herein as may be necessary during the period of suspended work or until the Contractor has been declared in default.
- 3.2.19.4 All work associated with this IDC is intended to be cost neutral to the State. All work and/or inspection of contractor's work needed to be performed by State forces after hours, on weekend or Holidays, whether anticipated or unanticipated, the ESCO shall account for such additional cost in his proposal, or an equivalent amount shall be deducted from the ESCO monthly invoice.

3.2.20 Failure to Maintain the Project: (Phase II, Phase III)

Failure on the part of the Contractor, at any time, to adequately maintain installed equipment shall result in the State notifying the Contractor to comply with the required maintenance provisions of the Contract. In the event that the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the State will immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from funds due the Contractor.

3.2.21 Materials: (Phase II, Phase III)

- 3.2.21.1 All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the State in writing of the sources from which they propose to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract.
- 3.2.21.2 Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitation as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, fishing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in this RFP shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, or regulations.
- 3.2.21.3 Approval: All materials submitted in the Contractor's specifications and as required in this RFP are subject to the State's approval as to conformity with the type, quality, design, color, etc. No work for which approval is necessary shall be completed until written approval is given by the State. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications.
- 3.2.21.4 New Materials: Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the Procurement Officer.
- 3.2.21.5 Quality: All materials shall be of the best quality of the respective kinds.
- 3.2.21.6 Samples: The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.
- 3.2.21.7 Proof of Quality: The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. The Contractor shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in these General Conditions.
- 3.2.21.8 Standard Specifications: When no specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then:
- 3.2.21.8.1 For items not otherwise specified below, the latest edition of the applicable American Society for Testing and Materials specification is the applicable specification.
- 3.2.21.8.2 For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the Building Officials and Code Administrators code are the applicable specification.
- 3.2.21.8.3 For items generally considered as heating, refrigerating, air-conditioning, or ventilating, the applicable portions of the latest four editions of the ASHRAE Handbook published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., are the applicable specification.
- 3.2.21.8.4 For items generally considered as site work, the applicable portions of the Maryland State Highway Administration standard specifications are the applicable specification.
- 3.2.21.8.5 For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical code are the applicable specification.

3.2.21.8.6 For items generally considered as fire protection, the applicable portion of the latest edition of the National Fire Protection Association Code is the applicable specification.

3.2.22 Storage and Handling of Materials: (Phase II, Phase III)

- 3.2.22.1 Materials shall be so stored as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment; such storage areas must be restored to their original condition by the Contractor at his expense.
- 3.2.22.2 All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50 °F).
- 3.2.22.3 All valves shall be stored under roof on wood pedestals, aboveground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer on oiling, protection and maintenance of equipment during storage. It shall be the Contractor's complete responsibility for the storage and care of the equipment and materials. Material not properly stored prior to installation shall not be considered for payment.
- 3.2.22.4 Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
- 3.2.22.5 Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract documents as to the "Limit of Contract."
- 3.2.22.6 Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- 3.2.22.7 Explosives. Explosives shall not be used on projects covered under this contract.
- 3.2.22.8 Paints.
 - 3.2.22.8.1 Oil base paints and flammable liquids shall not be stored in quantities beyond what would be consumed in a one day on the project. Containers shall be limited to five gallon size. Any liquid with a flash point of less than one hundred (100) degrees F shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans.
 - 3.2.22.8.2 Oily rags, waste, etc., must be removed from the work site at the close of each working day.

3.2.23 Substitutions: (Phase II, Phase III)

- 3.2.23.1 Should the Contractor desire to substitute another material for one or more specified by name in the RFP or the approved specifications, the Contractor shall apply in writing, for such permission and state the credit or extra involved by the use of such material. The State will not consider the substitution of any material different in type of construction methods unless such substitution affects a benefit to the State.
- 3.2.23.2 The Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material" by the State when the Contractor has not designated such materials as a "substitute," shall not be binding on the State nor release Contractor from any obligations of his Contract, unless the State approves such "substitution" in writing expressly acknowledging the substitution.

3.2.24 Approved Equals: (Phase II, Phase III)

The terms "Or Equal," "Equal," "Approved Equal," where used, are used as synonyms in this RFP. They are implied in reference to all named manufacturers in the RFP and specifications unless otherwise stated. Only materials fully equal in all details will be considered. The Department is the final judge of the equality. The Department does not represent or warrant under any circumstances, including by use of the words "or equal," that there exists an equal to any item specified.

3.2.25 Contractors Options: (Phase II, Phase III)

When several products or manufacturers are named in the specifications and approved by the State for the same purpose or use, then the Contractor may select any of those so named. However, all of the units required for, and used in, the project must be the same in material and manufacture.

3.2.26 Tests: (Phase II, Phase III)

- 3.2.26.1 If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested, or approved, the Contractor shall give the State timely notice of its readiness so the State may observe such inspection, testing, or approval. The Contractor shall bear all costs of such inspections, tests, or approvals.
- 3.2.26.2 If the State determines that any work requires special inspection, testing, or approval which the contract documents do not include, the State will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in A., above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the contract documents, the Contractor shall bear all costs thereof, including compensation for the State's additional services made necessary by such failure; otherwise the State shall bear such costs, and an equitable adjustment will be made in the Contract price.
- 3.2.26.3 Required certificates of inspection, testing or approval shall be obtained by the Contractor and promptly delivered by them to the State. The work shall not be considered 100% complete until such certifications are in the possession of the State.

3.2.27 Prosecution of the Work; Delays and Extension of Time:

- 3.2.27.1 It is imperative that the Contractor complete the work within the time limits specified and agreed to in the contract.
- 3.2.27.2 The date of commencement of the work is the date established in a Notice to Proceed signed by the Project Manager.
- 3.2.27.3 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims 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. 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.

3.2.28 Public Convenience and Safety: (Phase II, Phase III)

The Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along

and/or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the Procurement Officer. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets and portions of the project under construction shall not be obstructed more than is absolutely necessary.

3.2.29 Barricades & Warning Signs: (Phase II, Phase III)

The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the work and safety of the agency and its employees.

3.2.30 Preservation, Protection and Restoration of Property: (Phase II, Phase III)

3.2.30.1 The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the State property from injury or loss arising in connection with this Contract. He shall repair and indemnify against any such damage, injury or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the State. He shall adequately protect adjacent property as provided by law and the contract documents.

3.2.30.2 The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

3.2.31 Scheduling: (Phase I, Phase II)

3.2.31.1 Preparation of Work Schedule. The Contractor shall prepare a Critical Path Method (CPM) schedule setting forth his dates for completing various portions of the work. Included among the tasks set forth on the schedule shall be the critical design completion dates, submittal dates (to the State), and dates for return of the approved submittals. The schedule shall be reviewed by the State for approval of the time within which the State must evaluate the Contractor's submittals. The State's approval of the Contractor's schedule does not constitute an approval of the entire schedule; it merely constitutes an approval of that portion of the schedule that relates to the State's review of submittals.

3.2.31.2 Preparation of Critical Path Method Schedules. The Contractor shall submit a CPM to the Owner before the Notice to Proceed is issued. The CPM will be updated at least monthly, or more often if dictated by circumstances, to reflect changes and variances in the progress of the project.

3.2.31.3 The Contractor shall so schedule the work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching, and digging necessary to the execution of the work is included.

3.2.31.4 The Contractor shall so schedule the scope of work (including design, construction, maintenance, training, etc.) that each installation or portion of the work shall be properly coordinated with all other portions of the work as required for a complete installation, all according to accepted good design and construction practice, and in accordance with the project schedule.

3.2.32 Suspension of Work:

- 3.2.32.1 The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the State.
- 3.2.32.2 No request for an extension under this clause will be allowed:
 - 3.2.32.2.1 For any costs incurred more than 30 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved,
 - 3.2.32.2.2 unless the request is asserted in writing no more than 30 days after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

3.2.33 Partial Acceptance: (Phase II)

- 3.2.33.1 If during the construction of work the State desires to occupy any portion of the project, the State will have the right, at its sole option and discretion, to occupy and use those portions of the project which in the opinion of the Procurement Officer, can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the State for maintenance, heat, light, utilities, and insurance are mutually agreed to by the Contractor and the State.
- 3.2.33.2 Partial occupancy shall in no way relieve the Contractor of his responsibilities under the contract.

3.2.34 Substantial Completion & Final Acceptance: (Phase II)

- 3.2.34.1 When the installation is substantially completed, the Contractor shall notify the Contract Monitor that the work will be ready for final inspection and test on a definite date. Sufficient notice shall be given to permit the Contract Monitor to schedule the final inspection.
- 3.2.34.2 On the basis of the inspection if the Contract Monitor determines that the work is substantially complete and the project can be occupied or used for its intended purpose, the Contract Monitor will establish the date of substantial completion and will state the responsibilities of the State and the Contractor for maintenance, heat, utilities, and insurance.
- 3.2.34.3 The Contract Monitor will fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (punch list) prepared by the State. If the Contractor fails to complete the remaining items so listed in the time stipulated, the State will have the undisputed right to complete the work and deduct any cost incurred from any monies related under the Contract.

3.2.35 Cleaning-up: (Phase II, Phase III)

The Contractor shall at all times keep the construction area, including storage areas used by them, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the State. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Procurement Officer.

3.2.36 Guarantees: (Phase II, Phase III)

The Contractor guarantees for the life of the Contract, commencing on the date fixed by the parties:

(normally at Master Lease Program Loan Takedown, unless otherwise noted).

- 3.2.36.1 That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.
- 3.2.36.2 That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, have been installed in accordance with specifications, all applicable codes and manufacturers recommendations, and shall operate with ordinary care and attention in a satisfactory and efficient manner.
- 3.2.36.3 That the Contractor will re-execute, correct, repair, or remove and replace with proper work, without cost to the State, any work found not to be as guaranteed by this Section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this Section.
- 3.2.36.4 That the entire work shall be water-tight and leak-proof.
- 3.2.36.5 That the actual adjusted cost avoidance for the life of the Contract will be no less than the guaranteed savings as defined in the Contract.
- 3.2.36.6 Guaranteed energy savings as stipulated in the Measurement & Verification section in this IDC.

3.2.37 Scope of Payment:

3.2.37.1 Phase I Payment:

- 3.2.37.1.1 Should the recommendations contained in the Phase I fail to meet the State's objectives for the project (as outlined in Scope of Work within this RFP), or is deemed unreasonable, unworkable, or cost excessive by the State, the State will have no obligation to pay the Contractor the fee associated with the Phase I.
- 3.2.37.1.2 Should the recommendations, including capital cost, yearly maintenance cost, and guaranteed savings, meet or exceed the State's objectives (as outlined in the Scope of Work within this RFP) as determined by the State, and the State elects to proceed with Phase II of the project, the cost of the study shall be included in the Contractor's ECM capital cost, within the financial Phase II Proposal, and financed by the State, either through the Contractor or privately. In either case, the payment to the Contractor shall be the same as noted in above.
- 3.2.37.1.3 Should the recommendations contained in Phase I meet or exceed the State's objectives and all contract requirements as determined by the State and the State, for any reason, does not proceed with Phase II, then the ESCO shall be paid the previously agreed upon cost of the Phase I based on the Phase I proposal.

3.2.37.2 Phase II Payment:

- 3.2.37.2.1 The State will hold 5% of each monthly payment as retainage for the first 50% of the contract or 2nd 50% of the contract; to the contractor within 120 days of satisfactory completion. The State would release half the retained amount at substantial completion and the remaining amount within 6 months afterward. This will insure the Contractor's compliance with the contract requirements and the proper closing out of the construction phase of the project.
- 3.2.37.2.2 The State agrees to pay the Contractor on the following basis as compensation for the Contractor's services: Total ECM capital cost, as quoted in the Contractor's Final Phase II proposal, including engineering feasibility study, preparation of comprehensive energy plan, design, construction documents, construction, training and start-up. This amount is to be fully payable to the Contractor

upon acceptance by the State at 100% completion of the construction phase of the project, and subject to the loan takedown schedule set by the State's Guaranteed Energy Performance Lease Line of Credit. The cost or contract value of any ECMs not operating to the expected performance levels will be the responsibility of the ESCO. Payments during Phase II will be made based on a schedule of values created by the contractor and approved by the State.

3.2.37.3 Phase III payments will occur annually and include the costs of the contractor's measurement & verification and any accepted maintenance.

3.2.37.4 General Payment:

3.2.37.4.1 The State's total yearly cost for the repayment of the project capital cost including interest and yearly maintenance costs, cost of M & V, cost of guarantee, and cost of Project manager shall not be greater than the guaranteed energy and energy related savings for the duration of the contract.

3.2.37.4.2 After completion of project phases noted above, and upon demand, the Contractor shall certify to the State in writing that, in accordance with contractual arrangements, suppliers and subcontractors: have been paid from the proceeds of the financing arranged by the Contractor or the State, and no liens have been filed or are pending against the installed equipment.

3.2.37.4.3 The State may withhold payment under this Contract if it determines that any part of the contract, including completion of punch list items, has not been completed satisfactorily. A letter notifying the Contractor of the outstanding work will be submitted by the State. Neither payment made to the Contractor nor partial or entire use of the work by the State shall be an acceptance of any work or materials not in accordance with this Contract.

3.2.37.4.4 The State has the right to withhold from payments due to the Contractor any amounts the State claims to be owed the State by the Contractor.

3.2.37.4.5 In applying for all payments, the Contractor shall submit in addition a certificate that he has paid: all labor to date; all vendors and material suppliers in full for all items received; all subcontractors in full, less the retained amount; and all insurance premiums.

3.2.38 Employees & Consultants:

3.2.38.1 Qualification of Employees: Only personnel thoroughly trained and skilled in the task assigned to them may be employed on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work. A full time, Maryland certified Engineer shall be assigned to represent the ESCO on each and every project during the Phase I and Phase II of the projects.

3.2.38.2 Licensed Employees: When Municipal, County, State, or Federal laws require that certain personnel (electricians, plumbers, architects, engineers, etc.) be licensed, then all such personnel employed on the work shall be so licensed.

3.2.38.3 Quantity of Labor: The Contractor shall employ on the work, at all times, sufficient personnel to complete the work within the time stated in the Contract.

3.2.38.4 Work Areas. The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or direction of the Department.

3.2.38.5 Methods and Quality:

- 3.2.38.5.1 All workmanship shall be of good quality. Whenever the method of the work or manner of procedure is not specifically stated in the contract documents, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. This, however, does not remove any requirement in these specifications to add to the manufacturer's recommendations.
- 3.2.38.5.2 All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
- 3.2.38.5.3 All methods, procedures, and results are subject to the State's approval as to finished result to be obtained.
- 3.2.38.6 Superintendent: The Contractor shall keep on the project site, at all times during its progress, a competent, English-speaking Superintendent and any necessary assistants, all approved by the Department prior to commencement of the work. The Contractor shall submit in writing to the Department the name of the person it intends to employ as superintendent for the execution of this Contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by the Department and an approval or rejection given in writing. Persons who have previously provided unsatisfactory work executed for the State of Maryland, or who are without proper qualifications, will not be approved. Should it be necessary to change the Superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same institution or close to each other only when approved by the Department in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Directions shall be confirmed in writing on written request from the contractor. Should the Superintendent be complained of by the Department for cause, he shall be removed from the work and a new Superintendent obtained and approved as described above.
- 3.2.38.7 Discipline: The Contractor shall at all times enforce strict discipline and good order among their employees and shall not employ or permit to remain on the work any unfit person. They shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law, and the State. Employees must not be allowed to loiter on the premises before or after working hours.
- 3.2.38.8 Employee Safety: The Contractor shall designate a responsible member of his organization, on the work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards required under the Contract. The name and position of the person so designated shall be reported to the Department by the Contractor at the commencement of the work.

3.2.39 Subcontracts:

- 3.2.39.1 The Contractor shall, as soon as practicable and before the execution of the Phase II Contract, notify the Department in writing, of the name of subcontractors proposed for the principal parts of the work and for such others as the State may direct and shall not employ any that the Department may object to as incompetent or unfit.
- 3.2.39.2 The Contractor agrees that the Contractor is as fully responsible to the State for the acts and omissions of their subcontractors at any time and of persons either directly employed by them, as it is for the acts and omissions of persons directly employed by the subcontractors.

3.2.39.3 Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the State, and nothing in the contract documents is intended to make the subcontractor a beneficiary of the Contract between the State and the Contractor.

3.2.40 Relation of the Contractor & Subcontractor:

3.2.40.1 The Contractor agrees to bind every subcontractor and will see that every subcontractor agrees to be bound by the terms of the Contract documents, as far as applicable to its work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Department.

3.2.40.2 The Contractor agrees and shall incorporate by reference or otherwise include these General Conditions and the following provisions in all subcontracts and supply contracts applicable to the work. Subcontractor agrees to be bound to the Contractor by the terms of the Agreement, General Conditions, Drawings and Specifications, and to assume toward them all obligations and responsibilities that they, by those documents, assumes toward the State.

3.2.41 Construction Safety & Health Standards: (Phase II)

It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards, laws and regulations of the locality in which the work is done, the State, and the Federal government.

3.2.42 Contingency Work: (Phase II)

All work under the contingency part of the contract shall be evaluated and handled in the same manor as the Scope of Work, including the acceptable rates of contractor and sub-contractor allowed over head and profit as per the change order section.

3.3 Pre-Phase I

3.3.1 Pre-Phase I of each identified project, will be competitively evaluated between all pre-qualified ESCOs, to conduct a detailed energy audit, technical study and preliminary design to identify cost effective solutions to achieve a minimum of twenty percent (20%) reduction from the baseline in annual energy usage and a maximum project payback period of 15 years, while maintaining or enhancing existing comfort levels. The 20% annual energy reduction from the baseline may be revised at the State's/Agency's discretion.

3.3.2 The State requires Pre-Phase 1 proposals from all qualified ESCOs selected under this IDC for each EPC project.

3.3.3 Method of Project Assignment

3.3.3.1 Using Agencies interested in an Energy Performance Contract shall coordinate with DGS and MEA, to gather pertinent data and establish performance goals.

3.3.3.2 All Pre-Phase I projects will be awarded based on competitive proposals for Phase I of an EPC by each ESCO.

3.3.3.3 All qualified ESCOs under this IDC will receive written notification of the intent of an agency to enter into an EPC approximately 10 working days prior to the initial meeting with the agency, DGS and MEA representatives.

- 3.3.3.4 The purpose of the initial meeting is to introduce the goals of the agency to the ESCOs, as well as to discuss the facility mission and operating patterns. ESCOs will be notified of the date of an initial site visit at this meeting. Subsequent site visits may be scheduled at the ESCOs' request, subject to the discretion of the State.
- 3.3.3.5 All ESCOs are required to attend the kick-off and any subsequent meetings. Meetings for individual firms will not be allowed.
- 3.3.3.6 Each ESCO will have 30 days after the initial site visit to submit a proposal for Pre-Phase I services to the agency. At the discretion of the State, a brief extension may be granted for submitting the Pre-Phase I proposal. The ESCO agrees that its Phase II project will, at a minimum, meet the level and scope defined in the Pre-Phase I proposal, in response to the evaluation factors listed below.
- 3.3.3.7 Each Pre-Phase 1 proposal will be scored on the criteria listed below, and evaluated by an evaluation committee. Oral presentation may be required and will be requested, if required after the submission of the Phase I proposals. An ESCO will be selected based on the proposal with the highest combined score:
 - 3.3.3.7.1 First year guaranteed Cost Avoidance for the facility for a 13 year term with an amortization at an interest rate determined by the State. (This may include energy and operational savings. Operational savings must be agreed to by the State, in order to be included.)
 - 3.3.3.7.2 Guaranteed percentage energy reduction against a baseline defined and prepared by the State.
 - 3.3.3.7.3 Proposed list of ECM's to be included in the project. This can be a generalized list. However, major equipment upgrades or replacements should be included specifically. List first year energy and cost avoidance, estimated cost, and simple payback.
 - 3.3.3.7.4 Proposed overhead and profit rates on both subcontract prices and internal ESCO prices.
 - 3.3.3.7.5 Proposal for renewable and sustainable technologies as an energy conservation measure. This must include specific applications at the proposed facility. No points will be given for an ESCO presenting a cursory look at the potential application of such technologies.
 - 3.3.3.7.6 Cost of the Phase I study .
 - 3.3.3.7.7 Proposed method of Guaranty in accordance with the Scope of Work Phase II Section.

3.4 Phase I- Preliminary Design and Development

A single ESCO will be awarded a Phase I contract based on the evaluation in Pre-Phase I. This awarded ESCO shall develop the proposed comprehensive energy efficiency and guaranteed savings program. The objective shall be to identify technical solutions in order to maximize energy and cost savings and provide a definitive estimate of costs and savings resulting from the proposed energy conservation measures. Upon approval of this phase of the project, the ESCO will guarantee all identified costs and savings. A project must meet minimum energy reduction requirements, meet minimum expectations of equipment replacement, acceptable costs, and be fully funded with guaranteed energy savings to proceed to Phase II.

- 3.4.1** Conduct a comprehensive energy audit, a detailed engineering feasibility study of the energy and utility systems serving the facility, and effectively analyze all existing systems, equipment, operations and utility costs. Identify technical solutions in order to maximize energy and cost savings as well as operational and maintenance savings. (Operational and maintenance savings must be clearly defined by the agency and the States' project manager. Facility labor costs savings associated with all upgrades may only be included by approval from the agency and project manager.) Further, provide a definitive estimate of all costs and savings expected to result from the proposed energy conservation measures. The ESCO shall consult utility and fuel supply companies prior to effectively conducting analysis of existing systems and utility costs. The ESCO shall also field verify existing conditions to accurately design and locate the installation of new equipment, retrofits or expansion of existing systems.

- 3.4.2** Identify, recommend and provide potential Energy Conservation Measures (ECMs) for the facility. ECMs must be designed using a system-wide approach, for the optimization of building operations. If a type of light fixture or lighting system is to be upgraded, it should be upgraded throughout the facility. If a type of mechanical system is to be upgraded, it should be upgraded throughout the facility. If the Building Automation System is to be upgraded, the new system should be implemented throughout the facility, replacing any other BAS entirely. Additionally, mechanical systems to be upgraded are not to be upgraded on a piecemeal basis. In other words, if a chiller is to be replaced, all associated components are to be replaced with it, including pumps, valves, instrumentation, etc.
- 3.4.3** Identify and quantify deferred maintenance items that qualify as energy cost reduction measures to be included in the project. Provide comprehensive technical analysis including but not limited to: building envelope (roofing, windows, glass, walls, insulation, etc.) automatic temperature control systems, HVAC and HVAC controls, electrical systems, energy efficient lighting retrofit, chiller and boiler operation, including distribution systems, ductwork cleaning, and coils. All systems must be evaluated and supporting documentation provided regardless of inclusion in the project. Items selected to be included in the project shall meet the requirements of the RFP and support any Master Plan for the facility.
- 3.4.4** Identify and evaluate water conservation measures.
- 3.4.5** Assess the feasibility of the replacement or upgrade of electrical, steam, and natural gas distribution systems.
- 3.4.6** Provide detailed plan to install sub-metering for gas, electric, water, etc. in all buildings to measure savings. Include cost and description of such equipment. Provide plan to document assumptions used for baseline development. This may require the installation of sub-meters or data loggers during the Phase I study portion.
- 3.4.7** Assess the feasibility and implement plans, if approved, for new energy management systems and automatic controls.
- 3.4.8** Assess the feasibility of distributed generation, including economic benefits from utility rebates and/or participation in demand side management programs.
- 3.4.9** Assess the feasibility of renewable and/or innovative technology applications. The Offerors objective shall be to identify technical solutions in order to maximize energy savings.
- 3.4.10** Phase II Proposal must be calculated on a 13-year term to allow for the fluctuation in interest rate during the construction phase.
- 3.4.11** Ensure that the project plan conforms to all requirements of applicable utility energy conservation rebate incentive programs, in order to minimize cost and payback period.
- 3.4.12** Provide itemized costs for the following:
- 3.4.12.1 Detailed total fee for engineering and design
 - 3.4.12.2 Detailed total cost of construction period interest
 - 3.4.12.3 Detailed total Material and equipment costs
 - 3.4.12.4 Detailed total Labor costs
 - 3.4.12.5 Funding interest rate
 - 3.4.12.6 Cost of the study
 - 3.4.12.7 Cost of the guarantee.

3.4.13 Provide a project Cash Flow to document all project costs on an annual basis, for each year of the project. The costs of financing the project shall be included. The total project costs shall be amortized over the term of the project. The following costs shall be itemized:

- 3.4.13.1 Energy savings (dollars)
- 3.4.13.2 Operational and maintenance savings (dollars)
- 3.4.13.3 Water savings (dollars)
- 3.4.13.4 Debt service, including SALP repayments
- 3.4.13.5 Maintenance costs
- 3.4.13.6 Training and M&V costs
- 3.4.13.7 DGS construction management services and annual monitoring and verification costs (if applicable).

3.4.14 As part of Phase I, and prior to submission by the State to the Board of Public Works (BPW) for approval of Phase II, the ESCO shall prepare a Phase II Proposal specifying the ECM recommendations approved in Phase I, including but not limited to the following:

- 3.4.14.1 List of all subcontractors and responsibilities and a list of the project team if it is different from the response to the IDC solicitation.
- 3.4.14.2 Floor plans identifying location and arrangement of major equipment and systems (35% CDs).
- 3.4.14.3 Schematic diagrams, including single line piping and ductwork diagrams for all mechanical and electrical equipment.
- 3.4.14.4 Manufacturers' catalogue sheets for major equipment, including boilers, chillers, cooling towers, generators, air handling units, plumbing, and lighting systems.
- 3.4.14.5 Block Load calculations, based on existing building parameters, supporting the selection of major HVAC equipment and new or renovated systems included in the project. Existing occupancy and lighting densities shall be verified through field surveys. Most current ASHRAE ventilation standard shall be used to size primary heating and cooling equipment.
- 3.4.14.6 Calculations and methodology of all energy savings supporting the energy guarantee; savings/year to be dollar based on utility time-of-day rates and estimated energy and demand unit reductions.
- 3.4.14.7 All documentation to be provided in raw electronic format if requested by the State.
- 3.4.14.8 Preliminary design specifications for all major components and systems, including but not limited to:
 - 3.4.14.8.1 Cooling System:

The ESCO shall provide a schematic diagram of the existing and the proposed cooling system. The schematic diagram of the existing system shall indicate location and arrangement of major existing equipment and shall indicate ratings and performance parameters (e.g. flow rates, temperatures, and heat transfer rates), and sizes. Any unique control requirements should be noted. Include recommendations about the acceptability of the performance of the associated equipment to remain in service. Recommendations should include discussion of: compressors, expansion tanks, air separators, insulation, valves, piping, or any part of the associated distribution system. The schematic diagram of the proposed cooling system shall provide the performance ratings and parameters of the new equipment, as well as any new appurtenances such as valves, flow meters, temperature sensors, etc. The equipment specifications for the new equipment to be installed in the cooling system shall provide details including, but not limited to, the following:

3.4.14.8.1.1 Chiller:

- 3.4.14.8.1.1.1 Nominal capacity (tons) at specified entering and discharge evaporator temperatures
- 3.4.14.8.1.1.2 Nominal design efficiency at nominal capacity (kW/ton)

- 3.4.14.8.1.1.3 Refrigerant type
- 3.4.14.8.1.1.4 Fluid (water, glycol)
- 3.4.14.8.1.1.5 Evaporator entering and discharge temperatures
- 3.4.14.8.1.1.6 Condenser entering and discharge Temperatures
- 3.4.14.8.1.1.7 Electrical Characteristics (HP, Phase, Volts, Hz)
- 3.4.14.8.1.1.8 Compressor type (reciprocating, centrifugal, rotary screw)
- 3.4.14.8.1.1.9 Capacity control method
- 3.4.14.8.1.1.10 Electrical characteristics (HP, volts, phase, HZ)
- 3.4.14.8.1.1.11 List of Acceptable Manufacturers

3.4.14.8.1.2 Cooling Tower:

- 3.4.14.8.1.2.1 Nominal duty (tons)
- 3.4.14.8.1.2.2 Fluid (water, glycol)
- 3.4.14.8.1.2.3 Entering and leaving fluid temperatures
- 3.4.14.8.1.2.4 Ambient air temperature (DB and WB)
- 3.4.14.8.1.2.5 Electrical characteristics (HP, volts, phase, HZ)
- 3.4.14.8.1.2.6 List of Acceptable Manufacturers

3.4.14.8.1.3 Pump:

- 3.4.14.8.1.3.1 Type (horizontal split case, end suction, etc.)
- 3.4.14.8.1.3.2 Capacity (GPM)
- 3.4.14.8.1.3.3 Minimum NPSH
- 3.4.14.8.1.3.4 RPM
- 3.4.14.8.1.3.5 Minimum operating efficiency
- 3.4.14.8.1.3.6 Mounting (base, inertia pad, vibration isolators)
- 3.4.14.8.1.3.7 Electrical characteristics (HP, volts, phase, HZ)
- 3.4.14.8.1.3.8 List of Acceptable Manufacturers

3.4.14.8.2 Heating System:

The ESCO shall provide a schematic diagram of the existing and the proposed heating system. The schematic diagram of the existing system shall indicate location and arrangement of major existing equipment and shall indicate ratings and performance parameters (e.g. flow rates, temperatures, and heat transfer rates), and sizes. Any unique control requirements should be noted. Include recommendations about the acceptability of the performance of the associated equipment to remain in service. Recommendations should include discussion of: expansion tanks, air separators, insulation, valves, piping, or any part of the associated distribution system. The schematic diagram of the proposed heating system shall provide the performance ratings and parameters of the new equipment, as well as any new appurtenances such as valves, flow meters, temperature sensors, etc. The equipment specifications for the new equipment to be installed in the heating system shall provide details including, but not limited to, the following: The equipment specifications for the new equipment to be installed in the Heating System shall provide details including, but not limited to, the following:

3.4.14.8.2.1 Boiler:

- 3.4.14.8.2.1.1 Fuel (Primary/Secondary, if applicable)
- 3.4.14.8.2.1.2 Output Rating (MBH)
- 3.4.14.8.2.1.3 Maximum Firing Rate (scfh)
- 3.4.14.8.2.1.4 Operating Pressure or GPM
- 3.4.14.8.2.1.5 Boiler Type (Cast-Iron Sectional, Firetube, etc.)
- 3.4.14.8.2.1.6 Electrical Characteristics (HP, Phase, Volts, Hz)

3.4.14.8.2.2 Heat Exchanger:

- 3.4.14.8.2.2.1 Fluid Types

- 3.4.14.8.2.2.2 Flow Rates
- 3.4.14.8.2.2.3 Entering Temperature for Both Fluids
- 3.4.14.8.2.2.4 Leaving Temperature for Both Fluids
- 3.4.14.8.2.2.5 Heat Exchanger Type (Plate & Frame, Shell & Tube, etc.)
- 3.4.14.8.2.2.6 List of Acceptable Manufacturers

3.4.14.8.2.3 Pump:

- 3.4.14.8.2.3.1 Type (horizontal split case, end suction, etc.)
- 3.4.14.8.2.3.2 Capacity (GPM)
- 3.4.14.8.2.3.3 Minimum NPSH
- 3.4.14.8.2.3.4 RPM
- 3.4.14.8.2.3.5 Minimum operating efficiency
- 3.4.14.8.2.3.6 Mounting(base, inertia pad, vibration isolators)
- 3.4.14.8.2.3.7 Electrical characteristics (HP, volts, phase, HZ)
- 3.4.14.8.2.3.8 List of Acceptable Manufacturers

3.4.14.8.3 HVAC System:

The ESCO shall provide a schematic diagram of the existing and the proposed HVAC System. The schematic diagram of the existing system shall include all the major existing equipment, along with their performance parameters, duct sizes, flow rates, etc. Any unique control requirements should be noted as well as comments made about the acceptability of the performance of the equipment to remain such as VAV Boxes, Coils, Diffusers, Dampers, Ductwork, Insulation, etc. The schematic diagram of the proposed Heating System shall provide the performance parameters of the new equipment, as well as any new appurtenances such as dampers, flow sensors, temperature sensors, etc.

The equipment specifications for the new equipment to be installed in the HVAC System shall provide details including, but not limited to, the following:

3.4.14.8.3.1 Air Handling Unit:

- 3.4.14.8.3.1.1 Airflow rate (CFM)
- 3.4.14.8.3.1.2 External Static Pressure (in. WG)
- 3.4.14.8.3.1.3 Total Cooling Capacity Sensible Cooling Capacity
- 3.4.14.8.3.1.4 Sensible Heating Capacity
- 3.4.14.8.3.1.5 Entering Air Temperature
- 3.4.14.8.3.1.6 Leaving Air Temperature
- 3.4.14.8.3.1.7 Design Space Temperature
- 3.4.14.8.3.1.8 Design Outdoor Air Temperature Minimum Outdoor Air (%)
- 3.4.14.8.3.1.9 Electrical Characteristics (HP, BHP, RPM, Phase, Volts, Hz)
- 3.4.14.8.3.1.10 List of Acceptable Manufacturers

3.4.14.8.3.2 Exhaust Fan:

- 3.4.14.8.3.2.1 Airflow Capacity
- 3.4.14.8.3.2.2 Fan RPM
- 3.4.14.8.3.2.3 Electrical Characteristics (HP, BHP, Phase, Volts, Hz)
- 3.4.14.8.3.2.4 List of Acceptable Manufacturers

3.4.14.8.4 Lighting:

The ESCO shall conduct a detailed room-by-room survey to identify existing fixtures, lamps ballasts and wiring arrangements. Where lighting renovations include alterations to existing configurations, zonal calculations shall be provided. ESCO shall evaluate existing conditions, including illumination levels, and recommend new lighting designs, where applicable. All lighting improvement shall be consistent with the building interior design and to insure that the new upgrade is harmonized with the existing lighting fixture design. It is unacceptable to replace some

fixtures or parts of fixtures in the same room or hall, while leaving other, older fixtures untouched. ESCO shall request specific approval from the State if unable to comply with the preceding. Provide 11X17 floor layout clearly identifying rooms in a corresponding manner with lighting calculation spread sheets.

3.4.14.8.5 Controls:

The ESCO shall provide a schematic diagram of the existing and the proposed controls system, Building Automation System (BAS), Facilities Management System (FMS), and any other controls. Any such system replacement or upgrade shall include the entirety of the building or facility.

At this Phase, the ESCO shall provide a complete detailed listing of all equipment systems to be connected to the controls system. In addition, the ESCO shall provide a detailed listing of any equipment systems planned to be excluded from the controls system. All equipment systems to be connected to the control system are to be connected in their entirety, and any overlooked or added instruments are to be included/ added. All relevant system parameters are to be monitored by the system, including but not limited to:

- 3.4.14.8.5.1 Temperatures (zone, outdoor, air, water, and other working fluids)
- 3.4.14.8.5.2 Flow rates (air, water, and other working fluids)
- 3.4.14.8.5.3 Equipment Status (on/off, enable/disable, alarm)
- 3.4.14.8.5.4 Alarm conditions
- 3.4.14.8.5.5 Analog control and status signals (valves, dampers, VFDs)
- 3.4.14.8.5.6 System modes

Any control points not specifically excluded are assumed to be included. At this Phase, the ESCO shall provide a sample of the User Interface and graphics for the controls system, indicating the level of detail available to the End User. The intention of this section is to indicate that all HVAC equipment for a building be operable through a single controls system from a central location.

3.4.14.9 Equipment warranty for all ESCO furnished equipment for life of payback period. ESCO furnished equipment warranted by ESCO shall be serviced by ESCO.

3.4.14.10 CPM schedule of Phase II work, including any outages necessary.

3.4.14.11 Commissioning methodology.

3.4.14.12 Description of maintenance services, including but not limited to a detailed list of all equipment installed by the ESCO, type of service to be performed, specific cost of services, frequency of service, records of service and date performed and ESCO response time for each piece of equipment or system involved. Identify each entity that will be providing work. Any existing maintenance contracts to be consolidated into ESCO provided maintenance must be included for review by DGS or the Using Agency. It is the responsibility of the ESCO to ensure that all existing services currently provided under existing contracts is included in the list of services. The ESCO proposed contract for services must also be included. The ESCO shall be responsible for maintaining all work installed under this contract, up to and including full replacement, throughout the contract term.

3.4.14.13 Detailed capital cost estimate breakdown, by ECM, including:

- 3.4.14.13.1 All subcontractors quotes
- 3.4.14.13.2 Detailed engineering fees
- 3.4.14.13.3 Construction labor
- 3.4.14.13.4 Materials
- 3.4.14.13.5 Major equipment cost
- 3.4.14.13.6 Rebates/incentives

3.4.14.14 Construction cost estimate:

3.4.14.15 Demolition Costs

- 3.4.14.16 New Work listed by system Cost, including but not limited to:
- 3.4.14.16.1 Central cooling system, central heating system, cooling and heating distribution systems (HVAC)
 - 3.4.14.16.2 Automatic temperature controls.
 - 3.4.14.16.3 To verify that the capital cost estimate is fair and reasonable, the State may, by whatever method it considers reasonable and appropriate, secure an independent estimate.
- 3.4.14.17 ESCO ongoing training, maintenance, and energy guarantee cost (cost of the surety instrument) are considered non-capital costs by the State, and shall not be included in capital financing. Costs shall be paid annually by Using Agency and shall be included in the project's overall cash flow. Labor costs shall be based on Prevailing Wage Rates, as issued by Maryland Department of Labor, Licensing & Regulation. All major sub-contractors (mechanical, electrical, ATC, etc.) must be contracted directly to the ESCO.
- 3.4.14.17.1 Engineering cost breakdown: disciplines, hours per discipline, hourly rates, OH, profit, etc.
 - 3.4.14.17.2 Identification and inclusion of an on-line monitoring system (Capital costs and annual fees).
 - 3.4.14.17.3 Baseline methodology and methodology of calculation of guaranteed energy savings. All energy savings to be based on time-of-day rates and are to be quoted in dollars/yr; energy unit costs shall be current rates or future rates, whichever is greater. Baseline shall include verification occupancy schedules, temperature set points, equipment runtimes, lighting burn times, utility rates of natural gas, electricity, fuel oil, water and sewer charges, as applicable.
- 3.4.14.18 All proposals to replace major equipment (boiler/chiller/AHU, etc.) shall be based on a whole system. Proposal to replace just the major equipment, without the associated parts (i.e. controls, piping, pump, filter, etc.) shall deem the proposal unacceptable.

3.5 Phase II – Final Design and Implementation

For each awarded Phase II contract, the Contractor shall implement the comprehensive energy efficiency and guaranteed savings program, which shall include:

- 3.5.1** Upon the State's approval of the recommendations of a Phase II proposal, including a determination of fair and reasonable price for capital and yearly maintenance costs, the ESCO will implement the comprehensive energy efficiency and guaranteed savings program, provide the funds necessary to cover all of the costs associated with the program and provide a guarantee of the level of energy and energy related operational cost avoidance to be achieved throughout the payback period.
- 3.5.2** Final Design and Specifications. Before installation of the proposed ECMs, the ESCO shall prepare detailed construction plans and specifications for the installation of all equipment and systems proposed under Phase I; and shall include, but not be limited to the following:
 - 3.5.2.1 A critical path method (CPM) diagram shall be submitted within 14 days of the execution of the Phase 2 contract. The CPM diagram shall outline activities for the first 90 days of construction. Include a skeleton diagram for the remainder of the work with the preliminary diagram. This preliminary diagram must be approved prior to the first requisition being processed. Include each significant construction activity. Coordinate each activity with other activities and schedule each construction activity in the proper sequence.
 - 3.5.2.2 Site plans and floor plans showing equipment location, ductwork and piping routing, and connections to existing systems. Also include valves, fittings, instrumentation, utility meter locations, and electrical connections. Include electrical wiring schematics, wire and conduit sizes. Include plumbing isometric diagrams and drawings showing connections to all HVAC equipment.
 - 3.5.2.3 Automatic temperature control (ATC) sequence of operations, logic and wiring -diagrams.
 - 3.5.2.4 Equipment schedules, including acceptable manufacturers, model numbers, ratings and operating characteristics.

- 3.5.2.5 Construction specifications indicating material, sizes, and thicknesses being used in construction components and equipment components, pressure and temperature ratings of system components, national standards or national laboratory testing standards being met (NFPA, ASHRAE, ASME, UL, NEC, ASTM, etc.), methods of installation, electrical ratings of electrical components, and any special requirements relating to this installation
- 3.5.2.6 A complete description of any modifications to existing HVAC, electrical or plumbing systems.
- 3.5.2.7 Lighting retrofit plans and specifications.
- 3.5.3 Execution shall include but not be limited to the following:**
 - 3.5.3.1 Furnishing and installation of all equipment and accessories in accordance with the requirements of this RFP (including Section I- General Conditions), and the ESCO's approved Phase II proposal.
 - 3.5.3.2 Schedule of values, clearly identifying and describing dates, items, and scheduled percent of project completion (required for State progress payment approval).
 - 3.5.3.3 Completions of all punch list items.
 - 3.5.3.4 Submittal of all applicable Operating and Maintenance manuals to Using Agency.
 - 3.5.3.5 On-site training and education of facility maintenance and operating personnel in the functions, operations and maintenance of all equipment installed under the project. This is to be performed after all commissioning work has been completed; not done as a part of commissioning or acceptance testing
 - 3.5.3.6 Compliance with any change orders.
 - 3.5.3.7 Electrical inspection certificate, issued by State approved independent inspection company.
 - 3.5.3.8 Boiler inspection by Department of Labor, Licensing, and Regulation (if applicable).
- 3.5.4 Commissioning**
 - 3.5.4.1 Prior to final acceptance by the State, the ESCO shall demonstrate to the satisfaction of the State that all components, systems, and processes required to fully verify proper operation and guaranteed cost avoidance, are complete, properly functioning and commissioned.
 - 3.5.4.2 Commissioning of all major systems and equipment, including complete point-to-point checkout of all Building Automation Systems controls and verification of all control graphics. Commissioning plans are to include equipment testing and operational verification. Commissioning and testing work is to be coordinated with and observed by DGS or the Using Agency.
 - 3.5.4.3 Prior to final acceptance by the State, the ESCO shall submit to the State for approval, a Commissioning Plan. The plan shall include a detailed specification of all procedures, including preliminary check-out, sequence of operations of major equipment, and functional performance testing, which must be executed to demonstrate and verify proper data collection, processing, communication, and report preparation capability. The Commissioning Plan must be submitted in time to allow the State to conduct a thorough review, without causing delay in the ESCO's timely completion of the work.
 - 3.5.4.4 The ESCO shall prepare and submit to the State for approval, detailed documentation of all conditions, requirements and the results of all final inspections and functional performance tests. Where a pre-existing client owned Energy Management System (EMS) is available, or the ESCO has installed a new EMS under the scope of the ESCO shall, prior to final acceptance by the State, put in place trend logs to continuously record runtime on each item of equipment under the scope of the project, space temperatures, water loop temperatures, flow rates, power consumption, and any other parameters which are required to demonstrate operational performance and cost avoidance.
 - 3.5.4.5 Prior to final acceptance, the ESCO must furnish written documentation, which demonstrates, to the satisfaction of the State, that all equipment operating schedules, temperature set points, equipment sequences of operation, power,

temperature, flow measurement instrumentation, and safety alarms have been in place and operating satisfactorily, for a minimum of two weeks, continuously. Documentation of any overrides or other programming changes must be submitted, in writing, and include date and time of change, person implementing the change, and reason for the change. The State will not grant final acceptance of the project unless the ESCO fully comply with these requirements.

- 3.5.4.6 The State shall be notified in advance, of the schedule of any final inspections and functional performance tests.
- 3.5.5** Provision of an acceptable project financing plan to cover 100% of the costs of developing and implementing the approved comprehensive energy efficiency and guaranteed savings program.
- 3.5.6** The ESCO shall recover all costs of the feasibility study, engineering design, equipment procurement, installation, maintenance, training, support services and finance charges over the life of the contract. Payments by the Using Agency will be solely from the guaranteed cost avoidance and payments will never be greater than the actual cost avoidance generated.
- 3.5.7** The financing shall be severable from all other aspects of this project and is subject to the fiscal non-appropriation clause.
- 3.5.8** Conditions of Work and Job Site Visit
- 3.5.8.1 Site Investigation: By submitting a Phase II Proposal, the ESCO acknowledges that it has investigated and satisfied itself as to the actual conditions affecting the work, including but not restricted to those bearing upon the physical conditions at the site, the formation and conditions on the ground, and the character of equipment and facilities prior to and during prosecution of the work.
- 3.5.8.2 Any failure of the Offeror to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The State will not be responsible for any conclusions or interpretations made by the ESCO on the basis of information made available in this RFP.
- 3.5.9** Energy Savings Guarantee/Project Financing
- 3.5.9.1 The ESCO shall provide an energy savings guarantee, whereby the ESCO guarantees that a certain level of energy and energy related operating and maintenance savings will accrue as result of implementing the approved comprehensive energy efficiency and guaranteed savings program, and that if the actual savings achieved is less than the guaranteed savings, the ESCO will reimburse the State an amount equal to the difference between the actual savings and the guaranteed savings.
- 3.5.9.2 Each ESCO shall provide a method of securing the energy savings to the State. The method will be determined by the State on a project by project basis, depending on the nature of the surety markets. If self-insured, the ESCO may provide a parental guarantee or an irrevocable letter of credit, payable to the State and issued by a solid financial institution, approved by the State. As an alternative, the ESCO shall provide, for a period mutually agreed to by the State and ESCO, a performance bond issued by a bonding agency, or an insurance policy issued by a reputable insurance company who has provided similar policies for similar projects, and are approved by the State. Insurance policies and bonds shall provide for direct payment of the shortfall amount to the State, as well as allow the State to file a claim against the surety instrument in effect.
- 3.5.9.3 Prior to the initiation of Phase II of each project, the ESCO shall provide an indexed rate of interest which reflects the cost of the financing to be provided by the ESCO. The effective rate of interest the ESCO proposes to charge for this contract will be determined and fixed on the funding date based on the index.
- 3.5.9.4 The State shall, at its sole option, determine whether or not to accept the financing offered by the ESCO or arrange an alternate means of financing. No payments by the State for the capital costs (design, construction, training, and startup services) shall be made to the ESCO until 100% completion and acceptance of all ECM installations by the State. Payments by the State (including capital cost principal & interest cost of the guarantee, and maintenance costs) for the duration of the project, shall be solely from the guaranteed cost savings.

3.5.10 Capacity to Perform Work

The successful ESCO shall maintain an adequate staff to provide the services required herein with the professional quality and timeliness required. Preferably, the same personnel shall be utilized for the duration of each project. Failure to maintain adequate staff or to provide staff replacements with personnel of equivalent quality and experience shall be cause for termination for default by the Procurement Officer

3.5.11 Schedule

The State and the ESCO will mutually agree on the schedule for Phase I and Phase II for each assigned project. Failure of the ESCO to satisfactorily complete work assignments within the time specified may be cause for termination for default by Procurement Officer.

3.6 Phase III – Performance Period

3.6.1 Performance Period Commencement

3.6.1.1 A fundamental requirement of this program is that all measures and procedures required to achieve the guaranteed cost avoidance be in place during the entire financing term. Under no circumstances will the State be exposed to risk of loss or harm, through incurring repayment obligations, which are not sufficiently secured by the means to fully recover program costs, including a suitable surety instrument.

3.6.1.2 Pursuant to subparagraph. 1, the performance period shall commence on the earlier of:

3.6.1.2.1 the date of first scheduled loan repayment, as designated by the financing institution;

3.6.1.2.2 or the first day of the first full month, following final acceptance by the State, and shall continue for the term specified.

3.6.2 Energy Reduction and Cost Avoidance

3.6.2.1 Energy Reduction - It is expected that implementation of this program will result in a net reduction in energy consumption, comprising electricity, natural gas, fuel oil, water, and other utilities, in State owned facilities.

3.6.2.2 Cost Avoidance - It is expected that implementation of this program will result in guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract.

3.6.2.3 ESCO shall implement, monitor, maintain and document system and equipment settings to safeguard energy savings and cost avoidance. Any changes to the contract settings, either by the State or ESCO, shall be documented by ESCO. The State will not entertain any claim by the ESCO for an adjustment to annual cost avoidance results without detailed documentation of factors leading to a claim for such adjustment.

3.6.3 Comprehensive Maintenance

for the term of the contract, of all installed equipment and systems, up to and including replacement of worn, failed, and doubtful components with new components of equal or superior quality Emergency on-site service and component replacement must be provided on a 24-hour per day basis. Provide itemized list to include each unit of equipment and the applicable service schedule.

3.6.4 Measurement and Verification

3.6.4.1 Standards

All measurement and verification procedures shall be consistent with the following documents:

- 3.6.4.1.1 International Performance Measurement and Verification Protocol, (IPMVP). Vol. I (2012) and Vol. III Sec. II (2012), (IPMVP).
- 3.6.4.1.2 Federal Energy Management Program M&V Guidelines: Measurement and Verification for Federal Energy Projects, Ver. 3.0 (2008), (FEMP).
- 3.6.4.2 Methodology
 - 3.6.4.2.1 Overview
 - 3.6.4.2.1.1 Various M&V methodologies may be employed to document guarantee performance. Methodologies shall be as defined in the documents cited in Paragraph 3.5.4.1 above.
 - 3.6.4.2.1.2 The ESCO, in consultation with the State, shall develop the appropriate M&V methodology or methodologies, during the technical feasibility study phase (Phase I). Each methodology or procedure must be approved by the State prior to implementation, and no substitutions will be permitted without explicit approval of the State.
 - 3.6.4.2.1.3 Throughout the baseline and guarantee performance periods, ESCO shall conduct regular inspections and maintenance to insure that all instrument accuracy remains within acceptable tolerances. Guarantee performance shall not be harmed nor the State inconvenienced, due to faulty or unreliable instrumentation. The State, at its discretion, may require ESCO to repair or replace any parts, material or software, deemed faulty or unreliable.
 - 3.6.4.2.1.4 Documentation of any overrides or other programming changes must be submitted, in writing, and include date and time of change, person implementing the change, and reason for the change. The State will not grant final acceptance of the project unless the ESCO fully comply with these requirements.
 - 3.6.4.2.2 M&V Plan and Methodology
 - 3.6.4.2.2.1 The ESCO shall prepare and include, as a separate section of the final Phase I technical feasibility study, a detailed M&V plan. The plan shall indicate and describe the proposed IPMVP and/or FEMP methodology or methodologies, to be employed throughout the project, for baseline development and ongoing monitoring during the guarantee period. In accordance with Paragraph 3.1.2.
 - 3.6.4.2.2.2 Unless otherwise directed, State requires, as part of the M&V Plan, installation of metering, instrumentation and related software, during Phase I for various purposes, including verifying existing equipment performance, to refine energy reduction estimates and guarantee cost avoidance, development of performance baselines, and ongoing monitoring during the guarantee period.
 - 3.6.4.2.2.3 Prior to installation of metering, the ESCO shall prepare and present to the State for review and approval, a detailed metering plan. The plan shall clearly identify meter locations, measured parameters (temperature, flow rate, electrical power, etc.), units and frequency of measurements. In addition, the plan shall indicate proposed meter manufacturer(s), model number(s) and specification of instrument accuracy.
 - 3.6.4.2.2.4 ESCO shall indicate details of energy and cost avoidance calculations. Details shall include formulas, constants, and unit conversion factors, assumed or measured values and calculation algorithms.
 - 3.6.4.2.2.5 The M&V plan shall be summarized in table format. In addition, accompanying documentation shall describe how each methodology is to be implemented.
 - 3.6.4.2.2.6 For ECM specific methodologies, the following shall also be specified:

3.6.4.2.2.6.1 FEMP Option A: Retrofit Isolation with Key Parameter Measurement

3.6.4.2.2.6.1.1 Indicate parameter(s) and basis for stipulated performance methodology.

3.6.4.2.2.6.1.2 Stipulated measures are generally not preferable and must be specifically approved by the State.

3.6.4.2.2.6.2 FEMP Option B: Retrofit Isolation with All Parameter Measurement

3.6.4.2.2.6.2.1 Indicate all parameters, which are to be measured, including units of measure, e.g.:

3.6.4.2.2.6.2.1.1 Power (watts, kilowatts)

3.6.4.2.2.6.2.1.2 Energy (watt-hours, kilowatt-hours, therms)

3.6.4.2.2.6.2.1.3 Temperature (°F, °C)

3.6.4.2.2.6.2.1.4 Flow rate (gallons per minute, cubic feet per minute)

3.6.4.2.2.6.2.2 Measurement frequency and duration, e.g.:

3.6.4.2.2.6.2.2.1 One-time

3.6.4.2.2.6.2.2.2 Interval (e.g., one each 15 minutes, 24 hours, 30 days)

3.6.4.2.2.6.2.2.3 Continuous

3.6.4.2.2.6.2.3 Measurement Method, e.g.:

3.6.4.2.2.6.2.3.1 Hand held instrument

3.6.4.2.2.6.2.3.2 Portable data logger

3.6.4.2.2.6.2.3.3 Field mounted instrument or data collection panel

3.6.4.2.2.6.2.4 Communications interface, e.g.:

3.6.4.2.2.6.2.4.1 Manually read

3.6.4.2.2.6.2.4.2 Telephone dialup

3.6.4.2.2.6.2.4.3 Wireless

3.6.4.2.2.6.2.4.4 Using Agency LAN

3.6.4.2.2.6.2.4.5 Web based

3.6.4.2.2.6.3 Where determined to be appropriate, FEMP Option C: Whole Building Utility Data Analysis shall be employed. Option C is generally indicated when the following conditions are met:

3.6.4.2.2.6.3.1 Savings are predicted to be greater than about 10% to 20% of the overall consumption measured by the utility or sub-meter.

3.6.4.2.2.6.3.2 At least 12 and preferably 24 months or more of pre-installation data are used to calculate a baseline model.

3.6.4.2.2.6.3.3 Adequate data on independent variables are available to generate an accurate baseline model, and procedures are in place to track the variables required for performance period models.

3.6.4.2.3 Performance Baseline

3.6.4.2.3.1 Performance baseline (baseline) is defined as a detailed documentation of quantitative parameters and operating characteristics of a facility during a suitably chosen recent period, prior to implementation of any ECMs. Documented operating characteristics shall include, but not necessarily be limited to:

3.6.4.2.3.1.1 Electric energy consumption, demand and cost

3.6.4.2.3.1.2 Natural gas and fuel oil consumption and cost

3.6.4.2.3.1.3 Water consumption and cost

3.6.4.2.3.1.4 Other utility consumption and cost

- 3.6.4.2.3.1.5 Operating hours of heating, cooling and ventilating equipment
- 3.6.4.2.3.1.6 Operating hours of lighting systems
- 3.6.4.2.3.1.7 Facility occupancy levels
- 3.6.4.2.3.1.8 Facility square footage
- 3.6.4.2.3.1.9 Weather severity (heating and cooling degree days)

3.6.4.2.3.2 The baseline period shall be chosen such that the nature, level and pattern of operations during the period are most representative of current operations, other than changes as a result of implementation of any ECMs. In the event of a significant lapse of time between project scope development (Phase I) and final completion (Phase II), the baseline period may be revised to correspond to a period ending just prior to implementation of any ECMs.

3.6.4.2.3.3 The ESCO shall develop and include, in the final Phase I technical feasibility study, documentation and detailed descriptions of baseline performance. Documentation shall indicate and describe the proposed IPMVP or FEMP methodology or methodologies, to be employed throughout the project, for initial baseline development, as well as on-going monitoring during the guarantee period.

3.6.4.2.3.4 During the guarantee monitoring period, the ESCO may adjust the baseline, as required, to account for changes in facility operational characteristics which occur after the original baseline is established.

3.6.4.2.3.5 Baseline units and cost shall be developed and presented in a format consistent with applicable utility tariffs and rates (see Subparagraph 3.5.4.2.5) below.

3.6.4.2.4 Sampling Plan

3.6.4.2.4.1 For certain ECMs, which encompass multiple units of a similar equipment type, and monitored through FEMP Option A or B, the ESCO may elect to perform measurements of a statistical random sample selected from the population, for the purpose of establishing baseline or guarantee performance.

3.6.4.2.4.2 Prior to performing measurements, the ESCO shall prepare a detailed sampling plan, indicating sample size and measurement locations. The sampling plan must be carefully designed, based on recognized statistical techniques, in accordance with procedures set forth in FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects, Ver. 3.0 Appendix B. Prior to implementation, the Sampling Plan must be submitted to the State for review and approval.

3.6.4.2.5 Energy Rates

3.6.4.2.5.1 Unless explicitly approved by the State, all performance results (baseline and guarantee period) shall be based on costs determined through application of applicable utility rate tariffs and schedules to energy units. Electricity costs and cost avoidance, in particular, must be based on the application of time-of-use (TOU) energy rates, where in effect, and separate demand rates, to energy and demand units, respectively. Where tiered rate schedules apply, costs shall be determined through application of specific charges to energy units in each rate tier. In addition, the application of rate schedules shall include an explicit itemization of fixed charges, such as customer charges, minimum charges, and all applicable surcharges.

3.6.4.2.5.2 The ESCO shall include, in the final Phase I technical feasibility study, applicable baseline energy rates and/or utility rate schedules, for each energy type. Where utility rate schedules are not available (e.g., fuel oil rates), the ESCO shall include documentation, supporting the baseline rate.

3.6.4.2.5.3 Where utilities are provided on a deregulated basis, the ESCO shall include separate schedules for commodity and distribution components. DGS will make available current de-regulated commodity rates.

3.6.4.2.6 Energy and Cost Avoidance Calculation

- 3.6.4.2.6.1 Energy units avoidance during any period shall be calculated as the difference between baseline units consumed, adjusted for variation in weather severity and operational characteristics, as described in Subparagraph 3.5.4.2.5, and actual units consumed, during the period.
- 3.6.4.2.6.2 Energy cost avoidance during any period shall be presented using a baseline vs. post retrofit utility bill model. Cost avoidance shall be calculated as the difference between baseline energy cost and actual cost, during the period. Baseline cost shall be calculated using baseline units, adjusted for variation in weather severity and operational characteristics, as described in Subparagraph 8 (aa), and applying actual utility or energy supplier rates, as described in Subparagraph 10). Actual cost shall be determined from utility and supplier invoices. Unless explicitly approved by the State, cost avoidance calculated with blended unit rates will not be acceptable.

3.6.4.2.7 Applicable Energy Rates

- 3.6.4.2.7.1 For measures which achieve cost avoidance through energy unit reduction, applicable rates shall be baseline rates or current rates, whichever result in the greater baseline cost.
- 3.6.4.2.7.2 For measures which achieve cost avoidance through energy rate reduction (e.g., fuel switch or tariff switch), guaranteed cost avoidance shall be calculated by applying the contract rate differential to baseline and actual energy units. Contract rate differential is defined as the difference between the energy rate of the baseline energy source and converted energy source, negotiated by the State and ESCO. Actual avoided cost shall be calculated using the current rate differential. Subject to the contract rate differential, the ESCO shall assume all risk of any deviation between actual and guaranteed cost avoidance, due to swings in rate differential.

3.6.4.2.8 Reconciliation of Actual vs. Guaranteed Savings

- 3.6.4.2.8.1 The guarantee monitoring period shall commence on the earlier of:: the date of first scheduled loan repayment, as designated by the Treasurers Office or other financing institution; or the first day of the first full month, following final acceptance by the State, and shall continue for the term specified.
- 3.6.4.2.8.2 In the event that the State deems it necessary to delay final acceptance beyond the date of the first scheduled loan repayment, and to the extent that such delay is judged by the State to be due to failure of the ESCO to satisfactorily complete the work in a timely manner, the guarantee monitoring period shall commence on the date of the first scheduled loan repayment, and the ESCO will nevertheless be liable for the entire first year's guaranteed cost avoidance, at the end of the first twelve months of the monitoring period.
- 3.6.4.2.8.3 If the actual cost avoidance is greater than the ESCO's guaranteed cost avoidance, then the State shall retain the difference.
- 3.6.4.2.8.4 If the actual cost avoidance is less than the guaranteed cost avoidance, the ESCO shall refund the difference to the State. The ESCO shall submit documentation verifying temperature set points, operating hours or other parameters stipulated in the Phase 2 proposal. If a deviation from Phase 2 proposal parameters by the State has resulted in lower than expected cost avoidance, then the amount due to the State may be reduced by the difference between the expected cost avoidance and actual cost avoidance.
- 3.6.4.2.8.5 Any payment due the State shall be made within 60 days of the yearly anniversary date of the completion of the ECM installation. Failure to submit payment during this time frame may result in the State filing a surety claim against the ESCO for the amount due.

3.6.4.2.8.6 The State will not permit any provisions allowing excess cost avoidance during any annual monitoring period to be carried over to any future (or past) year, to offset future (or past) cost avoidance shortfalls. Each monitoring year following completion of ECM installation is to be evaluated and reconciled on a stand-alone basis.

3.6.4.2.8.7 The State will not allow any provisions allowing cost avoidance realized during the ECM installation period (construction period) to be applied toward the guarantee cost avoidance.

3.6.4.3 Products and Special Services

3.6.4.3.1 Energy Accounting Software

3.6.4.3.1.1 If FEMP Option C methodology is employed, the ESCO shall provide and use State approved, third-party commercially available energy accounting software. Such software shall accommodate a detailed inventory of energy records and shall employ linear regression analysis to model baseline performance, incorporating changes in weather severity, and other operational variations.

3.6.4.3.1.2 The State may direct the ESCO to include in the project cost, purchase of one or more licenses as directed by the State, on a project by project basis, of any energy accounting software, including training and product support.

3.6.4.3.2 Internet Data Acquisition

3.6.4.3.2.1 The State may direct the ESCO to include in the project scope, provision of an Internet based facility energy monitoring service, including setup, training and product support, as the State may require.

3.6.4.3.2.2 The Internet monitoring service shall support interval storage and retrieval of utility and energy data, up to and including real time data, which will permit calculation of an approximate monthly bill, for a given utility, and creation of usage trend reports.

3.6.4.3.3 Instrumentation

3.6.4.3.3.1 Electric Power and Energy

3.6.4.3.3.1.1 All devices employed to meter electric power use shall be capable of metering continuous RMS voltage, current, power and power factor at accuracy within +/- 1.0% of actual value, over the entire load range.

3.6.4.3.3.1.2 Metering of polyphase loads shall include independent measurement of each phase.

3.6.4.3.3.1.3 All devices employed to meter electric power for continuous monitoring (i.e., other than spot measurement) shall be minimally capable of storing data in 15 minute intervals, for a minimum of 30 days.

3.6.4.3.3.1.4 Where required, due to voltage levels, the ESCO shall employ potential transformers.

3.6.4.3.3.2 Temperature

3.6.4.3.3.2.1 All devices employed to meter temperature of liquid media shall have accuracy within +/- 0.1 ° F of actual value, or better.

3.6.4.3.3.2.2 Surface mounted sensors such as strap on types may not be used for the purpose of verifying baseline or guarantee period performance, unless specifically approved by the State. Preferred sensors shall be suitable insertion type.

3.6.4.3.3.3 Primary devices used for the purpose of providing information to a control system or energy information system, shall be provided with a calibration certificate.

3.6.4.3.4 Pressure

- 3.6.4.3.4.1 All pressure sensing devices shall have accuracy within +/- 1% of full scale.
- 3.6.4.3.4.2 Primary devices used for the purpose of providing information to a control system or energy information system, shall be provided with a calibration certificate.

3.6.4.3.5 Flow Rate

- 3.6.4.3.5.1 All devices employed to meter flow rate of liquid media shall have accuracy within +/- 1.0 % of actual flow or better.
- 3.6.4.3.5.2 Approved flow metering devices shall include orifice, venturi, turbine or ultrasonic types.
- 3.6.4.3.5.3 Flow rates determined from equipment manufacturers' specifications or performance curves (including pump curves) or operating equipment pressure differential will not be acceptable for the purpose of verifying baseline or guarantee period performance.
- 3.6.4.3.5.4 Flow rates in constant volume flow systems shall be verified, using approved instrumentation, as defined in this Subparagraph 3.5.4.3.5, as average rate over a minimum continuous period of 30 minutes.
- 3.6.4.3.5.5 Flow rates in variable volume flow systems shall be verified, using approved instrumentation, as in this Subparagraph 3.5.4.3.5, by continuous measurement throughout the monitoring period.

3.6.4.4 Energy and Cost Avoidance Reports

- 3.6.4.4.1 The ESCO shall provide a detailed report of energy and cost avoidance performance, at least once a year. During years one through three of the guarantee performance period, or as directed by the State, ESCO will provide informal semi-annual performance updates.
- 3.6.4.4.2 Reports shall clearly indicate energy baselines, monitoring period energy usage, applicable rates and any adjustments to energy and cost baselines.
- 3.6.4.4.3 Results shall be compiled into an integrated report and presented by the ESCO in person, at a time and location acceptable to the State. In-person ESCO representatives must include:
 - 3.6.4.4.3.1 M&V specialist with principal responsibility for report preparation
 - 3.6.4.4.3.2 Lead service technician assigned to the project
 - 3.6.4.4.3.3 Operations manager assigned to the project or relevant region or business sector under which the project falls
 - 3.6.4.4.3.4 Principal account executive assigned to the project
- 3.6.4.4.4 Though the State may request an advance report for review, note that "mail in" reconciliation reports will not be acceptable. The State reserves the right to edit and revise the format and presentation of any reports, including ESCO standardized reports, to conform to a format more acceptable to the State.
- 3.6.4.4.5 All reports shall conform to the format agreed to by the ESCO and the State. ESCO shall include detailed documentation, verifying results presented. Report formats shall be such that the State can easily confirm the logic, formulas, and calculation algorithms, in order to independently validate performance results. Reports shall be provided in hard copy and electronic media format. Electronic format shall include spreadsheets, database files, text documents and portable data files (PDF) and shall be made available in portable media

format designated by the State. All calculations, documentation and analysis supporting baseline and final performance results shall be included.

- 3.6.4.4.6 To facilitate the State's review and verification of annual performance results, the ESCO shall provide copies of any utility bills for the base year and current reporting year, which are not available in the State's online utility database.

3.7 Insurance Requirements

- 3.7.1** The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.7.2** The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.7.3** The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered but in no case less than those required by the State of Maryland.
- 3.7.4** The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.7.5** Within five (5) Business Days of notification that it is being recommended for the award of the Contract (See §5.6 i), the Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
- 3.7.5.1 Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- 3.7.5.2 Commercial General Liability as required in Section 3.4.1.
- 3.7.5.3 Errors and Omissions/Professional Liability as required in Section 3.4.2.
- 3.7.5.4 Automobile and/or Commercial Truck Insurance as required in Section 3.4.3.
- 3.7.5.5 Employee Theft Insurance as required in Section 3.4.4.
- 3.7.6** The State shall be named as an additional named insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.7.7** The Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.7.8 Construction Insurance Requirements

3.7.8.1 Insurance during Construction

- 3.7.8.1.1 The Contractor and his subcontractors shall purchase and maintain comprehensive third-party legal liability insurance and other such insurance as is appropriate for the work to be performed on the project. Further, the Contractor shall be responsible of the maintenance of this insurance whether the work is performed directly by the Contractor, by any subcontractor, by any person employed by the Contractor or any subcontractor, or by anyone for whose acts the Contractor may be liable. This insurance shall include protection for:
- 3.7.8.1.1.1 Claims arising from Worker's Compensation statutes or similar employee benefit acts, or third-party legal liability claims arising from bodily injury, sickness and disease, or death of Contractor's employees. The minimum limits of such coverage shall be as required by law.
 - 3.7.8.1.1.2 Third-party legal liability claims against the Contractor arising from the operations of the Contractor, subcontractors, and supplies with such protection extended to provide comprehensive coverage, including personal injury, completed operations, explosion and collapse hazard, and underground hazard. The minimum combined limit for personal injury and property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless higher limits are stated elsewhere in the contract documents.
 - 3.7.8.1.1.3 Third-party legal liability claims arising from bodily injury and/or damage to property of others from the ownership, maintenance or use of any motor vehicle, both on- site and off site. The minimum combined limit for personal injury and property damage liability shall be: \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- 3.7.8.2 The Contractor shall purchase and maintain property insurance (Builder's Risk) covering the project, including improvements to real property and goods and materials on the site to be incorporated into the project. Such property insurance shall be for the full insurable value of the property covered and shall be written on an "All Risk" basis covering physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage, and such other perils as may be applicable to the project. Such insurance shall include the interest of the Owner, the General Contractor, and all subcontractors as their interest may appear.
- 3.7.8.3 General: All insurance required shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Such insurance shall be for limits of liability as specified for the project or legally required, whichever is greater. All required insurance policies shall be endorsed to provide thirty (30) days prior written notice by certified mail, or any material change, cancellation, or non- renewal to:

Department of General Services
Contract Services Division
301 West Preston Street, Room M-7
Baltimore, Maryland 21201

- 3.7.8.4 All required insurance shall be maintained until the State has fully accepted the work required under the Contract. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the Contract for default. The State of Maryland shall be identified as an additional insured.

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.

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.

3.8.2 The Contractor must provide the PEP no later than ten (10) Business Days after notice of Contract award or after the date of the Notice to Proceed, whichever is earlier. 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:

3.8.2.1 The process for establishing the existence of a problem;

3.8.2.2 The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;

3.8.2.3 Circumstances in which the escalation will occur in less than the normal timeframe;

3.8.2.4 The nature of feedback on resolution progress, including the frequency of feedback, to be provided to the State;

3.8.2.5 Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;

3.8.2.6 Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and

3.8.2.7 A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

3.9 Invoicing

3.9.1 General

3.9.1.1 All invoices for services shall be signed by the Contractor and submitted in triplicate to the Contract Monitor. All invoices shall include the following information:

3.9.1.1.1 Contractor name;

3.9.1.1.2 Remittance address;

3.9.1.1.3 Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);

3.9.1.1.4 Invoice period;

3.9.1.1.5 Invoice date;

3.9.1.1.6 Invoice number

3.9.1.1.7 State assigned Contract number;

3.9.1.1.8 State assigned (Blanket) Purchase Order number(s);

3.9.1.1.9 Goods or services provided; and

3.9.1.1.10 Amount due.

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

3.9.1.2 The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as

the Contractor brings itself into full compliance with the Contract. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of SFP §§ 15-215 through 15-223 and with COMAR 21.10.02.

3.9.2 Invoice Submission Schedule

The Contractor shall submit invoices in accordance with the following schedule:
Schedule of values to be determined for each project issued from this IDC.

3.10 MBE Reports

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

- 3.10.1** Attachment D-4, the MBE Participation Prime Contractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.
- 3.10.2** Attachment D-5, the MBE Participation Subcontractor Paid/Unpaid MBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the MBE Liaison Officer.

3.11 VSBE Reports

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

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SECTION 4 – PROPOSAL FORMAT (RESPONSE TO THIS RFP)

4.1 One Part Submission

This proposal will have one volume- TECHNICAL PROPOSAL

4.2 Proposals

4.2.1 Technical Proposal – shall contain an unbound original, so identified, and five (5) copies. Label bearing:

- The RFP title and number,
- Name and address of the Offeror,
- Closing date and time for receipt of Proposals

To the Procurement Officer (see Section 1.5 “Procurement Officer”) prior to the date and time for receipt of Proposals (see Section 1.11 “Proposals Due (Closing) Date and Time”).

4.2.2 An electronic version of the Technical Proposal in Microsoft Word format must be enclosed with the original Technical Proposal. An electronic version of the Financial Proposal in Microsoft Excel format must be enclosed with the original Financial Proposal. Electronic version must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number.

4.2.3 All pages of proposal shall be consecutively numbered from beginning (Page 1) to end (Page “x”).

4.2.4 Proposals and any modifications to Proposals will be shown only to State employees, members of the Evaluation Committee, or other persons deemed by the Department to have a legitimate interest in them.

4.2.5 Transmittal Letter: A Transmittal Letter must accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one Transmittal Letter is needed and it does not need to be bound with the technical proposal.

4.3 Delivery

Offerors may either mail or hand-deliver Proposals.

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

- 4.3.2** Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.
- 4.3.3** After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

4.4 Volume I – Technical Proposal

4.4.1 Format of Technical Proposal

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, five (5) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Each section of the Technical Proposal shall be separated by a Tab as detailed below: 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. Technical Proposals shall be double sided with divider tabs.

4.4.2 Additional Required Technical Submissions

The following documents shall be completed, signed, and included in the Technical Proposal, each in its own section that follows the material submitted in response to Section 4.4.3.

1. Completed Bid/Proposal Affidavit (Attachment B).
2. Completed Maryland Living Wage Requirements Affidavit (Attachment G-1).
3. Completed Certification of Investment Activities in Iran (Attachment N).

The following documents shall be completed, signed, and included in the Technical Proposal, each in its own section that follows the material submitted in response to Section 4.4.3. *See appropriate RFP Section to determine whether the Attachment is required for this procurement:

1. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D1)
*see Section 1.33.
2. Completed Conflict of Interest Affidavit and Disclosure (Attachment I) *see Section 1.36.
3. Completed Location of the Performance of Services Disclosure (Attachment O) *see Section 1.44.

TAB A. Transmittal Letter

A Transmittal Letter must accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one Transmittal Letter is needed and it does not need to be bound with the Technical Proposal.

TAB B. Title Page and Table of Contents

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.

TAB C. Executive Summary

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary should identify the Service Category (ies) and Region(s) the Offeror is proposing to provide services for (if applicable). The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unresponsive, unacceptable or classified as not reasonably susceptible of being selected for award. If the Offeror has taken no exceptions to the requirements of this RFP, the Executive Summary shall so State.

Warning: Exceptions to term and conditions may result in having the proposal deemed unresponsive, unacceptable or classified as not reasonably susceptible of being selected for award.

TAB D. Offeror Technical Response to RFP Requirements, Proposed Work Plan/Prior Project Experience

TAB E.

This section defines the minimum material and documentation to be submitted in the Offeror's Technical Proposal. Submissions should be carefully organized in the same order as the RFP and clearly provide the information required. Clarity and conciseness are important. Technical proposals shall be classified as being either reasonably or not reasonably susceptible for award.

Failure to fully complete the form may render your proposal not reasonably susceptible of being selected for award.

1. Sample Detailed Engineering Feasibility Study

Include one detailed engineering feasibility study conducted by the Offeror's project team on a similar energy conservation project, funded by energy savings. Clearly mark "A Sample Detailed Technical Study" on the cover with your firm's name. The study must include detailed energy and economic calculations, preliminary design and specifications, narrative clearly indicating scope of work. Study should be submitted for project where construction has been completed.

2. Green Building and Sustainable Design Experience:

Describe offeror's experience with the analysis, design, construction, and operation of geothermal heat pump system, solar energy, fuel cells, or other renewable energy resources. Describe in detail previous projects where these technologies were evaluated even if they were not implemented. If studied and not implemented explain why. Greater consideration shall be given to Offerors with experience in offering creative and cutting edge technology for evaluation and inclusion in projects. All ESCO's must examine renewables for all State projects as part of the Phase I study.

3. Past Performance:

The State will consider the Offeror's past performance on energy performance projects with Maryland State Agencies, or other municipalities. Ability to properly assess facilities loads, adherence to schedule, engineering, operability of installed systems, timely delivery of services and achievement of energy guarantee, creativity of Phase I study and project development, use of new or renewable technologies, compliance with IDC, ability to properly price a project, and timely response to any shortfall in guaranteed savings will all be considered.

4. List of all ECMs:

Provide Offeror's comprehensive check list of all possible ECMs.

TAB F. Technical and Managerial Approach:

1. As proof of meeting the requirements described in, §2.1, the Offeror shall provide with its Proposal references from the past five years that cumulatively are able to attest to the Offeror's experience. The following must be included for each provided reference.
2. A general description of each project being offered as complete or partial proof that the requirements of §2.1 have been satisfied, including the customer (reference) for whom each project was performed and when and where each was performed.
3. The name and title of a contact person for the reference who can attest to the type of project the Offeror performed for the reference and the satisfaction of the Offeror's performance in satisfying the requirements of the project, from the perspectives of quality, quantity, timeliness and cost.
4. A telephone number and email address at which the individual identified as the contact can be reached.
5. Offerors are encouraged to submit sufficient graphic, narrative, and documentary material required to clearly demonstrate qualifications, financial responsibility, and performance capability of the Offeror's team. Qualification data will include the following:
6. Submit an organizational chart that clearly shows the responsibility and interrelationship of all key team members of the project team, including all sub-consultants and subcontractor firms. All sub-consultants and subcontractors shall be contracted directly to the Offeror. Submit qualifications and experience for the engineering design team firms and the proposed individuals and resumes and business references for the Offeror. Provide resumes for key project managers, energy engineers, design engineers (mechanical, Electrical, Structural, etc), construction managers, and operations managers, and Maintenance personnel. If identified individuals or associated firms are changed by the successful Offeror for a specific assigned project, Offeror must submit request for change to the State. The State reserves the right to reject the requested replacement. Describe how work assignments are made and how the team will be affected by additional EPC projects whether they be State or local government projects. The Offeror should present their ability to develop project tracking and reporting documents for submittals, requests for information and proposals/change orders. Therefore, offerors must include resumes that indicate qualifications of in-house staff or consultants proposed for scheduling responsibilities and tools/systems/software to be used for implementation of the scheduling effort.
7. Prior Project Experience:

Describe the offeror's energy performance contracting (EPC) experience in both the public and private sector with emphasis on State and local governmental projects with a maximum of 15 year payback. Indicating experience in the development, construction and implementation of comprehensive energy efficiency and guaranteed savings programs and proposed versus actual completion duration. Explain variances.
8. Construction Schedule:

The Offeror must clearly demonstrate knowledge and means of proper scheduling and planning practices in accordance with the scheduling requirements of the General Conditions, Offeror's submission of a Critical Path Method (CPM) construction schedule that clearly indicates from the estimated start of construction the duration of the major elements of the project and how they interface sequentially. Describe Offerors proactive management of the project's schedule and ability to recover from delays. Provide actual CPM schedule that was developed for one of the five (5) reference projects.

9. Project Management:

Describe Offeror's approach to managing the entire project and qualifications of project managers during the development and construction phases, including interface with sub-consultants and subcontractors, development of a comprehensive plan, detailed design, procurement, construction, training, punch lists and start-up. Identify site members of the project team who will be responsible for the various stages of design and implementation. Describe the various responsibilities and coordination of the team members, as well as the Using Agency, facility, DGS personnel and MEA, to ensure an effective and timely completion of both Phase I and Phase II of a project.

10. Development of Project Scope:

To demonstrate expertise in identifying energy conservation measures, provide the methodology involved in the preparation of a typical detailed engineering feasibility study, and development of preliminary plans and specifications in order for the State to proceed with the approval and implementation of the facility energy efficiency program. This shall include but not be limited to site investigation, analysis of the existing HVAC, and or steam or chilled water systems in their entirety including but not limited to existing distribution systems, operations and utility costs which may be supported with measured data, fuel switching, load calculations, current system operation practices, and maintenance. The State is paying for expert advice and analysis and fully expects to receive this expertise in the form of a comprehensive energy audit and Phase II proposal. Oversights or omissions of existing conditions, systems or equipment, and/or operating routines, will not be acceptable

11. Owner Training:

Provide detailed information on the training and education programs available for facility operating and maintenance personnel, including course content, location, schedule, hours, and types of trainees that are included.

TAB G. Financial Approach:

1. Procurement:

Describe the proposed method of procurement of all major types of equipment and services, including those subcontracted, and the pricing policy that will be applied to provide a competitive cost environment throughout a project.

2. Financing:

Describe the sources of the funds to be acquired by the Offeror and applied to implement a project. The project financing must be directly from the Offeror to the State. Indicate the Offeror's prior use and experience with this method of financing. This section should include the acknowledgment that the State may choose to finance all or part of the funds necessary to implement this project through its own sources.

3. Energy Savings Guarantee:

Provide terms, conditions, exclusions, insurers name and source of cost savings performance guarantee including provisions for payment due to the State in the event guaranteed savings exceed actual savings. Offeror shall provide sample policy proposed for use in this project, and if self-insured, provide a complete description of how insurance is funded. Offeror shall obtain insurance or bond that will remain in effect for

the term of the Contract to guarantee savings in the event the Offeror is unable or unwilling to pay any difference between actual cost savings and guaranteed savings. Policy/bond must be written such that the State is listed as an additionally insured entity which will provide the State with the ability to make a claim against the bond/policy.

4. Measurement & Verification:

Indicate Offeror's approach to monitoring the actual energy savings associated with the project. Provide sample energy savings calculation documents which will become an attachment to the guaranteed energy savings contract. Describe the methodology, measurement, and monitoring format of actual energy savings. Also, describe the process used to adjust the energy consumption baseline throughout the contract period.

TAB H. Financial and Legal Capability

1. Financial Statement:

Offerors must demonstrate the financial soundness of their firm by submitting a certified Financial Statement from a Bank and/ or Dunn & Bradstreet.

2. Legal Proceedings:

List all legal or administrative proceedings involving your firm currently pending or concluded adversely within the last five years which related to procurement or performance of any public or private contracts. In addition to the information requested, the case name and docket number, as well as the issues in the case, should be provided.

3. Performance Bond or Insurance:

List the name of the agent or bonding/insurance company that will be providing the bond /policy for the guarantee. List current bonding / insurance capacity and maximum length of term for bond /policy.

SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE

5.1 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.

5.2 Technical Proposal Evaluation Criteria

5.2.1 Criteria for Proposal Evaluation

The technical evaluation criteria that will be used by the Evaluation Committee for each Technical Proposal are those listed in descending order of importance

The criterion is as follows:

- A. Offeror Technical Response, to RFP Requirements, Proposed Work Plan/Prior Experience.
- B. Prior Project Experience
 - 1. Sample Detailed Engineering Feasibility Study
 - 2. Green Building and Sustainable Design Experience
 - 3. Past Performance
- C. Technical and Managerial Approach
 - 1. Construction Schedule
 - 2. Scheduling and Planning Practices
 - 3. Project Management
 - 4. Development for Project Scope
 - 5. Owner Training
- D. Financial Approach
 - 1. Procurement
 - 2. Financing
 - 3. Energy Savings Guarantee
 - 4. Savings Monitoring and Verification
- E. Financial and Legal Capability
 - 1. Financial Statement
 - 2. Legal Proceedings
 - 3. Performance Bond or Insurance

5.3 Financial Proposal Evaluation Criteria

This section not applicable.

5.4 Reciprocal Preference

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. Therefore, COMAR 21.05.01.04 requires that procuring units apply a reciprocal preference under the following conditions:

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

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

5.5 Selection Procedures

5.5.1 General

The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Proposals 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.

In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an 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. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Proposal will be returned.

5.5.2 Selection Process Sequence

- 5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule. (**Attachment M-1**) is included and is properly completed, if there is a VSBE goal.
- 5.5.2.2 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.

- 5.5.2.3 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. Proposals are given a final review and ranked.
- 5.5.2.4 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors that have submitted acceptable Proposals 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.

5.5.3 Award Determination

Upon completion of the Technical Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State.

5.6 Documents Required upon Notice of Recommendation for Contract Award

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

- A. signed Contract (Attachment A),
- B. completed Contract Affidavit (Attachment C),
- C. completed MBE Attachments D-2 and D-3, within ten (10) Working Days, if applicable; *see Section 1.33,
- D. completed MBE Attachment D-6 if a waiver has been requested, within ten (10) Working Days, if applicable; *see Section 1.33,
- E. signed Non-Disclosure Agreement (Attachment J), if applicable; *see Section 1.37,
- F. signed HIPAA Business Associate Agreement (Attachment K), if applicable; *see Section 1.38,
- G. completed VSBE Attachments M-2 and M-3, if applicable *see Section 1.41,
- H. completed DHR Hiring Agreement, Attachment P, if applicable *see Section 1.45, and
- I. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 "Insurance Requirements," naming the State as an additional insured, if applicable; *see Section 3.4.

5.6.2 Execution of Contract

- A. Upon the acceptance of the Phase II proposal, the Department shall forward the formal contract and the forms for the Payment and Performance Bonds, Contract Affidavit, and MBE Utilization to the successful Offeror for execution. The Offeror shall execute the contract and return it with fully executed Payment Bond, Performance bond, Contract Affidavit, Guaranteed Energy Savings bond and Certificates of Insurance.
- B. After receipt of the properly executed contract form and other required documents, the Department will execute the Contract within 90 days and forward the successful Offeror a copy. In the event the State fails to execute the Contract within the 90-day period, the Offeror will have, as its only remedy, the option to declare the contract terminated without any liability by the State or to accept an extended period for execution by the State.

5.6.3 Failure to Execute Contract

Failure of the Offeror to execute the contract and file acceptable bonds within the time provided shall be just cause for the payment of the penal sum of the bid bond or other bid security.

The remainder of this page is intentionally left blank.

RFP ATTACHMENTS

ATTACHMENT A – Sample Phase II Contract

This is the sample contract used by the Department. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time

ATTACHMENT B – Bid/Proposal Affidavit

This Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Minority Business Enterprise Forms

If required (see Section 1.33), these Attachments include the MBE subcontracting goal Statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3 and, if the Offeror has requested a waiver of the MBE goal, Attachment D-6.

ATTACHMENT E – Pre-Proposal Conference Response Form

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

ATTACHMENT F – Financial Proposal Instructions and Form (Financial Form under separate cover)

The Financial Proposal Form must be completed and submitted with the Financial Proposal.

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

Attachment G-1 Living Wage Affidavit must be completed and submitted with the Technical Proposal.

ATTACHMENT H – Federal Funds Attachment

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

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

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

ATTACHMENT J – Non-Disclosure Agreement

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

ATTACHMENT K – HIPAA Business Associate Agreement

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

ATTACHMENT L – Mercury Affidavit

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

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

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

ATTACHMENT N – Certification of Investment Activities in Iran

This Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT O – Location of the Performance of Services Disclosure

If required (see Section 1.44), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT P – Department of Human Resources (DHR) Hiring Agreement

If required (see Section 1.45), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT Q – COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request form.

The remainder of this page is intentionally left blank.

ATTACHMENT A – Sample Phase II Contract

ENERGY PERFORMANCE CONTRACT

DEPARTMENT OF GENERAL SERVICES

STATE OF MARYLAND

Project No. XXXXXXXXX (DGS-07-EPC-IDC-7.0)

THIS AGREEMENT made the ____ day of _____. Two Thousand Thirteen (2013) by and between XXXXXXXXX, address, herein called “Contractor”, and The State of Maryland (“State”), to Provide Energy Services for Development & Implementation of Energy Performance Projects, with Fees \$250,000 or Less.

, in coordination with the Department of General Services (DGS), Witnesseth, that the Contractor and State for the consideration herein mentioned agree as follows:

Article 1. Scope of Project- The Contractor shall furnish all of the materials and perform all of the work and provide the guarantees and savings and all other activities reasonably contemplated by the Contract Documents (as defined below), all of which are made a part hereof and incorporated herein, hereinafter “The Contract”. The work will be performed at _____.

(a) REQUEST FOR PROPOSAL

State’s Request for Proposal (RFP) No. DGS-07-EPC-IDC.7.0 Entitled Provide Energy Services for Development & Implementation of Energy Performance Projects, with Fees \$250,000 or Less including Construction Drawing pdfs; XXXXX Energy Baseline.xls; XXXXX Cashflow Template.xls; Utility Bill pdfs; Site Utilities and Metering Arrangement Description.doc; Site Mechanical and Electrical Systems Description.doc

(b) SPECIFICATIONS

Indefinite Delivery Contract DGS-07-EPC-IDC-7.0/Project No. EC-XXXXXX for Energy Services for Development and Implementation of Energy Performance Projects (Fees for Phase I, Detailed Engineering Feasibility study \$250,000 or Less) and all Addenda thereto.

(c) DRAWINGS

To be provided by Contractor as defined in RFP.

(d) PROPOSAL

Contractor's Proposal dated XXXXXXXX and Contractors Best and Final Offer dated XXXXXXXX

(e) OTHER

All other documents defined by the RFP as part of the Contract Documents and Addenda thereto.

Article 2. Phase 1 only upon written Notice to Proceed from DGS and shall be substantially complete no later than 120 days following Notice to Proceed.

Article 3. The Contract Price- Upon completion of Phase I, and acceptance by the XXXXXXX and DGS of the Contractor's recommendation contained in the engineering feasibility study/comprehensive energy efficiency and guaranteed savings program, the State and Contractor shall negotiate a firm price for the capital cost, yearly guaranteed energy savings, and yearly maintenance cost of an agreed upon scope of work to be performed in Phase II which needs approval by the Board of Public Works. Upon receipt of the completed Phase I study by the State:

(a) Should the recommendations contained in the study fail to meet the State's objective for the project, or is deemed unreasonable, unworkable, or cost excessive by the State, the State shall have no obligation to compensate the ESCO for preparation of the study.

(b) Should the recommendations contained in the study meet or exceed the State's objectives and all contract requirements and the State contracts for implementation (Phase II), the cost of the Phase 1 study shall be included in the project capital cost financed by the State.

(c) Should the recommendations contained in the study meet or exceed the

State's objectives and all contract requirements and the State, for any reason other than those in (a) above, elects not to proceed with implementation (Phase II), the ESCO shall be paid the previously agreed upon cost of the Phase I study.

Article 4. Special Provisions

(a) Order of Precedence among Contract Documents is as provided in Section III, Subsection 21, page 22 of the RFP;

(b) The Contractor shall include in the Phase II proposal, the installation of renewable energy technology to provide **2%** of the facilities electrical usage in those facilities that functionally can apply renewable energy technology.

(c) A minority participation of 25% of the total dollar value of the contract is to be provided directly or indirectly from all certified minority business enterprises with sub-goals as follows:

(i) A minimum of seven percent (7) of the total dollar value of the contract is to be provided directly or indirectly from certified minority business enterprises classified by the certification agency as African American-owned businesses.

(ii) A minimum of ten percent (10) of the total dollar value of the contract is to be provided directly or indirectly from certified minority business enterprises classified by the certification agency as women-owned businesses.

(e) The implementation of Phase II shall not begin until approved by the Maryland Board of Public Works and the signing of a written contract for such work.

(Signature Pages Continue)

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first written.

XXXXXXX

(Attest)

(President) (SEAL)

Approved by:
DGS Procurement

Approved _____
Name
Procurement Officer

DATE

Approved as to legal form and sufficiency this _____ day of _____ 2013

Assistant Attorney General

ATTACHMENT B – Bid/Proposal Affidavit

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under State or federal statute of:

- (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
- (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a State or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the SFP;
- (5) Been convicted of a violation of § 11-205.1 of the SFP;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a State or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the SFP with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID

Number: _____ Address: _____

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

Name and Department ID

Number: _____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a Statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Bid/Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a Statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement Agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the Statement required by §E(2)(b), above;
 - (h) Notify its employees in the Statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the Statement; and

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D – Minority Business Enterprise Forms

PURPOSE

The Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the Minority Business Enterprise (MBE) subcontractor participation goal Stated in this solicitation. MBE performance shall be in accordance with this Attachment and as set forth in COMAR 21.11.03. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Attachment.

In order to attempt to meet the MBE subcontractor participation goal using MBE subcontractors, all Bidders/Offerors shall comply with the requirements of COMAR 21.11.03.09 and shall:

- ❑ Identify specific work categories within the scope of the solicitation appropriate for subcontracting;
- ❑ Solicit certified MBEs in writing at least 10 days before Bids or Proposals are due, describing the identified work categories and providing instructions on how to provide a quote on the subcontracts;
- ❑ Attempt to make personal contact with the certified MBEs solicited and to document those attempts;
- ❑ Assist certified MBEs in fulfilling, or seeking a waiver of any bonding requirements; and
- ❑ Attend Pre-Bid/Proposal Conferences or other meetings that the Department schedules to publicize contracting opportunities for certified MBEs.

MBE GOAL AND SUB GOALS

An MBE subcontract participation goal of 30 of the total contract dollar amount has been established for this procurement, as set forth in RFP Section 1.33. Sub-goals will be placed on individual task orders assigned under this IDC. The Contractor, including an MBE prime contractor, shall attempt to achieve the MBE subcontracting goal and any subgoals established for this Contract by subcontracting to one or more MDOT-certified MBEs a sufficient portion of the Bidder/Offeror's scope of work that results in total MBE payments that meet or exceed the MBE subcontractor participation goals and, if applicable, subgoals.

SOLICITATION AND CONTRACT FORMATION

- ◆ A Bidder/Offeror must include with its Bid/Proposal a completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) whereby:
 - (1) the Bidder/Offeror acknowledges the certified MBE subcontractor participation goal and any subgoals, and commits to make a good faith effort to achieve the goal and any subgoals or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
 - (2) the Bidder/Offeror responds to the expected degree of MBE subcontractor participation as Stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule (**Attachment D-1**).

If the Bidder/Offeror specifies a range for a proposed MBE subcontractor, only the lowest amount in the range can be considered for MBE commitment purposes. Ex: If a range of “5-15%” is proposed for a MBE subcontractor, only “5%” can be considered for purposes of totaling the actual MBE commitment for that particular MBE subcontractor. It is suggested

that the Bidder/Offeror provide a specific percentage, and not a percentage range, for each MBE subcontractor proposed.

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

- ◆ Within 10 Working Days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee shall provide the following documentation to the Procurement Officer:

- a) Outreach Efforts Compliance Statement (**Attachment D-2**)
- b) Subcontractor Project Participation Certification (**Attachment D-3**)
- c) If the recommended awardee has requested a waiver (in whole or in part) of the overall MBE goal, it shall submit the Minority Contractor Unavailability Certificate (**Attachment D-6**) and a fully documented waiver request that complies with COMAR 21.11.03.11.
- d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE participation goal.

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

Rev. 3/25/2013

MBE REPORTING INSTRUCTIONS

The Contractor shall:

1. Submit by the 10th of each month to the Department's Contract Monitor or designee a Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4) listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice, and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors shall submit by the 10th of each month to the Department's Contract Monitor or a designee a Subcontractor Paid/Unpaid MBE Invoice Report (Attachment D-5) that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each subcontractor, and the actual dollar value of work performed. Subcontract agreements must be retained by the Contractor and furnished to the Procurement Officer upon request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. At the sole option of the Department, upon completion of the Contract and before final payment and/or release of any retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

ATTACHMENTS

- A. MDOT Certified MBE Utilization and Fair Solicitation Affidavit – Attachment D-1 (must be submitted with the Bid/Proposal)
- B. Outreach Efforts Compliance Statement – Attachment D-2 (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)
- C. Subcontractor Project Participation Certification – Attachment D-3 (must be submitted within 10 Working Days of notification of apparent award or actual award, whichever is earlier)
- D. Prime Contractor Paid/Unpaid MBE Invoice Report – Attachment D-4 (must be submitted by the 10th of each month by the Prime Contractor)
- E. Subcontractor Paid/Unpaid MBE Invoice Report – Attachment D-5 (must be submitted by the 10th of each month by the Subcontractor)
- F. Minority Contractor Unavailability Certificate – Attachment D-6 (must be submitted within 10 Working Days of notification of apparent award or actual award whichever is earlier, if a waiver has been requested)

MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with Bid/Proposal)

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

In conjunction with the Bid/Proposal submitted in response to Solicitation No. MDDGS31011337 , I affirm the following:

1. I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of 30 percent and, if specified in the solicitation, the following subgoals (complete for only those subgoals that apply):

7% African-American

4% Asian-American

12% Woman-Owned

Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

OR

- I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver in whole or in part of the overall goal and/or subgoals. Within 10 Working Days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11. If this request is for a partial waiver, I have identified the portion of the MBE goal that I intend to meet in this Attachment D-1.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 Working Days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
- (a) Outreach Efforts Compliance Statement (Attachment D2);
 - (b) Subcontractor Project Participation Certification (Attachment D3); and
 - (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE participation goal.

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

3. In the solicitation of subcontract quotes, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total contract amount allocated to each MBE for this project and the work activity(ies) each MBE will provide under the contract. I hereby affirm that the MBE firms are only providing those work activities for which they are MDOT certified.

MBE Subcontractor Participation Schedule

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Solicitation Number: MDDGS31011337	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	
Minority Firm Name	MBE Certification Number
FEIN Identify the Applicable Certification Category (For Dually Certified Firms, Check Only One Category)	
<input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Woman-Owned <input type="checkbox"/> Other	
Percentage of Total Contract Value to be provided by this MBE _____%	
Description of Work to Be Performed:	

Continue on a separate page, if needed.

SUMMARY

Total <i>African-American</i> MBE Participation: value	_____ % of total Contract
Total <i>Asian American</i> MBE Participation: value	_____ % of total Contract
Total <i>Hispanic American</i> MBE Participation: value	_____ % of total Contract
Total <i>Woman-Owned</i> MBE Participation: value	_____ % of total Contract
Total <i>Other</i> Participation: value	_____ % of total Contract
Total All MBE Participation: value	_____ % of total Contract

Note: The percentages entered above must reflect the actual percentage of total contract value committed to be paid to MBE subcontractor(s). (i.e., if the total MBE commitment is 25% of the total contract value, the subgroup percentages listed above should total 25%).

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

Bidder/Offeror Name

(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____

Title: _____

Date: _____

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

Rev. 3/11/2013

Outreach Efforts Compliance Statement

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

In conjunction with the Bid/Proposal submitted in response to Solicitation No. _____, Bidder/Offeror States the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
 - a. This project does not involve bonding requirements.

OR

 - b. Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
 - a. Bidder/Offeror did/did not attend the Pre-Bid/Proposal Conference.

OR

 - b. No Pre-Bid/Proposal Conference was held.

Bidder/Offeror Printed Name

By: _____
Signature

Address: _____

Subcontractor Project Participation Certification

Please complete and submit one form for each MDOT certified MBE listed on Attachment D-1 within 10 working days of notification of apparent award.

_____ (*prime contractor*) has entered into a contract with _____
(*subcontractor*) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Percentage of Total Contract	
Total Subcontract Amount \$	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

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

PRIME CONTRACTOR SIGNATURE

By: _____
Name, Title
Date

SUBCONTRACTOR SIGNATURE

By: _____
Name, Title
Date

Rev. 3/11/2013

This form is to be completed monthly by the prime contractor.

**Department of General Services
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____ Reporting Period (Month/Year): _____ Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
List all payments made to MBE subcontractor named above during this reporting period: <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:25%; text-align: center;"><u>Invoice#</u></th> <th style="width:25%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$		_____	List dates and amounts of any outstanding invoices: <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:25%; text-align: center;"><u>Invoice #</u></th> <th style="width:25%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$		_____
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**If more than one MBE subcontractor is used for this contract, you must use separate D-4 forms for each subcontractor.
****Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

_____ Contract Monitor _____ Contracting Unit (Department) _____ _____ _____

Signature: _____ Date: _____
 (Required)

This form must be completed monthly by all MBE subcontractors.

Minority Business Enterprise Participation Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____ Reporting Period (Month/Year): _____ Report is due by the 10th of the month following the month the services were performed.	Contract # _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
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MBE Subcontractor Name: _____																																
MDOT Certification #: _____																																
Contact Person: _____	E-mail: _____																															
Address: _____																																
City: _____	State: _____	ZIP: _____																														
Phone: _____	Fax: _____																															
Subcontractor Services Provided:																																
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td> </td><td> </td></tr> <tr><td>2.</td><td> </td><td> </td></tr> <tr><td>3.</td><td> </td><td> </td></tr> <tr> <td colspan="2">Total Dollars Paid: \$ _____</td> <td> </td> </tr> </tbody> </table>			<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Paid: \$ _____			List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td> </td><td> </td></tr> <tr><td>2.</td><td> </td><td> </td></tr> <tr><td>3.</td><td> </td><td> </td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$ _____</td> <td> </td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
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****Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

_____ Contract Monitor _____ Contracting Unit (Department) _____ _____ _____ _____

Signature: _____ Date: _____
 (Required)

Rev. 3/11/2013

Department of General Services
Code of Maryland Regulations (COMAR)
Title 21, State Procurement Regulations
(regarding a waiver to a Minority Business Enterprise subcontracting goal)

NOTE: Below is an excerpt only. Full text of COMAR Title 21 may be found at the website of the Secretary of State, Division of State Documents, at: <http://www.dsd.State.md.us/comar/>.

COMAR 21.11.03.11 - Waiver.

A. If, for any reason, the apparent successful Bidder/Offeror is unable to achieve the contract goal for each certified MBE classification specified as having a subcontract goal or the overall MBE contract goal, the Bidder/Offeror may request, in writing, a waiver to include the following:

(1) A detailed Statement of the efforts made to select portions of the work proposed to be performed by certified MBEs, including the work to be performed by each MBE classification if an MBE subgoal has been specified, in order to increase the likelihood of achieving the Stated goal;

(2) A detailed Statement of the efforts made to contact and negotiate with certified MBEs, and if appropriate, by certified MBE classification, including:

(a) The names, addresses, dates, telephone numbers, and classification of certified MBEs contacted, and

(b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful Bidder/Offeror considers not to be acceptable, a detailed Statement of the reasons for this conclusion;

(4) A list of certified MBEs including, if applicable, certified MBEs in each MBE classification, found to be unavailable, which shall be accompanied by an MBE unavailability verification form signed by the certified MBE, or a Statement from the apparent successful Bidder/Offeror that the certified MBE refused to give the written verification;

(5) The record of the apparent successful Bidder/Offeror's compliance with the outreach efforts required under Regulation .09C(2)(a)—(e) of this chapter; and

(6) If the request for a waiver is for a certain MBE classification within an overall MBE goal, the Bidder/Offeror shall demonstrate reasonable efforts to meet the overall MBE goal with other MBE classification or classifications.

B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the Bidder/Offeror that certified MBE subcontract participation was unable to be obtained, or was unable to be obtained at a reasonable price or in the appropriate MBE classifications, and if the Agency head or designee determines that the public interest is served by a waiver. In making a determination under this section, the Agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other Bids/Proposals and subcontract Bids/Proposal substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.

C. An Agency head may waive any of the provisions of Regulations .09—.10 of this chapter for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.

D. When a waiver is granted, except waivers under §C of this regulation, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE liaison officer with another copy forwarded to the Office of Minority Affairs.

MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

Section I (to be completed by PRIME CONTRACTOR)

I hereby certify that the firm of _____ (Name of Prime Contractor)

located at _____ (Number) (Street) (City) (State) (Zip)

on _____ (Date) contacted certified minority business enterprise, _____ (Name of Minority Business)

_____ located at _____ (Number) (Street) (City) (State) (Zip)

seeking to obtain a bid for work/service for project number _____, project name _____

List below the type of work/ service requested:

Indicate the type of bid sought, _____. The Minority Business Enterprise identified above is either unavailable for the work /service in relation to project number _____, or is unable to prepare a quote for the following reasons(s):

The Statements contained above are, to the best of my knowledge and belief, true and accurate.

_____ (Name) (Title)

_____ (Number) (Street) (City) (State) (Zip)

_____ (Signature) (Date)

Note: Certified Minority Business Enterprise must complete Section II below.

Section II (to be completed by CERTIFIED MINORITY BUSINESS ENTERPRISE)

I hereby certify that the firm of _____ MBE Cert.# _____
(Name of MBE Firm)

located at _____
(Number) (Street) (City) (State) (Zip)

was offered the opportunity to bid on project number _____, ON _____
(Date)

by _____
(Prime Contractor's Name) (Prime Contractor Official's Name) (Title)

The Statements contained in Section I and Section II of this document are, to the best of my knowledge and belief, true and accurate.

(Name) (Title) (Phone)

(Signature) (Fax Number)

ATTACHMENT E – Pre-Proposal Conference Response Form

**Solicitation Number MDDGS31011337 **
Indefinite Quantity Energy Performance Contracts

A Pre-Proposal Conference will be held at November 13, 2013 at 10:00 a.m. in the 14th Floor Conference Room, 301 West Preston Street, Baltimore, Maryland 21201. Please return this form by November 11, 2013, advising whether or not you plan to attend.

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

Debbie Pecora, CPPB
Procurement Officer
Department of General Services
301 W. Preston Street, Room M-10
Baltimore, Maryland 21201
Email: Debbie.pecora@dgs.state.md.us
Fax #: 410-767-5164

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

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

Signature

Title

Name of Firm (please print)

FINANCIAL PROPOSAL INSTRUCTION

Not Applicable.

ATTACHMENT G – Living Wage Requirements for Service Contracts

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under SFP 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 SFP 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 SFP §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 SFP §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 SFP Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.State.md.us/labor/> and clicking on Living Wage for State Service Contracts.

Maryland Living Wage Requirements Affidavit

(submit with Bid/Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

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

- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

(submit with Bid/Proposal)

ATTACHMENT H – Federal Funds Attachment

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT H-1

U.S. Department of Health and Human Services

CERTIFICATION REGARDING LOBBYING
Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Award No.	Organizational Entry
Name and Title of Official Signing for Organizational Entry	Telephone No. Of Signing Official
Signature of Above Official	Date Signed

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. Contract <input type="checkbox"/> b. Grant <input type="checkbox"/> c. Cooperative Agreement <input type="checkbox"/> d. Loan <input type="checkbox"/> e. Loan guarantee <input type="checkbox"/> f. Loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. Bid/offer/application <input type="checkbox"/> b. Initial award <input type="checkbox"/> c. Post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. Material change</p> <p>For Material Change Only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, <i>if known</i>:</p>		<p>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, <i>if known</i>:</p>
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, <i>if applicable</i>: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i></p>		<p>b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i></p>
<p>11. Amount of Payment <i>(check all that apply)</i></p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment <i>(check all that apply)</i></p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p>	
<p>12. Form of Payment <i>(check all that apply)</i></p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p style="text-align: center;"><i>(attach Continuation Sheet(s) SF-LLLA, if necessary)</i></p>		
<p>15. Continuation Sheet(s) SF-LLLA attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)</p>

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether sub-awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any Agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub-award recipient. Identify the tier of the sub-awardee, e.g., the first sub-awardee of the prime is the 1st tier. Sub-awards include but are not limited to subcontracts, sub-grants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Sub-awardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal Agency making the award or loan commitment. Include at least one organizational level below Agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal Agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal Agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
10. (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form and print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service
Health Resources and
Service Administration
Rockville, MD 20857

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103-227, also known as the Pro Children Act of 1994, Part C Environh Tobacco Smoke, requires that smoking not be permitted in any portion of any indoor facility owned, or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, early childhood development services, education or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such Federal funds. The law does not apply to children's services provided in private residences, portions of facilities used for inpatient drug or alcohol treatment, service providers whose sole sources of applicable Federal funds is Medicare or Medicaid, or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this certification, the offeror/contractor (for acquisitions) or applicant/grantee (for grants) certifies that the submitting organization will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

The submitting organization further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all sub-recipients shall certify accordingly.

Signature of Authorized Certifying Individual

ATTACHMENT I – Conflict of Interest and Affidavit Disclosure

Reference COMAR 21.05.08.08

(submit with Bid/Proposal)

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

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

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

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

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

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

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

ATTACHMENT J – Non-Disclosure Agreement

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

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for (solicitation title) Solicitation # (solicitation number); and

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

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

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

Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

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

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

Contractor: _____

(Department)

By: _____(SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and

_____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

Rev. 3/25/2013

ATTACHMENT K – HIPAA Business Associate Agreement

This solicitation does not require a HIPAA Business Associate Agreement.

ATTACHMENT L – Mercury Affidavit

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

ATTACHMENT M – Veteran Owned Small Business Enterprise

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

ATTACHMENT N – Certification Regarding Investments in Iran

CERTIFICATION REGARDING INVESTMENTS IN IRAN

(submit with Bid/Proposal)

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

Pursuant to SFP §§ 17-701 through 17-707, and in conjunction with the Bid or Proposal submitted in response to Solicitation No. (solicitation number), the following certifications are hereby made:

1. The Bidder/Offeror is **not** identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in SFP§ 17-702; and
2. The Bidder/Offeror is **not** engaging in investment activities in Iran as described in SFP§ 17-702.
3. If the Bidder/Offeror is unable to make the certifications listed in paragraphs 1 and 2 above, the Bidder/Offeror shall provide a detailed description of the Bidder/Offeror’s investment activities in Iran (attach additional pages if necessary):

I do solemnly declare and affirm under the penalties of perjury that the contents of this certification are true and correct to the best of my knowledge, information, and belief.

Date: _____

Bidder/Offeror Name: _____

By: _____

Name: _____

Title: _____

ATTACHMENT O – Location of the Performance of Service Disclosure

(submit with Bid/Proposal)

Pursuant to SFP § 12-111, and in conjunction with the Bid/Proposal submitted in response to Solicitation No. _____, the following disclosures are hereby made:

- 1. At the time of Bid/Proposal submission, the Bidder/Offeror and/or its proposed subcontractors:
 - ___ have plans
 - ___ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Bidder/Offeror or its proposed subcontractors, the Bidder/Offeror shall answer the following (attach additional pages if necessary):

- a. Location(s) services will be performed:

- b. Reasons why it is necessary or advantageous to perform services outside the United States:

The undersigned, being an authorized representative of the Bidder/Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: _____

Bidder/Offeror Name: _____

By: _____

Name: _____

Title: _____

Please be advised that the Department may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

ATTACHMENT P – DHR Hiring Agreement

**MARYLAND DEPARTMENT OF HUMAN RESOURCES
HIRING AGREEMENT**

This Hiring Agreement (“Agreement”) is effective this _____ day of _____, _____ and is entered into by and between the Maryland Department of Human Resources (“Department”) and _____ (the “Contractor”) pursuant to State Finance Procurement Article, § 13-224, Annotated Code of Maryland, arising out of a Contract for services between Contractor and _____ (“Entity”), contract number _____ (“Procurement Contract”).

WITNESSETH:

WHEREAS, the Department has identified the Procurement Contract as eligible for execution of this Agreement; and,

WHEREAS, the Contractor and the Entity, have discussed and reviewed an inventory of job openings that exists or the Contractor is likely to fill during the term of the Procurement Contract in the State of Maryland; and

WHEREAS, the Contractor, Department and the Entity have discussed and reviewed the job descriptions, locations, and skill requirements for those positions; and

WHEREAS, the Department and the Entity have identified and discussed with the Contractor the workforce related benefits and support services available to the Contractor as a result of the Agreement including:

- Medicaid coverage for the employee and the employee’s dependents for up to one year after placement in the job;
- Maryland Children’s Health Program (MCHP) medical coverage for the employee’s dependents after one year of employment for as long as eligibility is met;
- Food Stamps for the employee and the employee’s dependents for as long as eligibility requirements are met;
- Child Care subsidies for the employee’s dependents for up to one year after employment as long as eligibility requirements are met;
- Transportation subsidies for the employee for a period of time after employment;
- Other Retention services including counseling on an as needed basis; and
- Assistance with claiming tax credits for hiring Candidates.

WHEREAS, the Contractor and Department agree to work cooperatively to develop responses to the workforce development requirements faced by the Contractor and to promote the hiring of the Department’s current and former Family Investment Program (“FIP”) recipients, their children, foster youth, and child support obligors (“Candidates”) by the Contractor.

5. Provide follow-up and post hire transitional/supportive services, (e.g. Medicaid, MCHP, Food Stamps, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate.
6. Insure that the Contractor is advised of available subsidies and provide any assistance to the Contractor to obtain those subsidies.
7. Report the Contractor to the procurement Entity if the Contractor does not fulfill its responsibilities in accordance with this Agreement.
8. Review and evaluate the effectiveness of this undertaking with the Contractor and make modifications as necessary and appropriate.

C. DISCLAIMERS

Nothing in this Agreement shall cause the Contractor, except as explicitly provided in Section A above, to alter existing hiring practices or to hire an individual into a position for which he/she is not qualified.

D. NON-DISCRIMINATION

The Contractor agrees that there shall be no discrimination against any employee or Candidate for employment because of race, color, sex, religion, national origin, age, sexual preference, disability or any other factor specified in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1983 and subsequent amendments and that they will comply with all other pertinent federal and State laws regarding discrimination.

E. MARYLAND LAW PREVAILS

The place of performance of this Agreement shall be the State of Maryland. This Agreement shall be construed, interpreted, and enforced according to the laws and regulations of the State of Maryland, including approval of the Board of Public Works where appropriate.

F. EFFECTIVE DATE

This Agreement shall take effect on the date of the aforementioned Procurement Contract, which is for the period _____ through _____, and it shall remain in effect for the duration of the Procurement Contract, including any option periods or extensions.

IN WITNESS, WHEREOF, the Contractor and the Department have affixed their signatures below:

FOR THE CONTRACTOR:

FOR THE DEPARTMENT

SIGNATURE

SIGNATURE

TITLE

Hiring Agreement Coordinator
TITLE

DATE

DATE

ATTACHMENT Q-Vendor Electronic Funds Transfer (EFT) Registration Request Form

State of Maryland
Comptroller of Maryland

Date of request _____

Business identification information (Address to be used in case of default to check):

Business name _____

Address line 1 _____

Address line 2 _____

City _____ State _____ Zip code

Taxpayer identification number:

Federal Employer Identification Number:

(or) Social Security Number:

Business contact name, title, e-mail and phone number including area code. (And address if different from above):

Financial institution information:

Name and address _____

Contact name, phone number (include area code), _____

ABA number

Account number

Checking Money Market Savings

Account type

Format Desired: _____ CCD _____ CCD+ _____ CTX* (Check one.)

*Note – There may be a charge to you by your bank with this format.

A VOIDED CHECK from the bank account must be attached.

(OVER)

Transaction requested: _____

1. ___ Initiate all disbursements via EFT to the above account.
2. ___ Discontinue disbursements via EFT, effective _____
3. ___ Change the bank account to above information – a copy of the approved Registration Form for the previous bank account must be attached.

I am authorized by * _____ (hereinafter Company) to make the representations contained in this paragraph. Company authorizes the Comptroller and the Treasurer of Maryland to register it for electronic funds transfer (EFT) using the information contained in this registration form. Company agrees to receive all funds from the State of Maryland by electronic funds transfer according to the terms of the EFT program. Company agrees to return to the State of Maryland any EFT payment incorrectly disbursed by the State of Maryland to the Company's account. Company agrees to hold harmless the State of Maryland and its agencies and departments for any delays or errors caused by inaccurate or outdated registration information or by the financial institution listed above.

*Name of registering business entity

Signature of company treasurer, controller, or chief financial officer and date

Completed by GAD/STO

Date Received _____

GAD registration information verified _____ Date to STO _____

STO registration information verified _____ Date to GAD _____

R*STARS Vendor No. and Mail Code Assigned:

State Treasurer's Office approval date

General Accounting Division approval date

To Requestor:

Please retain a copy of this form for your records. Please allow approximately 30 days from the date of your request for the Comptroller's and Treasurer's Offices to process your request. Failure to maintain current information with this office could result in errors in payment processing. If you have any questions, please call the EFT registration desk at 410-260-7375.

Please submit form to: EFT Registration, General Accounting Division
Room 205, P.O. Box 746
Annapolis, Maryland 21404-0746

Instructions: Electronic Funds Transfer instructions are located: <http://compnet.comp.state.md.us/gad>. Questions may be requested by email, gad@comp.state.md.us. Or call 1-888-784-0144.
COT/GAD X-10