



STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES DGS
REQUEST FOR PROPOSALS (RFP)
ENERGY SERVICE COMPANIES- INDEFINITE DELIVERY
CONTRACT (IDC) 9.0

RFP NUMBER: DGSR3600014 / BPM037023

ISSUE DATE: JUNE 9, 2023

SECOND REVISION JUNE 27, 2023

NOTICE

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

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

VENDOR FEEDBACK FORM

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

Title: Energy Service Companies– IDC 9.0
Solicitation No: DGSR3600014 / BPM037023

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

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

E-mail Address: _____

STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES (DGS)
KEY INFORMATION SUMMARY SHEET

Request for Proposals	Energy Service Companies- Indefinite Delivery Contract (IDC 9.0)
Solicitation Number:	DGSR3600014 / BPM037023
RFP Issue Date:	June 9, 2023 Second Rev. 6/27/23; First Rev. 6/21/23
RFP Issuing Office:	DEPARTMENT OF GENERAL SERVICES (DGS or the "Department")
Procurement Officer:	Matthew Smith 301 W. Preston St., M-4 Baltimore, MD 21201
e-mail:	Matthew.Smith2@maryland.gov
Office Phone:	410-767-3039
Proposals are to be sent to:	Submit via eMMA
Pre-Proposal Conference:	Monday June 20, 2023 10:00 am Local Time See Attachment A for instructions.
Questions Due Date and Time	July 6, 2023 2:00 pm Local Time
Proposal Due (Closing) Date and Time:	July 20, 2023 July 27, 2023 2:00 pm Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page iv).
MBE Subcontracting Goal:	0%
VSBE Subcontracting Goal:	0%
Contract Type:	Indefinite Quantity with Fixed Prices
Contract Duration:	See Section 2.5
Primary Place of Performance	Statewide
SBR Designation:	No
Federal Funding:	No

TABLE OF CONTENTS – RFP

1	Minimum Qualifications	7
1.1	Offeror Minimum Qualifications.....	Error! Bookmark not defined.
2	Contractor Requirements: Scope of Work	9
2.1	Background and Purpose	9
2.2	General	9
2.2.9.1	Selection Phase and Pre-proposal Conference– During which Offerors have an opportunity to bid on a particular project. Provide an initial competitive proposal that details a plan to reduce energy, greenhouse gasses and energy related maintenance costs. This proposal will be submitted as the Phase I proposal for review and selection by the state. A single offeror will be awarded to move to Phase I.	10
2.2.9.2	Phase I – During which a single Offeror will conduct an in-depth engineering analysis leading to a Phase II proposal. Provide studies and analysis in the form of a detailed energy audit and engineering feasibility study to be included in the Phase II proposal.	10
2.2.9.3	Phase II - Final design and construction. Provide comprehensive energy efficiency and guaranteed savings program at a cost determined to be fair and reasonable by the State.	10
2.2.9.4	Phase III - Provide measurement & verification and energy savings guarantee. Additionally, this phase will include maintenance services.	10
2.3	Contract Type	11
2.5	Contract Duration	11
2.6	Scope of Work Requirements.....	12
2.7	Individual Project Selection Phase	31
2.8	Phase I - The Preliminary Design and Development Phase	32
2.9	Phase II – Final Design and Construction Phase	40
2.10	Phase III - The Performance Period	44
2.11	Maintenance	52
3	Contractor Requirements: General	54
3.1	Contract Initiation Requirements.....	54
3.2	End of Contract Transition	54
3.3	Invoicing.....	54
3.4	Failure to Complete on Time / Liquidated Damages.....	55
3.5	Insurance Requirements	55
3.6	Security Requirements.....	56
3.7	Problem Escalation Procedure.....	56

3.8	SOC 2 Type 2 Audit Report	57
3.9	Substitution of Personnel.....	57
3.10	Minority Business Enterprise (MBE) Reports.....	60
3.11	Veteran Small Business Enterprise (VSBE) Reports	60
4	Procurement Instructions.....	61
4.1	Pre-Proposal Conference	61
4.2	eMaryland Marketplace Advantage (eMMA)	61
4.3	Questions	61
4.4	Procurement Method	62
4.5	Proposals.....	62
4.6	Award Basis.....	63
4.7	Oral Presentation	63
4.8	Duration of Proposal.....	64
4.9	Revisions to the RFP	64
4.10	Cancellations	64
4.11	Incurred Expenses	64
4.12	Protest/Disputes.....	64
4.13	Offeror Responsibilities.....	64
4.14	Mandatory Contractual Terms.....	65
4.15	Proposal Affidavit	65
4.16	Contract Affidavit.....	65
4.17	Compliance with Laws/Arrearages	66
4.18	Verification of Registration and Tax Payment	66
4.19	False Statements	66
4.20	Payments by Electronic Funds Transfer	66
4.21	Prompt Payment Policy	67
4.22	Electronic Procurements Authorized.....	67
4.23	MBE Participation Goal	69
4.25	Living Wage Requirements	70
4.26	Federal Funding Acknowledgement.....	71
4.27	Conflict of Interest Affidavit and Disclosure	71
4.28	Non-Disclosure Agreement	72
4.29	HIPAA - Business Associate Agreement	72

4.30 Nonvisual Access 72

4.31 Mercury and Products That Contain Mercury 72

4.32 Location of the Performance of Services Disclosure 72

4.33 Department of Human Services (DHS) Hiring Agreement 72

4.34 Small Business Reserve (SBR) Procurement 72

4.35 Bonds 72

4.36 Maryland Healthy Working Families Act Requirements 72

5 Proposal Format 73

5.1 One Part Submission 73

5.2 Proposal Delivery and Packaging 73

5.3 Format of the Technical Proposal 73

6 Evaluation and Selection Process 76

6.1 Evaluation Committee 76

6.2 Technical Proposal Evaluation Criteria 76

6.3 Reciprocal Preference 76

6.4 Selection Procedures 77

6.4.1 General 77

6.4.2 Selection Process Sequence 77

6.4.3 Award Determination 77

6.5 Documents Required upon Notice of Recommendation for Contract Award 78

7 RFP ATTACHMENTS AND APPENDICES 79

Attachments AA1 – AA8 128

Attachments AB1 – AB3

Attachment AH

Attachment AD

Attachment AF1 – AF3

Attachment CM

1 Minimum Qualifications

Only those Offerors that fully meet all minimum qualification criteria shall be eligible for Request for Proposal (“RFP”) evaluation. The Offeror’s proposal and references will be used to verify minimum qualifications. Only Offeror qualifications may be used to demonstrate meeting minimum qualifications. Subcontractor experience cannot be used by Offeror to meet Minimum Qualifications.

The Offeror must provide proof with its Proposal that the following Minimum Qualifications have been met:

1.1 Energy Service Companies Corporate Experience:

- A. The Offeror shall verify having successfully performed and completed Energy Performance Contracts (EPC.) These completed EPC’s shall include initial facility assessment investment grade audit, design, build, commissioning finance, comprehensive maintenance (as defined in Appendix 1,) measured/verified (M&V) using International Performance Measurement and Verification Protocol (IPMVP) methodology and guaranteed annual savings for diverse energy conservation measures (ECM’s.) As proof of meeting this requirement, the Offeror shall complete three (3) versions of **Attachment AF (AF1, AF2, AF3,) - Project Example Overview and Reference**. Each project example submitted shall have a performance period with M&V reporting for a minimum of five (5) years.
- B. The Offeror must include in its Proposal:
- 1) A Sample Project Plan which shall comprise of an engineering feasibility study conducted by the Offeror’s project team, in correlation to Attachment AF1, AF2 or AF3. The document shall be clearly identified as to which Attachment it relates to and labeled as “Sample Project Plan.” The study shall include detailed energy and economic calculations preliminary design and specifications, narrative clearly indicating scope of work. The Offeror may redact information they deem as confidential under the condition it does not limit an understanding of the project.
 - 2) **One (1)** of the following Financial Requirements:
 - a) Possess an investment grade rating of its Senior Unsecured Debt from one of the three major rating agencies: “BBB” or higher from Standard and Poor’s or Fitch or “Baa” or higher from Moody’s. Include the most recently published rating and a copy of the rating agency report.
 - b) Obtain a Guarantor that possesses an investment grade rating of its Senior Unsecured Debt from one of the three major rating agencies: “BBB” or higher from Standard and Poor’s or Fitch; “Baa” or higher from Moody’s. Include the name of Guarantor, \$ limit of Guaranteed line provided, and rating of the proposed Guarantor.
- C. Cost Savings Performance Guarantee

Offeror must demonstrate the ability to insure the cost savings guarantee for ten million dollars (\$10,000,000). Offeror shall provide terms, conditions, exclusions, insurers name and source of cost savings performance guarantee including provisions

for payment due to the State in the event that actual savings are less than guaranteed savings. If self-insured, provide a complete description of how insurance is funded.

D. Organizational Chart

The Offeror shall submit an organizational chart that clearly identifies the responsibility and interrelationship of all key team member of the project team, including all sub-consultants and subcontractor firms to the Offeror. All sub-consultants and subcontractors shall be contracted directly with the Offeror.

1.2 Minimum Qualifications for Contract Manager

1.2.1 Contractor Contract Manager assigned to State of Maryland IDC – The Contract Manager serves as the Contractor’s representative to act as the official liaison to the Contract, communicates with executives, plans, budgets, executes, monitors quality assurance and implements course corrections as needed. The Contract Manager must meet the following qualifications:

- 1) General Experience: Five (5) years of experience managing the entire process of energy performance contracting project(s): analysis, design, construction, training, measurement and verification, and maintenance for the complete installation and operation of ECMs.
- 2) Education and other requirements: bachelor’s degree in engineering, or related technical discipline from an accredited college or university. In lieu of a degree, eight (8) years of continuous experience managing energy projects may be substituted for education.
 - a) Duties: Contract Manager position shall include overall Contract governance, be the main point of contact for the State, administers all phases of the project and address any issues that may arise, coordinate all issues brought to his/her attention, have the power and authority to commit and bind the Contractor and its resources during the course of the Contract. Organizes, directs and manages the Contract's operation and maintenance function. Contract Manager shall also identify issues and risks and recommend possible risk mitigation strategies, as well as ensure that performance is within scope, consistent with requirements, and delivered on time and within budget.
- 3) As proof of meeting the requirements of the Contract Manager, the Offeror will complete **Attachment CM – Contract Manager**.

1.3 Engineering Staff Required to be licensed in the State of Maryland

The Offeror shall provide a Chief Mechanical Engineer, a Chief Structural Engineer and a Chief Electrical Engineer who are licensed in the State of Maryland as professional engineers. These positions may be subcontractors employed by the Offeror. All mechanical and electrical work shall be performed under their supervision. Complete **Attachment AD – Maryland Licensing**.

2 Contractor Requirements: Scope of Work

2.1 Background and Purpose

- 2.1.1 The State of Maryland strives to reduce the consumption of energy, water, utility cost and associated greenhouse gasses in its facilities, improve and upgrade facility equipment, and track the performance of energy systems.
- 2.1.2 The State of Maryland has utilized Energy Performance Contract (“EPC”) since the mid 1990’s, and through this RFP, plans to continue utilizing these contracts to achieve an even greater energy reduction for the State.
- 2.1.3 Per statute (State Finance and Procurement Section 12-301), a unit of Maryland State government pursuing an Energy Performance Contract must receive final approval from the Department of General Services before submitting the proposed contract to the Board of Public Works for approval.
- 2.1.4 Per statute (State Finance and Procurement Section 12-302), a unit of Maryland State government that has entered into an EPC shall submit to the Department of General Services for review any required annual measurement and verification reports.

2.2 General

- 2.2.1 The State of Maryland is issuing this RFP to establish a list of qualified Energy Service Companies (“ESCOs”) who will have the opportunity to compete on potential EPC projects. Selected ESCOs must be able to demonstrate that they can perform each Phase of a potential EPC project. The State is hiring firms with expertise in the energy field and expects to be advised by each firm to the highest professional standards on all energy-related matters in each project. The firms hired under this contract must be proactive when providing the State with advice that complies with all building codes, energy codes, state policies and industry standards.
- 2.2.2 Responses to this RFP will be evaluated and awarded based on the criteria set forth in Section 6.
- 2.2.3 Accepted Offerors under this IDC will receive notice of the identified EPC projects in letters issued by the Procurement Officer. These letters will contain information on the projects and the date of the project pre-bid meeting.
- 2.2.4 Accepted Offerors under this IDC are required to attend the pre-bid meeting prior to the Selection Phase but ARE NOT REQUIRED to provide a Phase I proposal on each identified project. Offerors that do not intend to submit a proposal must notify the Procurement Officer within forty-eight (48) hours prior to the initial site walkthrough. A single Offeror will be selected to proceed to Phase I.
- 2.2.5 Once a contract is awarded at Phase I, the successful ESCO will complete the Feasibility Study/Development of Guaranteed Savings program (Phase I analysis period) within 180 calendar days following the Notice to Proceed. The Phase I study produces the Phase II proposal.

- 2.2.6** If the firm chosen to perform the Phase I study fails in their Phase II proposal to meet at least 100% of the firm’s cost and savings guarantee from their Phase I proposal, they may be removed from the project.
- 2.2.7** Upon the Notice to Proceed following approval of the Phase II proposal by the Board of Public Works, the ESCO will provide a detailed Critical Path Method (CPM) schedule, including major milestone dates, to complete the design and construction work, unless a different schedule is approved by the Contract Monitor. There will be timeline milestones during Phase II which, if not met by Offeror, will result in financial penalties as described in Section 3.4.2.
- 2.2.8** Measurement and Verification of savings guarantee. The savings guarantee requirements of Phase III must be considered during Phase I & Phase II. Phase III will take full effect at the conclusion of Phase II for the duration of the guarantee period, per Section 2.10.1 Phase III - The Performance Period
- 2.2.9** Project Phases:
- 2.2.9.1 Selection Phase and Pre-proposal Conference– During which Offerors have an opportunity to bid on a particular project. Provide an initial competitive proposal that details a plan to reduce energy, greenhouse gasses and energy related maintenance costs. This proposal will be submitted as the Phase I proposal for review and selection by the state. A single offeror will be awarded to move to Phase I.
- 2.2.9.2 Phase I – During which a single Offeror will conduct an in-depth engineering analysis leading to a Phase II proposal. Provide studies and analysis in the form of a detailed energy audit and engineering feasibility study to be included in the Phase II proposal.
- 2.2.9.3 Phase II - Final design and construction. Provide comprehensive energy efficiency and guaranteed savings program at a cost determined to be fair and reasonable by the State.
- 2.2.9.4 Phase III - Provide measurement & verification and energy savings guarantee. Additionally, this phase will include maintenance services.
- 2.2.10** Progression of project:
- i. Selection Phase (all firms)
 - ii. Phase I contract awarded to one firm
 - iii. Phase I study (180 days)
 - iv. Phase II proposal presented to Board of Public Works
 - v. Approved Phase II contract signed
 - vi. Notice to Proceed
 - vii. CPM delivered by firm (14 days)
 - viii. Construction begins
 - ix. Construction period
 - x. Measurement and Verification period
- 2.2.11** An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this

solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

- 2.2.12** A Contract award does not ensure a Contractor will receive all or any State, local government or not-for-profit entity business under the Contract.

2.3 Contract Type

- 2.3.1** This RFP is a “Performance Specification” and not a “Design Specification.” This contract is an “Energy Performance Contract” as defined in Section 12-301 State Finance and Procurement Code.

- 2.3.2** In the course of performance, the Contractor or its Subcontractors and/or sub-consultants may perform some construction or architectural/engineering services.

2.4 Contract with Government Organizations Other Than DGS

- 2.4.1** Maryland State and local entities as defined in Finance and Procurement 13-110(a)(5)(I) and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or not-for-profit entities:

- A. Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;
- B. Shall not constitute purchases by the State or State agencies under the Contract;
- C. Shall not be binding or enforceable against the State; and
- D. May be subject to other terms and conditions agreed to by the Contractor and the purchaser.

- 2.4.2** All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity requesting services under the Contract. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

2.5 Contract Duration

- 2.5.1** This agreement will be effective following BPW approval and full execution for a period of forty-eight (48) months with the unilateral option for a single twelve (12) month contract renewal period. 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.

2.6 Scope of Work Requirements

2.6.1 The ESCO shall provide for each project:

- A. All necessary analysis, design, construction, training, measurement and verification, savings guarantee and maintenance for the complete installation and operation of ECMs under the conditions required in this RFP.
- B. Complete construction drawings, specifications, and equipment submittals for review and approval by the State of Maryland. All engineering and design work shall be performed in accordance with the Maryland Department of General Services Procedure Manual for Professional Services (<https://dgs.maryland.gov/Documents/ofp/Manual.pdf>) unless noted otherwise herein.
- C. A program that will result in annual guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract which maximizes environmental benefit to the State. Program costs include capital, maintenance services, administrative and other costs identified herein.
- D. Analysis of all reasonable energy conservation measures recommended ECMs, and rationale for any potential ECMs not included in the proposal.
- E. A Certificate of Insurance, Energy Savings Bond or Irrevocable Letter of Credit for the savings guarantee prior to any funding of the project.
- F. An annual measurement and verification report detailing equipment monitoring and 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.
- G. Metering to determine the building's energy use per square foot. At the discretion of the State, each building included in the project that is not already served by a utility meter, shall have metering installed at the building level for every utility. Data from the meters shall be transmitted at least monthly to the state's utility database.
- H. Comprehensive Maintenance service, up to and including full replacement, for all installed equipment, throughout the Performance Period. Any software provided in the project must be maintained with the most recent version until the end of the contract term.
- I. Professional engineers licensed in the State of Maryland to supervise all energy audits, feasibility studies, plans and specifications. The Phase II proposal, and any final plans and specifications used throughout the project must be signed and sealed by the Professional Engineer.
- J. A Post-Installation Report ("PIR") within 60 days after final acceptance by the State certifying that the systems are capable of making the expected savings and provide details on any agreed upon adjustments to the original scope of the project.
- K. At the discretion of the State, project management using an internet-based platform such as the Department of Energy FEMP e-ProjecteXpress ("ePX") to manage the project from the beginning of Phase I through the end of the Performance Period.

2.6.2 The Contractor Shall:

- A. 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 and

methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the contract, including measurement and verification.

- B. 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.
- C. Confine operations at the site to areas permitted by law, ordinances, permits, contract documents, and as required to maintain building operations, and shall not unreasonably encumber the site with any materials or equipment.

2.6.3 Cutting and Patching of Work: (Phase II only)

- A. 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.
- B. 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.

2.6.4 Drawings and Specifications: (Phase I and Phase II)

- A. The Contractor shall do no work without approved contract drawings, specifications, and/or instructions.
- B. Copies Furnished: The Contractor shall provide (1) PDF and (1) editable Autodesk AutoCad file and shall furnish the State with up to five (5) paper copies of the drawings and specifications. The contractor shall provide Building Information Modelling (BIM) documents in an editable Autodesk Revit format.
- C. 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 an electronic version, shall be delivered to the State, and uploaded to ePX as required as a condition precedent to Final Acceptance of Work.
- D. 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.
- E. Dimensions: The Contractor shall carefully check all dimensions prior to execution of the project. Dimensions for items to be installed at the job will be taken at the job and will be the responsibility of the Contractor. No extra compensation will be allowed for adjustments in order to accommodate the particular item of equipment.
- F. Specifications: Construction Specifications Institute (“CSI”) formatted construction specifications (Latest version) shall be produced and submitted for the State’s approval.

2.6.5 Shop Drawings & Submittals: (Phase II)

- A. 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 drawings will be complete 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 practices and standards for the trade concerned.
- B. All shop drawings must show the name and location of the project and the Department contract number.
- C. 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), unless the State authorizes otherwise. 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 larger 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 ½" by 11") are acceptable for schedules and small details.
- D. 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, laboratory equipment, ducts, etc.
- E. Copies Required: Contractor shall upload to ePX or other site as designated by the State all shop drawings.
- F. Examination and Approval: The State will examine 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.
- G. 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.
- H. Resubmission: When the State notes desired corrections, or rejects the drawings, the Contractor shall resubmit the drawings with corrective changes.
- I. 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.

2.6.6 Cost and Price Certifications: (Phase II)

- A. The Contractor by submitting cost or price information certifies that, to the best of their knowledge, the information submitted is accurate, complete, and current as of the Phase II proposal final submission.
- B. Subject to negotiation by the State or the using agency/customer, Contractor is allowed a maximum profit of 10%. No markups shall be allowed on project contingency, bonding and insurance, taxes, Subcontractor Overhead & Profit (“OH&P”) or warranty costs. A maximum combined (OH&P) markup of up to 25% is allowed for costs associated with work self-performed by Contractor utilizing the Contractor’s in-house resources.
- C. 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 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:
1. Direct labor and indirect labor costs,
 2. Direct materials and Subcontract costs;
 3. Overhead costs analyzed to identify appropriate categories such as administration
 4. Payment details to suppliers and Subcontractors including canceled checks;
 5. Capital expenditure and such revenue expenditure as not detailed above;
 6. Other available items relating to the Contractor’s costs, income and profit as the State may reasonably require; cash flow statements of the Contractor
 7. Rebates and Incentives acquired from utility companies,
 8. And government programs for energy efficiency or renewables including Federal 179 D tax incentive.
- 2.6.7** The firm awarded a Phase I contract must provide a complete list of subcontractors prior to conducting the in-depth engineering analysis. The subcontractors must receive approval from the State.
- 2.6.8** Conditions Affecting the Work: (Phase I & Phase II)
- A. The Contractor shall be responsible for having taken sufficient 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. Notwithstanding any representations concerning existing conditions made by any State employee or agent prior to the execution of work, it is the responsibility of the Contractor to verify existing conditions prior to implementation of work under this Contract. 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.

- B. The Contractor is further advised that any ECMs or operational measures implemented through this Contract must be fully compatible with the proper operation of the entire existing system(s) of which they are included, including portions of any system(s) not directly covered in the scope of work of this Contract. The Contractor will take adequate steps to evaluate the impact on the entire system(s) performance, including any new work and operational measures, to ensure that proper operation of the entire system(s) is achieved or maintained.
- C. All available construction documents, including as-built drawings of the facility, shall be made available to the 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.

2.6.9 Changes in the Work:

- A. The Procurement Officer may, at any time, by their written order, make any change in the work within the general scope of the Contract.
- B. If any change 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, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- C. If the Contractor intends to assert a claim for an equitable adjustment, the Contractor shall, within thirty (30) days, unless this period is extended by the State, after receipt of a written change order, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim.
- D. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.
- E. 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.
- F. 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.
- G. 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.

2.6.10 Modification of the Contract Price shall be determined as follows (Phase II only):

- A. When unit prices are stated in the Contract, by application of such unit prices.
- B. 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.
- C. If job conditions, or the extent of the 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 Construction Change Directive. 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.
- D. 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.
- E. 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.
- F. 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):
- G. 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.
- H. For all Change Orders, the Contractor will be reimbursed for Contractor's expenditures for Workers Compensation Insurance, Social Security Taxes, and Unemployment Compensation Taxes covering persons actually engaged upon the Work and the actual increased cost of bonds.
- I. 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.
- J. 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.
- K. If the Contractor and the State cannot agree as to the extent the contract duration shall be increased for extra work or the extent the contract duration 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.

- L. Notwithstanding any provisions in the contract documents, the State shall not be liable to the Contractor, for any Phase II work, not covered by guaranteed cost savings.

2.6.11 Construction Change Directive:

- A. Contractor shall not initiate any change order, and 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.
- B. For changes approved by the State, the allowable percentages of cost for overhead and profit are deemed to include the following, or items approved by the Procurement Officer:
1. Job supervision (project manager, construction foreman/supervisor)
 2. Field office expense
 3. Expenses for timekeepers, clerks and watchmen
 4. Cost of correspondence of any kind
 5. Insurance not specifically mentioned herein
 6. Use of small tools or equipment at job location
 7. Incidental job burdens.
 8. No percentage allowances will be made for maintenance or operation of Contractor's regularly - established principal office, branch office or similar facilities.
- A. Materials. For materials accepted by the State and used, the Contractor shall receive the actual cost of such materials delivered to the site, including transportation paid by Contractor.
- B. 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. Equipment with a cost of \$500 or less will be considered small tools.
- C. 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.
- D. 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 Construction Change Directive work, the Contractor and State shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
- E. Compensation. The compensation as set forth above shall be received by the Contractor as payment in full for the work done on a Construction Change Directive 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 Construction Change Directive basis.

- F. Invoices. No payment will be made for work performed on a Construction Change Directive basis until the Contractor furnishes the Procurement Officer duplicate itemized invoices of the cost of such Construction Change Directive work detailed as to the following:
1. Name, classification, date, daily hours, total hours, rate, and extension for such laborer, foreman.
 2. Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
 3. Quantities of materials, prices, and extensions
 4. Transportation of materials.
 5. Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.

2.6.12 Unauthorized Work: (Phase II & Phase III)

- A. The Contractor shall not be paid for any work not authorized in writing by the Procurement Officer.

2.6.13 Conformity with Contract Requirements: (Phase II)

- A. All work performed and all materials furnished shall be in conformity with the Contract requirements.
- B. 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.
- C. 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.

2.6.14 Adjacent Work: (Phase II)

- A. The State shall have the right, at any time, to perform work near the work covered by this Contract. In addition, other nearby 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 State Project Manager.
- B. The Contractor agrees that in the 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 fully cooperate with all Contractors to resolve the matter.

2.6.15 Cooperation with Utilities: (Phase II)

- A. 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.
- B. 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.
- C. At points where the Contractor's operations are adjacent to properties of railway, 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/or required to notify the Miss Utility, prior to start of work.
- D. 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.
- E. 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.

2.6.16 Authority and Duties of State Project Manager:

- A. The State Project Manager will perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract. The State Project Manager will be authorized to inspect all completed work and all materials 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 State Project Manager is not authorized to revoke, alter, or waive any requirements of the Contract. The State Project Manager is authorized to call to the attention of the Contractor any failure to conform to the Contract. The State Project Manager has the authority to reject materials and work that does not conform to contract requirements.
- B. The State Project Manager 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.
- C. Any advice which the State Project Manager 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 State Project Manager 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 State Project Manager 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 State Project Manager is for the benefit of the State only.
- D. When there is disagreement between the Contractor and the State Project Manager, the State Project Manager 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 contractor is advised of the shutdown order, the Contractor will immediately stop work. Any work performed during the shutdown will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

2.6.17 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.

2.6.18 The Contractor shall provide for access and inspection as required by the State.

2.6.19 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.

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

- A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. 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 Project Manager.
- C. 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.

2.6.21 Maintenance of Work During Construction: (Phase II)

- A. The Contractor shall maintain the work during construction until Final Acceptance. This maintenance shall be continuous and effective, undertaken 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.
- B. 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.
- C. 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.

- D. All work associated with this IDC is intended to be cost neutral to the State. The cost of all work and/or inspection of contractor's work needed to be performed by State forces or State contractors after hours, on weekends or Holidays, whether anticipated or unanticipated, shall be deducted from the ESCO monthly invoice.

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

- A. 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 may 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.

2.6.23 Materials: (Phase II, Phase III)

- A. 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, bed or accessory that 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.
- B. Approval:
- 1) 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.
- C. New Materials:
- 1) 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 State Project Manager.
- D. Quality:
- 1) All materials shall be of the best quality of the respective kinds.
- E. Samples:
- 1) The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.
- F. Proof of Quality:
- 1) 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.

G. Standard Specifications:

- 1) When no specification is cited and the quality processing, composition or method of installation of a thing is only generally referred to, then:

H. Specifications:

- 1) For items not otherwise specified below, the latest edition of the applicable American Society for Testing and Materials specification is the applicable specification.
- 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) 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.
- 4) For items generally considered as site work, the applicable portions of the Maryland State Highway Administration standard specifications are the applicable specification.
- 5) For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical code are the applicable specification.
- 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.

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

- A. 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.
- B. 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).
- C. 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.

- D. Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
- E. 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."
- F. 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.
- G. Explosives shall not be used on projects covered under this contract.
- H. Paints:
 - 1) Oil base paints and flammable liquids shall not be stored in quantities beyond what would be consumed in 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.
 - 2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

2.6.25 Substitutions: (Phase II, Phase III)

- A. 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.
- B. 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.

2.6.26 Approved Equals: (Phase II, Phase III)

- A. 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.

2.6.27 Contractors Options: (Phase II, Phase III)

- A. 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.

2.6.28 Tests: (Phase II, Phase III)

- A. 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.

- B. 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.
- C. 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.

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

- A. It is imperative that the Contractor completes the work within the time limits specified and agreed to in the contract, as detailed in the Critical Path Method (CPM) schedule. There will be timeline milestones included in the CPM pertaining to the progress of Phase II which, if not met by Offeror, may result in financial penalties as described in Section 3.4.2.
- B. The Contractor must include Milestones in the CPM. Typical milestones include: 95% Drawing submission, major equipment installation schedule, Commissioning, training, substantial completion, etc.
- C. The Contractor must include dates for commissioning pieces of equipment and systems in the CPM.
- D. The date of commencement of the work is the date established in a Notice to Proceed signed by the Project Manager.
- E. The Contractor agrees to perform 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.
- F. Failure of the ESCO to satisfactorily complete work assignments within the time specified may be cause for termination for default by Procurement Officer.

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

- A. 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. 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.

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

- A. 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.

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

- A. The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the State property from injury or loss arising in connection with this Contract. Contractor 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. Contractor shall adequately protect adjacent property as provided by law and the contract documents.
- B. 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, hood hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

2.6.33 Scheduling: (Phase I, Phase II)

- A. 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. There will be timeline milestones during Phase II which, if not met by Offeror, shall result in financial penalties as described in Section 3.4.2, unless waived in writing by the Procurement Officer.
- B. 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 weekly, or more often if dictated by circumstances, to reflect changes and variances in the progress of the project.

2.6.34 Suspension of Work: (Phase II)

- A. 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 may be determined to be appropriate for the convenience of the State.
- B. No request for an extension under this clause will be allowed 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, 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.

2.6.35 Partial Acceptance: (Phase II)

- A. 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 Contract Monitor, 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.
- B. Partial occupancy shall in no way relieve the Contractor of his responsibilities under the contract.

2.6.36 Substantial Completion & Final Acceptance: (Phase II)

- A. Upon a claim of Substantial Completion, the Contractor shall notify the Contract Monitor that the work is ready for Commissioning. Sufficient notice shall be given to permit the Contract Monitor to witness the Commissioning. Commissioning is not complete until the Contract Monitor has given written approval that Commissioning has occurred.
- B. If the Contract Monitor determines that the work has been successfully Commissioned, and the project can be occupied or used for its intended purpose, the Contract Monitor shall establish the date of substantial completion and will state the responsibilities of the State and the Contractor for the remainder of the term of the contract.
- C. The Contract Monitor will determine the time within which the Contractor shall complete any remaining items of work which will be indicated on a punch list prepared by the Contractor in coordination with 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.

2.6.37 Clean-up: (Phase II, Phase III)

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

2.6.38 Guarantees: (Phase II, Phase III)

- A. The Contractor guarantees adjusted annual cost avoidance for the life of the Contract, commencing on the date specified in Section 2.10.1 A.
- B. The work shall contain no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.

- C. All mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended. They shall be installed in accordance with manufacturer's specifications and all applicable codes. All equipment, as installed, shall be reliably operable with ordinary care and attention.
- D. The Contractor shall correct, repair, or remove and replace, without cost to the State, any work found not to be in accordance with this Section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this Section.
- E. The entire work shall be water-tight and leak-proof as appropriate.

2.6.39 Scope of Payment (Phase I Payment):

- A. Should the recommendations of the Phase II proposal fail to meet or exceed the firm's cost and savings guarantee from their Phase I proposal, the State will have no obligation to pay the Contractor the fee associated with Phase I, and the Contractor shall not proceed to Phase II - Implementation.
- B. Should the recommendations of the Phase II proposal, including capital cost, yearly maintenance cost, and all other costs and fees meet or exceed the savings guarantee from the Contractor's Phase I proposal, 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.
- C. Should the recommendations of the Phase II proposal meet or exceed the firm's Phase I proposal 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 proposal.

2.6.40 Scope of Payment (Phase II Payment):

- A. The State will hold 10% of each monthly payment as retainage. The State will release half the retained amount within 90 days of Substantial Completion, and the remaining amount will be released within 90 days after Final Acceptance. The retainage will be held to ensure the Contractor's compliance with the contract requirements and the proper closing out of the construction phase of the project. Retainage will not be released until all contract requirements are fully met.
- B. 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 but not limited to engineering feasibility study, preparation of comprehensive energy plan, design, construction documents, construction, training and start-up. Payments made during Phase II will be based on a schedule of values created by the contractor and approved by the State.

2.6.41 Scope of Payment: (Phase III payment)

- A. Phase III payments will include the costs of the contractor's measurement & verification (M&V) activities and any maintenance under contract.

2.6.42 General Payment:

- A. 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, cost of Project manager and all

other related costs shall not be greater than the annual guaranteed energy and energy related savings for the duration of the contract.

- B. 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.
- C. 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.
- D. 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.
- E. 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. Contractor shall submit all invoices using AIA Document G702/CMA – Application and Certification for Payment.

2.6.43 Employees & Consultants:

- A. Qualification of Employees: Only personnel thoroughly trained and skilled in the task assigned to them may be employed on any portion of the work. At the discretion of the State, any employee found to be unskilled, untrained or otherwise unsuitable, shall be removed from the work. A full time, Maryland registered Professional Engineer shall be assigned to represent the ESCO on each and every project during the Phase I and Phase II of the projects.
- B. 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.
- C. 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.
- D. 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.

2.6.44 Methods and Quality:

- A. 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.
- B. 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.

- C. All methods, procedures, and results are subject to the State's approval as to the finished result to be obtained.

2.6.45 Superintendent:

- A. The Contractor shall keep on the project site, at all times during its progress, a competent 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. 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 upon written request from the Contractor.

2.6.46 Discipline:

- A. 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. The Contractor shall enforce all instructions relative to the use of water, heat, power, 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.

2.6.47 Employee Safety:

- A. The Contractor shall designate a responsible member of its organization to prevent accidents, and to enforce safety standards. The name and position of the person so designated shall be reported to the Department by the Contractor at the commencement of the work.

2.6.48 Subcontracts:

- A. Major consultants working on the design of the project, and subcontractors that will be installing components during Phase II, shall be identified by the Contractor in the Phase I proposal. Contractor must notify the Department in writing of the name(s) of subcontractors proposed for the principal parts of the work, and for such others as the State may direct. The State has the right to approve or deny all subcontractors, and Contractor shall not employ any staff that the Department may object to as incompetent or unfit.
- B. The Contractor is fully responsible to the State for the acts and omissions of its subcontractors and of persons directly employed by them.
- C. Nothing contained in the contract documents shall create any contractual relationship 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.
- D. The Contractor agrees to bind every subcontractor 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 by the Department.

2.6.49 Construction Safety & Health Standards: (Phase II)

- A. 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.

2.6.50 Contingency Work: (Phase II)

- A. The State may, on individual projects, identify a certain percentage of the contract value as State-controlled contingency fund. The contingency fund will be included in the project cost as an amount covered by the energy savings guarantee. All work performed under the contingency part of the contract shall be evaluated and handled in the same manner as the Scope of Work, including the acceptable rates of contractor and subcontractor allowed overhead and profit as per the change order section. All work performed under the contingency part of the contract must be approved by the State prior to execution. No Contractor initiated change orders, or Contractor initiated work under the contingency fund will be considered.

2.7 Individual Project Selection Phase

2.7.1 General:

- A. Agencies interested in an Energy Performance Contract shall coordinate with DGS to gather pertinent data and establish performance goals.
- B. All qualified ESCOs under this IDC will receive written notification of the intent of an agency to enter into an EPC approximately ten (10) working days prior to the pre-bid meeting with qualified ESCOs, the agency, DGS representatives.
- C. The purpose of the pre-bid meeting is to introduce the goals of the agency to the ESCOs, as well as to discuss the Agency mission, building systems, operating patterns and critical needs. The pre-bid meeting commences the Selection Phase. 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.
- D. All qualified ESCOs are required to attend the pre-bid meeting. Meetings for individual firms will not be allowed.
- E. For each project opportunity, all pre-qualified ESCOs will be invited to participate in the Selection Phase and to submit a Phase I proposal. The State does not require all ESCOs selected under this IDC to enter the Selection Phase leading to a Phase I proposal for each EPC project. Failure to submit a Phase I proposal on any project may be considered during future IDC evaluations. The goal of Phase I is to conduct a detailed energy audit, technical study and preliminary design, to identify cost effective solutions which achieve a minimum twenty percent (20%) reduction in annual baseline usage, at a maximum project payback term determined by the state and announced at the pre-bid meeting, and reduce carbon footprint, while maintaining or enhancing existing comfort levels. Proposals will be competitively evaluated. The 20% annual energy reduction may be revised at the State's/Agency's discretion.

2.7.2 Method of Project Assignment:

- A. A single ESCO will advance to Phase I based on a competitive review of all Phase I proposals.

- B. A Phase I proposal will only be accepted from pre-qualified ESCOs in attendance at the pre-bid meeting and at all scheduled Selection Phase site walks. ESCOs must be represented in person at these meetings and representation must include the Project Manager identified in the response to this RFP. Qualified ESCOs must submit a proposed list of attendees for each pre-bid. In order to substitute a team member the ESCO must follow the policies set forth in section 3.9 Substitution of Personnel.
- C. Each ESCO will have up to sixty (60) days, dependent upon project size, after the final site visit to submit a Phase I proposal to the agency. At the discretion of the State, a brief extension may be granted for submitting the Phase I proposal. The ESCO agrees that its Phase II project will, at a minimum, fully comply with the Phase I proposal. Failure to meet the minimum energy performance level, maximum cost and scope defined in the Phase I proposal shall constitute grounds for immediate termination of the Phase I contract by the State. The State will not pay for a Phase I proposal when terminated for any of the reasons listed above.
- D. An evaluation committee will be convened to review and score each Phase 1 proposal. During the proposal evaluation period, the committee may conduct an oral interview with one or more firms whose proposal is deemed susceptible for contract award. The goal of an oral interview is to clarify and confirm the content of each firm's proposal and to ensure that the State's requirements and expectations are clearly understood. Each firm submitting a Phase I proposal deemed reasonably susceptible for contract award may be invited to submit a Best and Final Offer (BAFO). In this case, the committee's final recommendation for award will be based solely on the content of the BAFO submittal.
- E. The committee will evaluate and score each proposal, according to the following criteria, listed in relative order of importance, from greatest to least importance:
 - 1) Proposed list of ECM's to be included in the project. Major equipment upgrades or replacements should be specifically identified. For each ECM, list first year energy units and cost avoidance, estimated installed cost, and simple payback.
 - 2) Overall environmental benefits, including annual reductions of CO₂, nitrogen oxides, sulfur oxides, wastewater and water. Firms shall provide their calculations and conversion factors for emissions avoidance.
 - 3) First year guaranteed Cost Avoidance for the facility for the term identified at the pre-bid meeting with amortization at an interest rate specified by the State. (This may include energy and operational savings. Operational savings must be agreed to by the State to be included.)
 - 4) Calculation method used to determine energy savings for each ECM.
 - 5) Cost of Phase I study.
 - 6) Proposed method of savings Guaranty in accordance with the Scope of Work Phase II Section.

2.8 Phase I - The Preliminary Design and Development Phase

- 2.8.1** A single ESCO will be awarded a Phase I contract based on the evaluation of their Phase I proposal. During Phase I, the awarded ESCO shall develop the proposed comprehensive energy efficiency and guaranteed savings program. The Phase I study produces the Phase II proposal. The objective shall be to

identify technical solutions to maximize energy, environmental and cost savings. The savings program must provide a definitive estimate of costs and savings resulting from the proposed energy conservation measures. The ESCO will guarantee the aggregated costs and savings, on an annual basis, of all approved work. The project as a whole must meet minimum energy reduction requirements, and must meet minimum expectations of equipment replacement, accepted costs, and be fully funded with guaranteed energy savings in order to proceed to Phase II. Phase I includes the following items:

- A. ESCO conducts a comprehensive energy audit, including a detailed engineering feasibility study of the energy and utility systems serving the facility, and effectively analyzes all existing systems, equipment, operations and utility costs. Identifies technical solutions to maximize energy, environmental and cost savings as well as operational and maintenance savings. Further, provides a definitive estimate of all costs and savings expected to result from the proposed energy conservation measures.
- B. 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.
- C. The ESCO shall consult utility and fuel supply companies prior to effectively conducting analysis of existing systems and utility costs.
- D. The ESCO shall also field verify existing conditions to accurately design and locate the installation of new equipment, retrofits or expansion of existing systems. Refer to Section 2.6.8 Conditions Affecting the Work: (Phase I & Phase II).
- E. The ESCO shall provide a Deficiency Report as part of the Phase II proposal. ESCO and the State shall negotiate the final scope of maintenance, and/or the repair or replacement, of the items identified in the Deficiency Report.
- F. Identify and recommend all potential 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. For instance, if a chiller is to be replaced, all associated components are to be replaced with it, including pumps, valves, instrumentation, etc.
- G. All systems that impact the energy use and/or indoor air quality of the facility must be evaluated and supporting documentation of the evaluation must be 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.
- H. Provide a detailed plan to install sub-metering for gas, electric, water, etc. in all buildings to measure savings. Include the cost and description of such equipment. Provide a plan to document assumptions used for the baseline development. This may require the installation of sub-meters or data loggers during the Phase I study portion.
- I. The savings guarantee must be calculated on a term determined by the State for each project.

- J. Ensure that the project plan conforms to all requirements of applicable utility energy conservation rebate incentive programs, to minimize cost and payback period.
- K. All ESCOs must examine the installation of renewables for all State projects as part of the Phase I study.

2.8.2 Phase I study must provide itemized costs for the following:

- A. Detailed total fee for engineering and design,
- B. Detailed total cost of interest during the construction period,
- C. Provide the interest rate used for the calculations,
- D. Detailed total Material and equipment costs,
- E. Detailed total Labor costs,
- F. Cost of the study,
- G. Cost of the guarantee.

2.8.3 Project Cash Flow: 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:

- A. Energy savings (dollars),
- B. Operational and maintenance savings (dollars),
- C. Water savings (dollars),
- D. Debt service,
- E. Maintenance costs,
- F. Guarantee Bond,
- G. ESCO M&V costs,
- H. State Treasury Office Fee,
- I. DGS M&V review costs (if applicable),
- J. DGS Project Management costs (if applicable).

2.8.4 Phase II Proposal: during Phase I the ESCO shall prepare a Phase II Proposal specifying the ECM recommendations approved in Phase I, including but not limited to the following:

- A. List of all subcontractors and responsibilities and a list of the project team if it is different from the response to the IDC solicitation. DGS approval is needed for any team member replacement.
- B. Floor plans identifying location and arrangement of major equipment and systems (35% Construction Drawings).
- C. Schematic diagrams, including single line piping and ductwork diagrams for all mechanical and electrical equipment.

- D. Manufacturers' catalogue sheets for major equipment, including boilers, chillers, cooling towers, generators, air handling units, plumbing, and lighting systems.
- E. Block Load calculations, using software and procedures approved by the State, based on existing building parameters, supporting the selection of major HVAC equipment and new or renovated systems included in the project. All buildings included in the project scope undergoing HVAC improvements must comply with the most current ASHRAE standards. The ESCO shall under no circumstances replace an existing HVAC component or system without first performing load calculations
- F. Existing occupancy and lighting densities shall be verified through field surveys, using procedures approved by the State.
- G. Calculations and methodology of all energy savings supporting the energy guarantee will be based on utility time-of-use rates, and estimated energy and demand unit reductions.
- H. 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, verification of 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 prior to the claim of substantial completion in time to allow the State to conduct a thorough review, without causing delay in the ESCO's timely completion of the work.
- I. All documentation to be provided in electronic format if requested by the State.

2.8.5 Preliminary design specifications developed during Phase I for all major components and systems, will include but are not limited to the following:

- A. Cooling System. The ESCO shall provide block load and room by room load calculations and 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 a complete and thorough analysis of and recommendations for the acceptability of the performance of the associated equipment to remain in service. Recommendations should include a 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:
 - 1) Chiller:
 - a) Nominal capacity (tons) at specified entering and discharge evaporator temperatures
 - b) Nominal design efficiency at nominal capacity (kW/ton)
 - c) Refrigerant type
 - d) Fluid (water, glycol)
 - e) Evaporator entering and discharge temperatures

- f) Condenser entering and discharge Temperatures
 - g) Electrical Characteristics (HP, Phase, Volts, Hz)
 - h) Compressor type (reciprocating, centrifugal, rotary screw)
 - i) Capacity control method
 - j) List of proposed manufacturers
- 2) Cooling Tower:
- a) Nominal duty (tons)
 - b) Fluid (water, glycol)
 - c) Entering and leaving fluid temperatures
 - d) Ambient air temperature (DB and WB)
 - e) Electrical characteristics (HP, volts, phase, HZ)
 - f) List of proposed manufacturers
- 3) Pumps:
- a) Type (horizontal split case, end suction, etc.)
 - b) Capacity (GPM)
 - c) Minimum NPSH
 - d) RPM
 - e) Minimum operating efficiency
 - f) Mounting (base, inertia pad, vibration isolators)
 - g) Electrical characteristics (HP, volts, phase, HZ)
 - h) List of proposed manufacturers
- B. Heating System. The ESCO shall provide block load and room by room load calculations and 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 a complete and thorough analysis of and recommendations for 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:
- 1) Boiler:

- a) Fuel (Primary/Secondary, if applicable)
 - b) Output Rating (MBH)
 - c) c) Maximum Firing Rate (SCFH)
 - d) Operating Pressure or GPM
 - e) Boiler Type (Cast-Iron Sectional, Firetube, etc.)
 - f) Electrical Characteristics (HP, Phase, Volts, Hz)
 - g) List of proposed manufacturers
- 2) Heat Exchanger:
- a) Fluid Types
 - b) Flow Rates
 - c) Entering Temperature for Both Fluids
 - d) Leaving Temperature for Both Fluids
 - e) Heat Exchanger Type (Plate & Frame, Shell & Tube, etc.)
 - f) List of proposed manufacturers
- 3) Pumps:
- a) Type (horizontal split case, end suction, etc.)
 - b) Capacity (GPM)
 - c) Minimum NPSH
 - d) RPM
 - e) Minimum operating efficiency
 - f) Mounting (base, inertia pad, vibration isolators)
 - g) Electrical characteristics (HP, volts, phase, HZ)
 - h) List of proposed manufacturers
- C. HVAC System. The ESCO shall provide block load and room by room load calculations and 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. A complete and thorough analysis of and recommendations for acceptability of and 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:
- 1) Air Handling Units:

- a) Airflow rate (CFM)
 - b) External Static Pressure (in. WG)
 - c) Total Cooling Capacity Sensible Cooling Capacity
 - d) Sensible Heating Capacity
 - e) Entering Air Temperature
 - f) Leaving Air Temperature
 - g) Design Space Temperature
 - h) Design Outdoor Air Temperature Minimum Outdoor Air (%)
 - i) Electrical Characteristics (HP, BHP, RPM, Phase, Volts, Hz)
 - j) List of proposed manufacturers
- 2) Exhaust Fans:
- a) Airflow Capacity
 - b) Fan RPM
 - c) Electrical Characteristics (HP, BHP, Phase, Volts, Hz)
 - d) List of proposed manufacturers
- D. Lighting. The ESCO shall conduct a detailed room-by-room survey to identify existing fixtures, lamps ballasts and wiring arrangements using Illuminating Engineering Society (IES) standards. 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 improvements shall be consistent with the building interior design and to ensure that the new upgrade is harmonized with the existing lighting fixture design. Only at the discretion of the State, is it acceptable 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 11”X17” floor layout drawings which clearly identify corresponding rooms with lighting calculation spread sheets.
- E. 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:
- a) Temperatures (zone, outdoor, air, water, and other working fluids)
 - b) Flow rates (air, water, and other working fluids)
 - c) Equipment Status (on/off, enable/disable, alarm)

- d) Alarm conditions
- e) Analog control and status signals (valves, dampers, VFDs)
- f) System modes
- g) 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.

2.8.6 Warranty. The ESCO shall provide an equipment warranty for all ESCO furnished equipment for the life of payback period. ESCO furnished equipment warranted by ESCO shall be serviced by ESCO or ESCO's approved subcontractor for the life of the payback period.

2.8.7 Schedule. The ESCO shall provide a Critical Path Method (CPM) schedule of Phase II work, including any outages necessary. The CPM shall include project milestones, which if not met, shall trigger liquidated damages as described in Section 3.4.2.

2.8.8 Maintenance. The ESCO shall provide a description of maintenance services, including but not limited to a detailed list of all equipment installed by the ESCO, the type of service to be performed, the specific cost of services, the frequency of service, the records of service and the date performed. 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 all 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. The ESCO will integrate its maintenance and M&V systems, when feasible, with the state's eMaint or current computerized maintenance system. A written justification from the ESCO as to the infeasibility of integrating its system with the State's must be approved by the state.

- A. Failure on the part of the Contractor, at any time, to adequately maintain installed equipment during the entire life of the contract, shall result in the State notifying the Contractor to comply with the required maintenance provisions of the Contract. If 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.

2.8.9 Capital cost. The ESCO shall provide a detailed capital cost estimate breakdown, by ECM, including:

- A. All subcontractors' quotes,
- B. Detailed engineering fees including engineering cost breakdown: disciplines, hours per discipline, hourly rates, OH, profit, etc.
- C. Construction labor,

- D. Materials,
- E. Major equipment cost,
- F. Rebates/incentives.

2.8.10 ESCO shall provide a detailed cost estimate for the following:

- A. Ongoing training, maintenance, and energy guarantee cost (surety instrument).
 - 1) Costs shall be paid annually by Using Agency and shall be included in the project’s overall cash flow.
 - 2) Labor costs shall be based on Prevailing Wage Rates, as issued by Maryland Department of Labor, Licensing & Regulation.
 - 3) All major sub-contractors (mechanical, electrical, ATC, etc.) must be contracted directly to the ESCO.
- B. Demolition.

Demolition costs are considered non-capital costs by the State and shall not be included in capital financing.

2.8.11 Baseline calculation. The ESCO shall provide a methodology for the baseline calculation, and a methodology for the calculation of guaranteed energy savings.

- A. All energy savings to be based on time-of-day rates, as applicable, and are to be quoted in dollars/yr. Energy unit costs shall be current rates or future rates, whichever is greater. The baseline shall include occupancy schedules, temperature set points, equipment runtimes, lighting burn times, utility rates of natural gas, electricity, fuel oil, water and sewer charges, as applicable.

2.8.12 System performance. All proposals to replace major equipment (boiler/chiller/AHU, etc.) shall consider how existing connected components affect system performance, and ESCO will be responsible to maintain, for the life of the contract, any existing components that would cause the energy guarantee to be missed.

2.9 Phase II – Final Design and Construction Phase

2.9.1 Upon the approval of a Phase II proposal by the Board of Public Works, the ESCO enters into an Energy Performance Contract with the State. The ESCO will implement the comprehensive energy efficiency and guaranteed savings program outlined in the Phase II proposal, and provide a guarantee of the energy and energy-related operational cost avoidance to be achieved throughout the payback period. For each awarded Energy Performance Contract, following the Notice to Proceed, the ESCO shall include the following:

- A. Schedule. A critical path method (CPM) diagram shall be submitted within 14 days of the Notice to Proceed. The CPM diagram shall provide a timeline for the Final Design for each ECM, a detailed timeline of the first 90 days of construction, and an overall framework timeline for the remainder of the work. An approved CPM must be in place prior to installing

any measures. The Contractor must include Milestones in the CPM. Milestones shall include 95% Drawing submission, major equipment installation, Commissioning, training, substantial completion, and final completion. If the milestones are not met by the ESCO, financial penalties shall result as described in Section 3.4.2.

- B. Final Design. Before installation of each proposed ECM, the ESCO shall prepare a Final Design pertinent to that ECM. In accordance with Chapter IV of the DGS Procedure Manual (<https://dgs.maryland.gov/Documents/ofp/Manual.pdf>), the ESCO shall provide in the Final Design for each EPC project:
- 1) Site plans and floor plans showing equipment location, ductwork and pipe 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.
 - 2) Automatic temperature control (ATC) sequence of operations, logic and wiring diagrams, including temperature set points and operations schedule.
 - 3) Equipment schedules, including acceptable manufacturers, model numbers, ratings and operating characteristics.
 - 4) 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.
 - 5) A complete description of any modifications to existing HVAC, electrical or plumbing systems, and building shell.
 - 6) Lighting retrofit plans and specifications.
 - 7) Execution shall include but not be limited to the following:
 - a) Furnish and install all equipment and accessories in accordance with the requirements of this RFP (including Section III- General Conditions), and the ESCO's approved Phase II proposal.
 - b) Hold regularly scheduled progress meetings.
 - c) Submittal of all applicable Operating and Maintenance manuals to Using Agency.
 - d) 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.
 - e) Compliance with any change orders.
 - f) Completion of all punch list items.
 - g) Commissioning witnessed and approved by the State.

- h) Electrical inspection certificate issued by a State approved independent inspection company.
- i) Boiler inspection by Department of Labor, Licensing, and Regulation (if applicable).
- j) A Post-Installation Verification Report (PIR) within 60 days after final acceptance by the State (see Section 2.6.1 J).

C. Commissioning.

- 1) Throughout Phase II, in accordance with the CPM schedule, the project will be Commissioned to demonstrate to the satisfaction of the State that all components, systems, and processes are complete, and are properly functioning. Commissioning shall be witnessed by the State. Commissioning shall be performed by an individual holding ASHRAE's BCxP certification.
- 2) Commissioning is required of all major systems and equipment, including conducting 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) 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.
- 4) Prior to Substantial Completion, 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 the reason for the change. The State will not accept a claim of Substantial Completion of the project unless the ESCO fully complies with these requirements.
- 5) The State shall be notified in advance of the schedule of any final inspections and functional performance tests.

D. Conditions of Work and Job Site Visit.

- 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 energy use and system performance. The investigation is not restricted to factors 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. Under no circumstances shall the ESCO be compensated for additional work arising from existing conditions that could have been observed and accounted for during development of the Phase II proposal.

- 2) Any failure of the ESCO 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.

E. Energy Savings Guarantee.

- 1) The ESCO shall guarantee annual cost avoidance, whereby the ESCO guarantees that a certain level of energy and energy related operating and maintenance savings will accrue as a result of implementing the approved comprehensive energy efficiency and guaranteed savings program. If the actual annual 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.
- 2) ESCO shall provide a method of securing the annual guaranteed cost avoidance to the State. The guaranteed 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 financial institution approved by the State. As an alternative, the ESCO shall provide, for a period mutually agreed to by the State and ESCO, an Energy Savings Guarantee Bond issued by a bonding agency, or an insurance policy issued by an insurance company approved by the State, that has provided similar policies for similar projects. 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.

F. Project Financing.

- 1) Prior to the initiation of Phase II of each project, when requested by the State, the ESCO shall provide an indicative rate of interest which reflects the cost of the financing to be provided by the ESCO when applicable. 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.
- 2) The State shall, at its discretion, when applicable, determine whether or not to accept the financing offered by the ESCO or arrange an alternate means of financing. 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.

G. Capacity to Perform Work.

- 1) The Contractor 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. Replacements of key personnel must be approved in writing by the state. 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.

H. Post Installation Verification Report

- 1) Provide a Post-Installation Verification Report (PIR) within 60 days after final acceptance by the State certifying that the systems are capable of making the expected savings and provide details on any agreed upon adjustments to the original scope of the project.

2.10 Phase III - The Performance Period

2.10.1 Performance Period Commencement. 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 Performance Period. 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.

A. Pursuant to the preceding, the Performance Period shall commence on the earlier of either:

- 1) the date of first scheduled principal and interest loan repayment, as designated by the Treasurer's Office,
- 2) or the first day of the first full month, following Substantial Completion and shall continue for the term specified.

2.10.2 Energy Reduction, Emissions Reduction and Cost Avoidance.

- A. Energy Reduction – the State expects 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.
- B. Emissions Reduction - The State expects that implementation of this program will result in a net reduction in greenhouse gas emissions and other pollutants.

2.10.3 Cost Avoidance – ESCO guarantees that implementation of this program will result in annual energy cost avoidance, sufficient to finance the cost of the program over the term of the contract.

- A. ESCO shall implement, monitor, maintain and document system and equipment settings to safeguard cost avoidance. Any changes to the settings stipulated in the contract, 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. DGS shall make the final decision as to the validity of ESCO's claim for adjustments.

2.10.4 Comprehensive Maintenance and Warranty Services

- A. For the term of the contract, all installed equipment and systems shall be operated and maintained in accordance with manufacturer's requirements and system design criteria. Complete and comprehensive maintenance, including routine regular maintenance, and up to and including replacement of worn, failed, and doubtful components with new components of equal or superior quality, shall be provided for the full contract term. Emergency on-site service and component replacement must be provided on a 24-hour per day basis (see Section 2.6.22 Failure to Maintain the Project) Provide an itemized list to include each unit of equipment and the applicable service schedule.

2.10.5 Measurement and Verification

A. Inspection and Documentation.

- 1) Throughout Phase II and the guaranteed Performance Period, ESCO shall conduct regular inspections and maintenance to ensure that all instrument accuracy remains within acceptable tolerances. The performance guarantee 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.
- 2) 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 accept claims of inadequate performance at the fault of the State unless the ESCO fully complies with these requirements.

2.10.6 Standards.

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

- 1) The most recently published version of the International Performance Measurement and Verification Protocol, (IPMVP).
- 2) The most recently published version of the Federal Energy Management Program M&V Guidelines: Measurement and Verification for Federal Energy Projects, (FEMP)

2.10.7 Methodology.

- A. Various M&V methodologies may be employed to document the performance guarantee. Methodologies shall be as defined in the documents cited in above sections.
- B. 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.

2.10.8 M&V Plan and Methodology.

- A. The ESCO shall prepare and include, as a separate section of the Phase II proposal 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 confirmation and ongoing monitoring during the guarantee period.
- B. Unless otherwise directed, the State requires, as part of the M&V Plan, installation during Phase 1 of metering, instrumentation and related software for verifying existing equipment performance, refining energy reduction estimates and guarantying cost avoidance, confirming performance baselines, and ongoing monitoring during the guarantee period.
- C. At the discretion of the State, ESCO shall install building level submetering for all energy sources that will report data to the State Energy Database for the term of the project.
- D. 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.

- E. 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.
- F. The M&V plan shall be summarized in table format. In addition, accompanying documentation shall describe how each methodology is to be implemented.
- G. For ECM specific methodologies, the following shall also be specified:
 - 1) FEMP Option A: Retrofit Isolation with Key Parameter Measurement
 - a) Indicate parameter(s) and basis for stipulated performance methodology.
 - b) Stipulated measures are generally not preferable and must be specifically approved by the State.
 - 2) FEMP Option B: Retrofit Isolation with All Parameter Measurement
 - Indicate all parameters, which are to be measured, including units of measure, e.g.:
 - i) Power (watts, kilowatts)
 - ii) Energy (watt-hours, kilowatt-hours, therms)
 - iii) Temperature (°F, °C)
 - iv) Flow rate (gallons per minute, cubic feet per minute)
 - v) Measurement frequency and duration, e.g.:
 - vi) One-time
 - vii) Interval (e.g., one each 15 minutes, 24 hours, 30 days)
 - viii) Continuous
 - 3) Measurement Method, e.g.:
 - i) Handheld instrument
 - ii) Portable data logger
 - iii) Field mounted instrument or data collection panel
 - 4) Communications interface, e.g.:
 - i) Manually read
 - ii) Telephone dialup
 - iii) Wireless
 - iv) Using Agency LAN
 - v) Web based
- H. FEMP Option C: Whole Building Utility Data Analysis
 - 1) Option C is generally indicated and preferred by the State when the following conditions are met:

- a) Savings are predicted to be greater than 15% of the overall consumption measured by the utility or sub-meter.
- b) At least 12, and preferably 24 months or more of pre-installation data are used to calculate a baseline model.
- c) 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.

2.10.9 Performance Baseline

- A. Performance 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:
 - 1) Electric energy consumption, demand and cost
 - 2) Natural gas and fuel oil consumption and cost
 - 3) Water consumption and cost
 - 4) Other utility consumption and cost
 - 5) Operating hours of heating, cooling and ventilating equipment
 - 6) Operating hours of lighting systems
 - 7) Facility occupancy levels
 - 8) Facility square footage
 - 9) Weather severity (heating and cooling degree days)
- B. 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.
- C. 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.
- D. During the guarantee monitoring period, the ESCO may adjust the baseline, as required and with written State approval, to account for changes in facility operational characteristics which occur after the original baseline is established.
- E. Baseline units and cost shall be developed and presented in a format consistent with applicable utility tariffs and rates.

2.10.10 Sampling Plan

- A. 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.

- B. 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.

2.10.11 Energy Rates

- A. 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.
- B. 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.
- C. Unless explicitly agreed to in writing by the State, an adjustment of annual guaranteed savings through application of a utility rate escalation shall not be permitted.

2.10.12 Energy, Emissions and Cost Avoidance Calculation

- A. Energy avoidance during any period shall be calculated as the difference between baseline units consumed, adjusted for variation in weather severity and operational characteristics, and actual units consumed.
- B. 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 by applying actual utility or energy supplier rates. 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.
- C. Emissions avoidance during any period shall be calculated by converting the reduction in energy units by nationally accepted conversion factors. Contractor must provide all conversions calculations.

2.10.13 Applicable Energy Rates

- A. 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.
- B. 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.

2.10.14 Reconciliation of Actual vs. Guaranteed Savings

- A. Unless otherwise agreed to by the State and ESCO, the guarantee monitoring period shall commence on the earlier of the date of first scheduled principal and interest loan repayment, as designated by the Treasurer’s Office, or other financing institution; or the first day of the first full month, following Substantial Completion, and shall continue for the term specified.
- B. In the event that Substantial Completion is delayed beyond the date of the first scheduled principal and interest 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 principal and interest 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.
- C. If the actual cost avoidance is greater than the ESCO’s guaranteed cost avoidance, then the State shall retain the difference.
- D. If, on an annual basis, the actual cost avoidance is less than the guaranteed cost avoidance, the ESCO shall refund the difference to the State. The refund shall be delivered to the State in the form of a check written to the State Treasurer’s Office. No refund shall be taken in the form of additional work. The check shall be received by the State within 30 days of signed agreement of the annual Measurement and Verification Report. Failure to submit payment during this time frame may result in the State filing a surety claim against the ESCO for the amount due.
- E. The ESCO shall submit documentation verifying temperature set points, operating hours or other parameters stipulated in the Phase 2 proposal.
- F. If the State has caused a deviation from Phase 2 proposal parameters that have resulted in lower than expected cost avoidance, then any amount due to the State may be reduced by the difference between the expected cost avoidance and actual cost avoidance.
- G. 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.
- H. The State will not allow any provisions allowing cost avoidance realized during the ECM installation period (construction period) to be applied toward the guaranteed cost avoidance.

2.10.15 Products and Special Services

- A. At the discretion of the State all project participants shall be required to use the Department of Energy FEMP ePX internet-based platform to manage the project from the beginning of Phase I through the end of the Performance Period.

2.10.16 Energy Accounting Software

- A. 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, and other operational variations.

- B. 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.

2.10.17 Internet Data Acquisition

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

2.10.18 Instrumentation

- A. Electric Power and Energy
 - 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.
 - 2) Metering of polyphase loads shall include independent measurement of each phase.
 - 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.
 - 4) Where required, due to voltage levels, the ESCO shall employ potential transformers.
- B. Temperature
 - 1) All devices employed to meter temperature of liquid media shall have accuracy within +/- 0.1 o F of actual value, or better.
 - 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) Primary devices used for the purpose of providing information to a control system or energy information system, shall be provided with a calibration certificate.
- C. Pressure
 - 1) All pressure sensing devices shall have accuracy within +/- 1% of full scale.
 - 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.
- D. Flow Rate
 - 1) All devices employed to meter flow rate of liquid media shall have accuracy within +/- 1.0 % of actual flow or better.
 - 2) Approved flow metering devices shall include orifice, venturi, turbine or ultrasonic types.

- 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.
- 4) Flow rates in constant volume flow systems shall be verified, using approved instrumentation, as defined in above subparagraphs, as average rate over a minimum continuous period of 30 minutes.
- 5) Flow rates in variable volume flow systems shall be verified, using approved instrumentation, by continuous measurement throughout the monitoring period.

2.10.19 Annual Measurement and Verification Report

- A. 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 guaranteed Performance Period, or as directed by the State, ESCO will provide informal semi-annual performance updates.
- B. Reports shall clearly indicate energy baselines, monitoring period energy usage, applicable rates and any adjustments to energy and cost baselines.
- C. The ESCO shall submit documentation verifying actual temperature set points, operating hours or other parameters that have deviated from those stipulated in the Phase 2 proposal. Documentation shall include date, time, value and duration of any deviation, and the purported responsible party for the deviation.
- D. Annual performance results shall be compiled into a comprehensive Measurement and Verification Report and presented by the ESCO in person, at a time and location acceptable to the State. In-person ESCO representatives must include:
 - 1) M&V specialist with principal responsibility for report preparation.
 - 2) Lead service technician assigned to the project.
 - 3) Operations manager assigned to the project or relevant region or business sector under which the project falls.
 - 4) Principal account executive assigned to the project.
- E. When requested by the State, ESCO must provide an advance report for review. 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.
- F. All Measurement and Verification Reports shall conform to a format defined by the State. ESCO shall include detailed documentation, verifying results presented. Report content shall be presented such that the State can easily confirm the logic, formulas, and calculation algorithms in order to independently validate performance results. Report content shall be provided in hard copy and electronic media format. Electronic format shall include spreadsheets, database files, third party software application files, text documents and portable data files (PDF), and shall be made available via portable media. All Reports shall conform to the format agreed to by the ESCO and the State. ESCO shall include detailed documentation, verifying results presented. All calculations, documentation and analysis supporting baseline and final performance results shall be included. M&V reports submitted by ESCO must include as a minimum the following information:

- 1) Title page with performance year, period of the report, date of the report submission and the EPC number.
 - 2) Executive Summary, which lists the EPC contract date, the completed date, the list of the ECMs with the M&V options used, the energy guarantee period, the entire project financial overview, the performance year financial overview and the amount of saving or shortfall. Include the Avoided CO2 Emission in the current performance year and provide the basis of the calculations used.
 - 3) EPC Final cash flow.
 - 4) List of facilities, accounts numbers included in the project. Baseline consumption for each account and unit cost. Set point temperature for each account. Weather Stations used for each location, and to provide an access to source of weather data. Regression equation for each account if applicable.
 - 5) List of any changes following the baseline period, with specific dates; for example: change in square footage, utility accounts, temperature set points and runtimes. Any changes must be supported by documentation.
 - 6) Breakdown of energy (by commodity) and water usage cost savings for each year up to date.
 - 7) Reductions of environmental pollutants by type.
 - 8) Performance year cost and use saving by ECM.
 - 9) Table to show total financial savings in the performance year from each utility account, including any adjustments.
 - 10) Table to show all contract years' guaranteed cost avoidance, actual savings and cost avoidance variance.
 - 11) Detailed cost avoidance table for each account.
 - 12) Each table should indicate the account number, service address, building name if applicable, baseline unit cost, actual unit cost, and regression equation.
 - 13) Documents to support the calculations of saving, and all the adjustments to the baseline reported in this performance year other than weather.
 - 14) Cost Avoidance Acceptance Letter at the end of the report.
 - 15) ESCO's must send all the tables' calculations in Excel files.
- G. To facilitate the State's review and verification of annual performance results, the ESCO shall provide copies of all utility bills for the base year and current reporting year, including those which are not available in the State's online utility database.

2.11 Maintenance

2.11.1 All equipment provided shall be maintained in accordance with the provisions detailed in each phase of work as described in the following referenced sections:

- A. Maintenance of Work During Construction: (Section 2.6.21 Phase II)

- B. Failure to Maintain the Project: (Section 2.6.22 Phase II, Phase III)
- C. Guarantees: (Section 2.6.38 Phase II, Phase III)
- D. Comprehensive Maintenance and Warranty Services (Section 2.10.4)

3 Contractor Requirements: General

3.1 Contract Initiation Requirements

3.1.1 Notification of award will be sent to all successful proposers.

3.2 End of Contract Transition

3.2.1 Not Applicable to this RFP.

3.3 Invoicing

3.3.1 General

- A. All invoices for services shall be on AIA Document G702/CMA and shall be signed by the Contractor and submitted in (electronic format) to the Contract Monitor. All invoices shall include the following information:
- 1) Contractor name and address;
 - 2) Remittance address;
 - 3) Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
 - 4) Invoice period (i.e. time period during which services covered by invoice were performed);
 - 5) Invoice date;
 - 6) Invoice number;
 - 7) State assigned Contract number;
 - 8) State assigned (Blanket) Purchase Order number(s);
 - 9) Goods or services provided;
 - 10) Current and cumulative amount of retainage, and
 - 11) Cumulative amount paid and current amount due.
- B. Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.
- C. The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the "Living Wage" provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article Section§ 15-215 through 15-223 and with COMAR 21.10.04.

3.3.2 Invoice Submission Schedule

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

- 1) Schedule of values to be determined for each project issued from this IDC.

3.4 Failure to Complete on Time / Liquidated Damages

3.4.1 Time is an essential element of the Contract and it is important that the work be vigorously performed until completion.

3.4.2 For each calendar day that any work shall remain incomplete beyond the Milestones specified in the Contract and this RFP, as described in the CPM (see Section 2.9.1 A), the Contractor shall be liable for liquidated damages in the amount of \$1,000.00 per calendar day. An adjustment of the specified completion time(s) may be granted for approved change orders, or at the sole discretion of the State.

3.4.3 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.

3.4.4 See also Attachment M-Contract, paragraph 36, which are liquidated damages for noncompliance with Minority Business Enterprises (MBE).

3.5 Insurance Requirements

3.5.1 The Contractor shall maintain the following types of insurance:

- A. Commercial General Liability Insurance 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, with a minimum limit of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- B. Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per claim and annual aggregate.
- C. 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.
- D. Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000.
- E. Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at a minimum the following:
- F. Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- G. The State of Maryland shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies

with the exception of Workers' Compensation Insurance, which is currently handled by the Chesapeake Employer's Insurance Company (formerly Injured Workers' Insurance Fund). The certificates of insurance for these policies must state, "The State of Maryland is an Additional Insured." 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 30 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.

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

3.6 Security Requirements

3.6.1 Employee Identification

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

3.6.2 Criminal Background Check

- A. The Contractor shall obtain from all Contractor and subcontractor personnel assigned to work on the Contract a signed statement permitting a criminal background check. The Contractor may be required to secure at its own expense a Maryland State Police and/or FBI background check and provide the Contract Monitor with completed checks on the above-listed personnel assigned to work under the Contract prior to assignment. At a minimum, these background checks must include all convictions and probation before judgment (PBJ) dispositions. The Contractor may not assign an individual whose background check reflects any criminal activity to work under this Contract unless prior written approval is obtained from the Contract Monitor.

3.7 Problem Escalation Procedure

3.7.1 General

- A. 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 problems as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- B. The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor be unavailable.

- C. The Contractor must provide the PEP no later than ten (10) Business Days after Contract Commencement. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the award of any contract for an individual project. 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:
- D. Names, titles, and contact information for progressively higher levels of personnel in the Contractor’s organization who would become involved in resolving a problem;
- E. For each individual listed in the Contractor’s PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor’s PEP;
- F. The method of providing feedback on a resolution, including the frequency of feedback to be provided to the State;
- G. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- H. A process for updating and notifying the Contract Monitor of any changes to the PEP.
- I. 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.

3.8 SOC 2 Type 2 Audit Report

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

3.9 Substitution of Personnel

3.9.1 Key Personnel

- A. The following are considered Key Personnel:
 - 1. Contract Manager
 - 2. M&V Manager
 - 3. Maintenance Manager
 - 4. Construction Manager
 - 5. Commissioning Agent

3.9.2 Continuous Performance of Key Personnel.

- A. Unless substitution is approved per section 3.9.3, 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.
- B. 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.

- C. If the Contract is task order based, the provisions of this section apply to Key Personnel identified in each task order proposal and agreement.

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

- A. Extraordinary Personal Circumstance – Any circumstance in an individual’s personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and 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.
- B. Incapacitating – 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.
- C. Sudden – 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.

3.9.4 Key Personnel General Substitution Provisions. The following provisions apply to all circumstances of staff substitution.

- 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:
 - 1) A detailed explanation of the reason(s) for the substitution request;
 - 2) The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - 3) The official resume of the current personnel for comparison purposes; and
 - 4) 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 the acceptance or denial, or contingent or temporary approval for a specified time limit, of the requested substitution.
- E. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.
- F. Replacement Circumstances:

- 1) Voluntary Key Personnel Replacement. To voluntarily replace any Key Personnel, the Contractor shall submit a substitution request to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 3.9.3 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
 - 2) 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).
- G. Under any of the circumstances, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 3.9.4 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.
- 1) 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 3.9.4 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.
- H. Directed Personnel Replacement:
- 1) 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. 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.
 - 2) In circumstances of directed removal, the Contractor shall, in accordance with paragraph 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.

- I. 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.
- J. 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.
- K. 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.

3.10 Minority Business Enterprise (MBE) Reports

3.10.1 A 30% Minority Business Enterprise (MBE) goal shall be assigned to the contract on a project-by-project basis.

3.10.2 If this solicitation includes an MBE Goal, the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

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

3.11 Veteran Small Business Enterprise (VSBE) Reports

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

4 PROCUREMENT INSTRUCTIONS

4.1 Pre-Proposal Conference

4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.

4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.

4.1.3 It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference/Site Visit to ensure that all parties understand the requirements of the contract and the MBE Goal.

4.1.4 MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.

4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions ([see Section 4.2.1 eMMA](#)).

4.1.6 Those wishing to attend the web conference may request a meeting invitation by emailing the Procurement Officer Matthew Smith at matthew.smith2@maryland.gov no later than 2:00 PM on June 16, 2023. An invitation e-mail is required for registration, and therefore attendance. Upon receipt of the email, the Procurement Officer will reply with a registration email with a link that may be used to register for the conference. Registration must be completed by 2:00 PM June 16, 2023.

4.2 eMaryland Marketplace Advantage (eMMA)

4.2.1 eMaryland Marketplace Advantage (“eMMA”) is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors’ questions and the Procurement Officer’s responses, addenda, and other solicitation-related information will be made available via eMMA.

4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to emma.maryland.gov, click on “New Vendor? Register Now” to begin the process, and then follow the prompts.

4.3 Questions

4.3.1 General

- A. 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 Procurement Officer’s e-mail address indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the

Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

- B. Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least five (5) 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.

4.4 Procurement Method

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

4.4.2 General

- A. 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.
- B. 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.
- C. The Evaluation Committee will make recommendations to the Procurement Officer for the IDC contract to the responsible ESCOs whose proposals are determined to be the most advantageous to the State, considering the factors listed in [Sections 6](#) of this RFP. The Evaluation Committee will select awardees based on the **nine (9)** highest ranked firms who score above a minimum score of **80%**.

4.5 Proposals

4.5.1 Submittal, Due (Closing) Date and Time

- A. Proposals, in the number and form set forth in RFP Section 5.2 “Proposals” must be received by the Procurement Officer at the Procurement Officer’s address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.
- B. 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 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the RFP Key Information Summary Sheet will not be considered.
- C. Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the RFP Key Information Summary Sheet for receipt of Proposals.
- D. Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.

- E. 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).
- F. Multiple and/or alternate Proposals will not be accepted.
- G. Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

4.5.2 Public Information Act Notice

- A. 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., General Provisions Article, Title 4. (Also, see RFP Section 5.3.2-C “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.
- B. Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

4.6 Award Basis

4.6.1 General

- A. The Contract shall be awarded to the **nine (9)** responsible Offerors submitting Proposals that have been determined to be the most advantageous to the State, considering the evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. [See RFP Section 6](#) for further award information.
- B. Phase I Contracts will be awarded based on selection criteria as specified in Section 6.4, of this RFP.
- C. Phase I Contracts awarded under this agreement may not exceed \$250,000.
- D. Phase II contracts have no dollar limit.
- E. Phase I and Phase II contracts must be approved by the Board of Public Works if the contract exceeds \$200,000.
- F. 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.

4.7 Oral Presentation

- A. Offerors may be required to make oral presentations to State representatives. 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.

4.8 Duration of Proposal

- A. Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.9 Revisions to the RFP

- A. 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 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 eMMA. 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 timely Proposals and that remain under award consideration as of the issuance date of the addenda.
- B. 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.

4.10 Cancellations

- A. The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- B. In the event, a government entity proposes and receives the recommendation for award for the Contract resulting from this RFP, the procurement may be cancelled and the award processed as a Memorandum of Understanding in accordance with COMAR 21.01.03.01.A(4).

4.11 Incurred Expenses

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

4.12 Protest/Disputes

- A. 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).

4.13 Offeror Responsibilities

- A. 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) to this RFP ([see Section 4.23 “Minority Business Enterprise Goals”](#) and [Section 4.24 “Veteran-Owned Small Business Enterprise Goal”](#)).

- B. 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, 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 shall submit with its Proposal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- C. 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.

4.14 Mandatory Contractual Terms

- A. 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 Contract, attached herein as Attachment M. 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.

4.15 Proposal Affidavit

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

4.16 Contract Affidavit

- A. 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 which is included as Attachment N of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

4.17 Compliance with Laws/Arrearages

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

4.18 Verification of Registration and Tax Payment

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

4.19 False Statements

- A. Offerors are advised that Md. Code Ann., State Finance and Procurement Article, Section 11-205.1 provides as follows:
 - 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.
 - d) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
 - e) 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 5 years or both.

4.20 Payments by Electronic Funds Transfer

- A. By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000.
- B. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form downloaded from the Comptroller's website at <https://www.marylandtaxes.gov/>. 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.

4.21 Prompt Payment Policy

- A. This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor’s Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract “Prompt Payment” clause (see Attachment M). Additional information is available on GOMA’s website at: <https://gomdsmallbiz.maryland.gov/Pages/default.aspx>

4.22 Electronic Procurements Authorized

- 4.22.1** Under COMAR 21.03.05, unless otherwise prohibited by law, the Office of Energy & Sustainability may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.22.2** Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.22.3** “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.
- 4.22.4** In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:
- A. The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:
- 1) The RFP;
 - 2) Any amendments and requests for best and final offers;
 - 3) Pre-Proposal conference documents;

- 4) Questions and responses;
- 5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
- 6) Notices of award selection or non-selection; and
- 7) The Procurement Officer's decision on any Proposal protest or Contract claim.

B. The Offeror or potential Offeror may use eMMA or e-mail to:

- 1) Submit Proposals;
- 2) Ask questions regarding the solicitation;
- 3) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;
- 4) Submit a "No Proposal Response" to the RFP.

C. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section 4.25.5 of this subsection, utilizing e-mail or other electronic means if authorized by the Procurement Officer or Contract Monitor.

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

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

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

4.23 MBE Participation Goal

4.23.1 Establishment of Goal and Subgoals

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

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

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

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

4.23.2 Attachments

- A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule
 2. Attachment D-1B Waiver Guidance
 3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
 4. Attachment D-2 Outreach Efforts Compliance Statement
 5. Attachment D-3A MBE Subcontractor Project Participation Certification
 6. Attachment D-3B MBE Prime Project Participation Certification
 7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
 8. Attachment D-4B MBE Prime Contractor Report
 9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report

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

4.24 VSBE Goal

- A. There is no VSBE participation goal for this procurement.

4.25 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in Attachment F. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (Attachment F-1) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or

a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.

- 1) The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier (enter “1” or “2,” depending on where the majority of the service recipients are located) Contract.
- 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
- 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- E. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- F. The Offeror shall identify in the Proposal the location from which services will be provided.
- G. NOTE: Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage.

4.26 Federal Funding Acknowledgement

This Contract does not contain federal funds.

4.27 Conflict of Interest Affidavit and Disclosure

- 4.27.1** The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal.
- 4.27.2** By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.27.3** Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

4.27.4 Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

4.28 Non-Disclosure Agreement

All 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 I. This Agreement must be provided with the required documents specified herein.

4.29 HIPAA - Business Associate Agreement

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

4.30 Nonvisual Access

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

4.31 Mercury and Products That Contain Mercury

All products or equipment provided pursuant to this solicitation shall be mercury-free products. The Offeror must submit a Mercury Affidavit in the form of Attachment K with its Proposal.

4.32 Location of the Performance of Services Disclosure

This solicitation does not require a Location of the Performance of Services Disclosure.

4.33 Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

4.34 Small Business Reserve (SBR) Procurement

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

4.35 Bonds

This solicitation does not require performance, payment or proposal bonds.

4.36 Maryland Healthy Working Families Act Requirements

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

5 Proposal Format

5.1 One Part Submission

- 5.1.1 Volume I – Technical Proposal - **REQUIRED**
- 5.1.2 Volume II – Financial Proposal – **NOT REQUIRED**

5.2 Proposal Delivery and Packaging

- 5.2.1 Volume I – Technical Proposal. Proposals delivered by facsimile and e-mail shall not be considered.
- 5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.
- 5.2.3 Offerors may submit Proposals through the State’s internet based electronic procurement system, eMMA.
- 5.2.4 The Procurement Officer must receive all electronic Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.
- 5.2.5 Submission:
 - A. Technical Proposal consisting of:
 - 1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater,
 - 2) Technical Proposal in searchable Adobe PDF format,
 - 3) a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted ([see Section 4.5.2](#)), and
 - B. Financial Proposal – **NOT REQUIRED**

5.3 Format of the Technical Proposal

- 5.3.1 In addition to the instructions below, responses in the Offeror’s Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . .”). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”).
 - A. The Offeror shall address each RFP requirement (RFP Section 2 – Scope of Work and Section 3 - General) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in

Section 2 and Section 3 in order and shall contain a cross reference to the requirement.

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

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

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

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

1. Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 4.5.2 “Public Information Act Notice”). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.

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

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

D. Executive Summary (Limit to 2 pages, and Submit under TAB D)

1. The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”
2. In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see Section 4.13 “Offeror Responsibilities”).
3. The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment M), or any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

- E. Minimum Qualifications Documentation (Submit under TAB E)
1. The Offeror shall submit the required Minimum Qualifications documentation required, as set forth in RFP Section 1.
- F. Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB F)
- G. Experience and Qualification of Proposed Staff (TAB G)
- 1) Offeror must document team continuity whereby the majority of team members have served through the term of at least two (2) entire projects by submitting the following Attachments:
 - a) AA1 – Contract Manager through AA8 – Commissioning Agent
 - b) AB1, AB2 and AB 3 – Engineering Design Firm
 - c) Attachment AH – M&V Manager Certification
 - d) Attachment AD – Maryland Licensing
 - e) Organizational Chart

H. Legal Action Summary (TAB H)

This summary shall include the following:

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

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

6 Evaluation and Selection Process

6.1 Evaluation Committee

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

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

6.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub criteria within each criterion have equal weight. Technical proposals shall be determined as being either reasonably or not reasonably susceptible for award based upon receiving a minimum score of 80.

6.2.1 Team Qualification and Experience of Proposed Staff

Response to:

- A) **Attachments AA1 – Contract Monitor through AA8 Commissioning Agent** per Section 5.3.2 G (1) (a)
- B) **Attachments AB1 – AB3** per Section 5.3.2 G (1) (b)
- C) **Attachment AH – M&V Manager Certification** per Section 5.3.2 G (1) (c)
- D) **Attachment AD – Maryland Licensing** per Section 5.3.2 G (1) (d)
- E) **Organizational Chart** – Per Section 5.3.2 G (e)

6.2.2 Offeror Prior Project Experience and Technical and Managerial Approach

Response to:

- A) **Attachment AF1 – AF3 – Project Example Overview and Reference** per Section 1.1 A
- B) **Attachment CM – Contract Manager Resume** per Section 1.2.1 (3)
- C) Current or Prior State Contracts
- D) Sample Project Plan per Section 1.1 B (1)

6.2.3 Financial Strength and Disclosure and Legal Capability

Response to:

- A) Financial Requirements per Section 1.1.1 B (2)
- B) Legal Action Summary per Section 5.3.2 H.

6.3 Reciprocal Preference

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

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
- C. The other state gives a preference to its resident businesses through law, policy, or practice; and
- D. The preference does not conflict with a federal law or grant affecting the procurement Contract.

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

6.4 Selection Procedures

6.4.1 General

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

6.4.2 Selection Process Sequence

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

6.4.3 Award Determination

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

6.5 Documents Required upon Notice of Recommendation for Contract Award

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

7 RFP Attachments and Appendices

Instructions Page

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

For documents required as part of the Proposal:

1. Submitted via eMMA, submit one (1) copy of each with signatures.

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

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

Table 1: RFP ATTACHMENTS AND APPENDICES

Applies ?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
N	Not Applicable	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf)
Y	Not Applicable at this Phase	D	MBE Forms D-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal.
Y	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf)

Appl es ?	When to Submit	Label	Attachment Name
			Important: Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.
Y	As directed in forms	D	MBE Forms D-4A, D-4B, D-5 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf)
N	Not Applicable	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.
N	Not Applicable	E	VSBE Forms E-1B, E-2, E-3 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf) Important: Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.
Y	With Proposal	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf)
N	Not Applicable	G	Federal Funds Attachments (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf)
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf)

N	With Proposal	I	Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf)
N	Not Applicable	J	HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf)
N	Not Applicable	K	Mercury Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf)
N	Not Applicable	L	Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf)
Y	With Proposal	AA1-AA8	Team Continuity
Y	With Proposal	AB1 – AB3	Engineering Design Firms
Y	With Proposal	AH	M&V Manager Certification
Y	With Proposal	AF1-AF3	Project Example Overview and Reference
Y	With Proposal	AD	Engineer – Maryland Licensing
Y	With Proposal	CM	Contract Manager Resume
Y	5 Business Days after recommended award	M	Sample Contract (included in this RFP)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf)
N	Not Applicable	O	DHS Hiring Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf)
Appendices			
Applies?	When to Submit	Label	Attachment Name
Y	N/A		Abbreviations and Definitions (included in this RFP)
Y	With Proposal	1	Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-

			content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf
N	Not Applicable		Non-Disclosure Agreement (Offeror)
N	Not Applicable		Labor Categories
Y	Not Applicable		Labor Resume Form
N	Not Applicable		Performance Bond
N	Not Applicable		Payment Bond
N	Not Applicable		Proposal Bond
Additional Submissions			
Applies?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see Section 3.5); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy

Attachment A. Pre-Proposal Conference Response Form

Solicitation Number DGSR3600014 / BPM037023

ENERGY SERVICE COMPANIES- INDEFINITE DELIVERY CONTRACT (IDC) 9.0

A Pre-Proposal conference will be held on June 20, 2023 at 10:00 am Local Time via Google Meet. The link for this Pre-Proposal conference is:

Pre Bid - Energy Service Companies IDC 9.0
Tuesday, June 20 · 10:00 – 11:00am
Google Meet joining info
Video call link: <https://meet.google.com/zcu-dpci-vrx>
Or dial: (US) +1 402-396-5238 PIN: 495 092 760#

Please return this form by June 16, 2023 advising whether or not your firm plans to attend. The completed form should be returned via e-mail or fax to the Procurement Officer at the contact information below:

Matthew Smith
Department of General Services
Matthew.smith2@maryland.gov
Phone: 410-767-3039

Please indicate:

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

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

Offeror: _____
Offeror Name (please print or type)

By: _____
Signature/Seal

Printed Name: _____
Printed Name

Title: _____
Title

Date: _____
Date

Attachment B. Financial Proposal Instructions & Form

Not Applicable

Attachment C. Proposal Affidavit

See link at:

http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf.

Attachment D. Minority Business Enterprise (MBE) Forms

See link at:

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

This solicitation includes a Minority Business Enterprise (MBE) participation goal of **30% percent** and no sub goals.

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

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

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

This solicitation **does not** require a Living Wage Affidavit of Agreement.

Attachment G. Federal Funds Attachments

This solicitation **does not** include a Federal Funds Attachment.

Attachment H. Conflict of Interest Affidavit and Disclosure

This solicitation **does not** require a Conflict of Interest Affidavit and Disclosure.

Attachment I. Non-Disclosure Agreement

See Link at:

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

Attachment J. HIPAA Business Associate Agreement

This solicitation **does not** require a HIPAA Business Associate Agreement.

Attachment K. Mercury Affidavit

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

Attachment L. Location of the Performance of Services Disclosure

This solicitation **does not** require a Location of the Performance of Services Disclosure.

Attachment M. Contract - SAMPLE

DEPARTMENT OF GENERAL SERVICES (DGS)
Energy Service Companies IDC 9.0
DGSR3600014 / BPM037023

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 20__ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF GENERAL SERVICES.

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

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.3 “Financial Proposal” means the Contractor’s [pick one: Financial Proposal or Best and Final Offer (BAFO)] dated _____ (Financial Proposal date or BAFO date).
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for Energy Service Companies IDC 9.0, Solicitation # DGSR3600014 / BPM037023, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. _____ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

2. Scope of Contract

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

Exhibit A – The RFP

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

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

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

3. Period of Performance

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

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, DGS shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

[[Use this paragraph for a fixed price contract or a contract that has a fixed price component.]]The total payment under a fixed price Contract or the fixed price element of a combined fixed price –

time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

[[Use this paragraph for a contract with a time and materials component or has an indefinite quantity (IDIQ) component.]] For time and materials Contracts, IDIQ Contracts, or Contracts which include either or both a time and materials or IDIQ element(s), total payments to the Contractor pursuant to this Contract for the time and materials and IDIQ portion(s) may not exceed \$ _____ (the “NTE Amount”), which includes \$ _____ for the Initial Term[[If one or more option periods exist, then include:]] and \$ _____ for the Renewal Term(s).

[[Use this paragraph for a contract with a time and materials component, labor hour component, or has an indefinite quantity (IDIQ) component]] Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the NTE Amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult and work in good faith with DGS to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete State-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

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

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

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

The State is not liable for interest:

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

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

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

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

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

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

7. Patents, Copyrights, and Intellectual Property

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2. Except for (1) information created or otherwise owned by DGS or licensed by DGS from third parties, including all information provided by DGS to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and DGS will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.
- 7.4. Without limiting Contractor’s obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5. Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the

Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.

- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to DGS, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without DGS’s consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, DGS shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

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

9. Loss of Data

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor.

At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.

- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.7**.

10. Indemnification and Notification of Legal Requests

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

11. Non-Hiring of Employees

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

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending

resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law Prevails

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

14. Nondiscrimination in Employment

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

15. Contingent Fee Prohibition

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

16. Non-Availability of Funding

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

as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Default

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

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

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

24. Retention of Records

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

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. DGS may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at DGS's

selection. DGS may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

- 25.3 The right to audit shall include any of the Contractor’s subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure DGS has the right to audit such subcontractor(s).

26. Compliance with Laws

The Contractor hereby represents and warrants that:

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

27. Cost and Price Certification

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

28. Subcontracting; Assignment

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

29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 “Patents, Copyrights, Intellectual Property”** of this Contract;

- (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
 - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor’s liability shall be unlimited.
 - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor’s indemnification obligations for Third party claims arising under Section 10 (“Indemnification”) of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor’s indemnification liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by DGS, in all subcontracts.

31. Prompt Pay Requirements

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

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

31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of DGS concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:

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

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

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

- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.

Verification shall include a review of:

- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and

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

32. Living Wage

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

33. Use of Estimated Quantities

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

34. Risk of Loss; Transfer of Title

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

35. Effect of Contractor Bankruptcy

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to “intellectual property,” and the subject matter of this Contract, including services, is and shall be deemed to be “embodiments of intellectual property” for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code (“Code”) (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the

State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

36. Miscellaneous

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

37. Contract Monitor and Procurement Officer

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. DGS may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. DGS may change the Procurement Officer at any time by written notice to the Contractor.

38. Notices

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

If to the State:

David St. Jean
301 W. Preston St.
Baltimore, MD 21201
Phone Number: 443-591-1966
E-Mail: David.stjean1@maryland.gov

With a copy to:

Matthew Smith
Department of General Services (DGS)
301 W. Preston St., M-4
Baltimore, MD 21201
Phone Number: 410-767-3039
E-Mail: Matthew.Smith2@maryland.gov

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: _____

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: _____

Attn: _____

<<39.>> Liquidated Damages for MBE

[[If there is no MBE goal for the Contract delete this section and its heading, renumbering any subsequent sections.]]

<<39.>>1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

<<39.>>2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$<<insert value>> per day until the monthly report is submitted as required.
- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$<<insert value>> per MBE subcontractor.
- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the

MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.

- (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$<<insert appropriate rate following calculation instructions from GOSBA>> per day until the undisputed amount due to the MBE subcontractor is paid. [[Remove this sub-clause if this Contract is subject to section 15-226 of the State Finance and Procurement Article – Construction Contracts – Prompt Payment of subcontractors.]]

<<39.>>2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

<<40.>> Parent Company Guarantee (If applicable)

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

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

<<41.>> Federal Department of Health and Human Services (DHHS) Exclusion Requirements

[[Keep this section if this Contract is for a federally-funded contracts involving healthcare entities or individuals, the employment of healthcare entities or individuals, or subcontracting with healthcare entities or individuals that may be named on the DHHS List of Excluded Individuals/Entities. Otherwise, delete this section and its heading, renumbering any subsequent sections.]]

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

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

<<42.>> **Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law**

[[If this Contract falls within the mandates of HIPAA, choose only 1 of the following options, otherwise, insert the following language and delete the remaining subsections.]]

HIPAA clauses do not apply to this Contract.

[[Medical Option 1 of 3 – Use this section when the Agency is not a covered entity. The blank at the beginning would reference any statutory requirement unique to DGS unit/program, or, if there is none, the first two sentences are combined to reference “any applicable law or regulation “as follows: “The Contractor agrees to keep information obtained in the course of this Contract confidential in compliance with any applicable State and federal regulation.”]]

The Contractor agrees to keep information obtained in the course of this Contract confidential in compliance with _____ . The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health, personally identifiable, and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health, personally identifiable, and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by DGS for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health, personally identifiable, and financial information.

[[OR –Option 2 of 3 – Use this confidentiality clause when DGS unit is a covered entity and the Contractor is not a business associate.]]

<<42.>>1 The Contractor acknowledges its duty to become familiar and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

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

- (c) Otherwise providing good information management practices regarding all health information and medical records.

<<42.>>2 If in connection with the procurement or at any time during the Term, DGS determines that functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form required by DGS.

<<42.>>3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is: individually identifiable; created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and related to the past, present, or future physical or mental health or condition of an individual, the provision of healthcare to an individual, or the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

[[OR –Option 3 of 3 – Use this confidentiality clause when DGS unit is a covered entity and the Contractor is a business associate.]]

<<42.>>1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

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

<<42.>>2 Based on the determination by DGS that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the selected Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.504 and in the form as required by DGS.

<<42.>>3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

<<43.>> Hiring Agreement

[[Keep this section if this Contract might include employment by current and former Family Investment Program (“FIP”) recipients, their children, foster youth, and child support obligors (“Candidates”). The actual DHS Agreement must be included in the solicitation as Attachment O (see Section 1.43) Delete this clause if inapplicable, and revise the numbering of the clauses in this Contract accordingly. Otherwise, delete this section and its heading, renumbering any subsequent sections.]]

<<43.>>1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Services (DHS) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Offeror and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Offeror that it is being recommended for Contract award. The Hiring Agreement will become effective concurrently with the award of the Contract.

<<43.>>2 The Hiring Agreement provides that the Contractor and DHS will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

<<44.>> Limited English Proficiency

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

<<45.>>Maryland’s Green Purchasing Reporting Requirements

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

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

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

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland
DEPARTMENT OF GENERAL SERVICES
DGS

By:

By: <<agencyContractSigner>>,
<<agencyContractSignerTitle>>

Date

PARENT COMPANY (GUARANTOR) (if applicable)

By:

By:

Date

Date

Approved for form and legal sufficiency
this ____ day of _____, 20__.

Assistant Attorney General

APPROVED BY BPW: _____
(Date) (BPW Item #)

Attachment N. Contract Affidavit

See link at:

<http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

Attachment O. DHS Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

Attachment P. Phase II Contract - SAMPLE

DEPARTMENT OF GENERAL SERVICES (DGS)
Energy Service Companies IDC 9.0
DGSR3600014 / BPM037023

THIS AGREEMENT, made this ___ day of __, 20__ (Two Thousand Twenty Three) (hereinafter referred to as the “Effective Date”), by and between, _____ herein called “Contractor”, and the State of Maryland, acting by and through the Department of General Services, (hereinafter referred to as the "State" or “DGS”) acting on behalf of the Department of _____ located _____
Witnessed, that the Contractor and Owner for the consideration herein mentioned agree as follows:

Article 1. Scope of Project

- A.** Contractor shall furnish all of the materials and perform all of the work and provide the guarantees and savings and do everything required by the Contract Documents, all of which are made a part hereof and are referred to herein as the "Contract". Here follows a list of said documents:
- (1) This Agreement
 - (2) Indefinite Delivery Contract No. XXXX, dated XXXX, 20XX, and documents identified therein as part of the Contract Documents
 - (3) Approved drawings and specifications
 - (4) Proposal entitled “Phase II Proposal for the Department of _____ (hereinafter called the “Phase II Proposal”)
- B.** In the event of a conflict between or among provisions of the Contract Documents, the documents shall be controlling in the order in which they are listed in Section III, Article 24- General Conditions of Indefinite Delivery Contract No.

Article 2. Time of Completion- The project shall be commenced upon written authorization in the form of Notice to Proceed (NTP) and shall be substantially completed within _____months thereafter. For each day that any work shall remain uncompleted beyond the time(s) specified in the project schedule, the Contractor shall be liable for liquidated damages in the amount of \$500.00 per day.

Article 3. The Contract Price – The owner shall pay the Contractor as follows:

subject to and in accordance with the Contract Documents, as follows:

<u>Description</u>	<u>Project Cost</u>	<u>Terms of Payment</u>
Phase I Feasibility Study	\$	Payable based on schedule of values as submitted in Phase II Proposal.
Design/Construction	\$	Payable Monthly during construction as progress payments as approved by DGS based upon the schedule of values included in the Phase II Proposal.
Total Design/Construction =		\$
Maintenance (over 13 years)	\$	Represents total expenditure over a thirteen-year period. Payable monthly by _____ Operating Budget in accordance with the Cash-flow
M&V (DGS over 13 years)	\$	Represents total expenditure over a thirteen-year period. Payable monthly by _____ Operating Budget in accordance with the Cash-flow
Annual Energy Guarantee Bond (over 13 years)	\$	Represents total expenditure over a thirteen-year period. Payable monthly by _____ Operating Budget in accordance with the Cash-flow
Total Contract Compensation for ESCO =		\$00,000
Consulting Service (DGS over 13 years)	\$	Represents total expenditure over a thirteen-year period. Payable to DGS from _____ Operating Budget in accordance with the Cash-flow
M&V (DGS over 13 years)	\$	Represents total expenditure over a thirteen-year period. Payable to DGS from _____ Operating Budget in accordance with the Cash-flow
Total Project Cost		\$

- A. Acknowledgment of Election of Owner Financing. By executing this Agreement, Contractor acknowledges that the owner has elected to exercise its option to finance the energy improvements constituting capital expenditures to the Owner’s facility through Owner’s Energy Performance Contracting Master Lease Purchased Agreement. Contractor further acknowledges that the Owner’s election of tax exempt financing places limitations on the private business use of such funds and the property financed with such funds.
- B. Management Services. “Management Services” is defined as all ongoing maintenance, training, service, monitoring and verification of energy savings as outlined in the Maintenance Services Section 8 of Contractor’s Phase II Proposal. Payment for Management Services, consisting of a fixed fee payable annually (invoiced monthly), shall be as set forth under Financial Summary and M & V Costs, in the Financial Analysis Section _____ of the Contractor’s Phase II Proposal. The

funds used to pay Contractor for Management Services will not be financed with Owner’s Energy Performance Contract Master Lease Purchase Finance Agreement.

- C. Severability of Management Services and Guarantee. The parties agree that the Management Services may be terminated separately from the Guarantee in accordance with the terms of this Agreement.
- D. Unless otherwise terminated sooner in accordance with the terms of the Contract Documents, this Agreement shall remain in force and effect for the period described in the Contractor’s Phase II Proposal, provided that this Agreement shall automatically terminate on the date which is thirteen (13) years from the first date following substantial completion and acceptance by DGS.

This Energy Performance Contract EC-000-0000-000 may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

INWITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

ESCO

Secretary

General Manager (seal)

(1) WITNESS

**STATE OF MARYLAND
DEPARTMENT OF GENERAL
SERVICES**

Procurement Officer

Approved by:
Board of Public Works

ITEM NO _____
DATE

Approved as to legal from
And sufficiency this _____ day
Of _____ 20__

Assistant Attorney General

Appendix 1. – Abbreviations and Definitions

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

- A. Acceptable Use Policy (AUP) - A written policy documenting constraints and practices that a user must agree to in order to access a private network or the Internet.
- B. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
- C. Application Program Interface (API) – Code that allows two software programs to communicate with each other.
- D. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- E. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- F. Commissioning – Project commissioning is the process of assuring that all systems and components of a building are designed, installed, tested, operated, and maintained according to the operational requirements of the owner and the equipment manufacturer(s). The commissioning process is the integrated application of a set of engineering techniques and procedures to check, inspect and test every operational component of the project: from individual functions (such as instruments and equipment) up to complex amalgamations (such as modules, subsystems and systems).
- G. Commissioning Agent – Staff with experience in Commissioning projects and who holds an ASHRAE BCxP certification. Equivalent certifications may be accepted at the discretion of the State.
- H. Comprehensive Maintenance – during the entire term of an EPC, all equipment and systems installed under the contract are maintained in accordance with manufacturer’s requirements and system design criteria, including replacement of worn, failed, and doubtful components with new components of equal or superior quality.
- I. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- J. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. DGS may change the Contract Monitor at any time by written notice to the Contractor.
- K. Contractor – The selected Offeror that is awarded a Contract by the State.

- L. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
- M. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- N. Deficiency Report – During Phase I, a report detailing existing marginal or defective equipment and components that may adversely impact the energy use of the facility, and/or adversely affect the Performance Guarantee.
- O. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- P. Enterprise License Agreement (ELA) – An agreement to license the entire population of an entity (employees, on-site contractors, off-site contractors) accessing a software or service for a specified period of time for a specified value.
- Q. Final Acceptance – Final Acceptance shall occur only when all contract work including all punch list work is complete to the written satisfaction of the Department.
- R. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- S. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
- T. IPMVP – International Performance Measurement and Verification Protocol, current edition.
- U. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Sections 3.10**.
- V. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- W. Milestone – an important event, subject to liquidated damages, in the project timeline and schedule as described in the Critical Path Method (CPM) provided by Contractor.
- X. 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.
- Y. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- Z. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- AA. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.

- BB. Offeror – An entity that submits a Proposal in response to this RFP.
- CC. Performance Period – The Performance Period is the period of time during which guaranteed cost avoidance must be met. It commences on the first day of the first full month following Substantial Completion and continues for the remainder of the financing term.
- DD. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- EE. Post Installation Verification Report (PIR) – A detailed report issued by the ESCO following project Final Acceptance, which documents the final as-built status of each ECM. The PIR shall serve to document and verify the capability of the project to achieve the annual guaranteed performance, including any request for baseline adjustments, or any expected shortfall in one or more annual reconciliation periods. The PIR shall include, at a minimum:
- a. Actual installed vs. proposed quantities (e.g., lighting fixtures, plumbing fixtures, control valves, etc.).
 - b. Actual vs. installed equipment capacity and performance parameters (e.g., lighting fixture wattage, motor horsepower, lighting illumination levels, heating or cooling water temperatures).
 - c. Any special operations and maintenance conditions which may affect the project’s ability to achieve annual guaranteed performance.
 - d. Contractor field notes, preliminary and post-performance measurements, and completed inspection forms.
 - e. Detailed description and documentation of any request for a baseline adjustment.
- FF. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The Department of General Services may change the Procurement Officer at any time by written notice to the Contractor.
- GG. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- HH. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- II. Request for Proposals (RFP) – This Request for Proposals issued by the Office of Energy & Sustainability, with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- JJ. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
- KK. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.

- LL. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- MM. Service Level Agreement (SLA) - Commitment by the Contractor to the Office of Energy & Sustainability> that defines the performance standards the Contractor is obligated to meet.
- NN. SLA Activation Date - The date on which SLA charges commence under this Contract, which may include, but to, the date of (a) completion of Transition in, (b) a delivery, or (c) releases of work.
- OO. Software - The object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. Software also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.
- PP. Software as a Service (SaaS) - A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of this RFP, the terms SaaS and PaaS are considered synonymous and the term SaaS will be used throughout this document.
- QQ. State – The State of Maryland.
- SS. Source Code – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.
- TT. System Availability – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.
- UU. System Documentation – Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:
- 1) Source Code: This includes source code created by the Contractor or subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract;
 - 2) All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;
 - 3) All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;

- 4) All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer's notes and other documentation;
- 5) A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software);
- 6) All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides; and
- 7) Operating procedures.

VV. Task Order – A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Task Order.

WW. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.

XX. Third Party Software – Software and supporting documentation that:

- 1) are owned by a third party, not by the State, the Contractor, or a subcontractor;
- 2) are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and
- 3) are specifically identified and listed as Third Party Software in the Proposal.

YY. Total Proposal Price - The Offeror's total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.

ZZ. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.

AAA. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

BBB. Work Order – A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Work Order.

Appendix 2. – Offeror Information Sheet

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

Appendix 3. Attachments AA1 – AA8

See separate PDF document for Attachments AA1 – AA8.

Appendix 4. Attachments AB AD AF AH and CM

See separate PDF documents for Attachments AB, AD, A,F, AH and CM

ATTACHMENT NUMBER AA1: CONTRACT MANAGER

ATTACHMENT NUMBER AA1 - Contract Manager				SECTION 5.3.2 G (1) (a)		
Name:				No. of years with current ESCO:		
Project Name (list three)	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Construction Begin date	Construction End date	No. of Months as Project Mgr.

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT NUMBER AA2: MAINTENANCE MANAGER

ATTACHMENT NUMBER AA2: Maintenance Manager				SECTION 5.3.2 G (1) (a)			
Name:				No. of years with current ESCO:			
Project Name (list three)	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Overall Value of Maintenance Contract (\$)	Maintenance Start Date	Maintenance End Date	No. of Months as Maintenance Mgr.

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AA3: ELECTRICAL ENGINEER

ATTACHMENT NUMBER AA3: Electrical Engineer				SECTION 5.3.2 G (1) (a)		
Name:				No. of years with current ESCO:		
Project Name (list three)	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Construction Begin date	Construction End date	No. of Months per Project as Electrical Engineer

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AA4: Mechanical Engineer

ATTACHMENT NUMBER AA4: Mechanical Engineer				SECTION 5.3.2 G (1) (a)		
Name:				No. of years with current ESCO:		
Project Name (list three)	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Construction Begin date	Construction End date	No. of Months per Project as Mechanical Engineer

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AA5: Structural Engineer

ATTACHMENT NUMBER AA5: Structural Engineer				SECTION 5.3.2 G (1) (a)		
Name:				No. of years with current ESCO:		
Project Name (list three)	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Construction Begin date	Construction End date	No. of Months per Project as Structural Engineer

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AA6: Construction Manager

ATTACHMENT NUMBER AA6: Construction Manager				SECTION 5.3.2 G (1) (a)		
Name:				No. of years with current ESCO:		
Project Name (list three)	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Construction Begin date	Construction End date	No. of Months per Project as Construction Manager

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AA7: M&V Manager

ATTACHMENT NUMBER AA7: M&V Manager				SECTION 5.3.2 G (1) (a)		
Name:				No. of years with current ESCO:		
Project Name (list three)	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Savings Guarantee Begin date	Savings Guarantee End date	No. of Months per Project as M&V Manager

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AA8: COMMISSIONING AGENT

ATTACHMENT NUMBER AA8: Commissioning Agent		SECTION 5.3.2 G (1) (a)	
Name:		No. of years with current ESCO:	
Project Name (list three)	Capital Project Value (\$)	Commissioning Agent Certification Type and Number	No. of Months per Project as Commissioning Agent

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT NUMBER AB3: SECTION 5.3.2 G (1) (b)

ENGINEERING DESIGN FIRM (3)

Name of Firm	Time period of contractual relationship with ESCO (years)	Project(s) Name	Name of Contractor/ESCO managing project	Capital Project Value (\$)	Project Guarantee Term (Yr)	Annual Savings Guarantee (\$)	Construction Begin date	Construction End date

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AH: M&V MANAGER CERTIFICATION

ATTACHMENT NUMBER (AH): SECTION 5.3.2 G (1) (c)			
M&V MANAGER CERTIFICATION			
Position	Name	CMVP number	Expiration date
M&V Manager			

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AD: MARYLAND LICENSING

ATTACHMENT AD: SECTION 5.3.2 G (1)				
ENGINEER: MARYLAND LICENSING				
Position	Name	Name of firm	MD license number	Expiration date
Electrical engineer				
Structural Engineer				
Mechanical Engineer				

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT AF1 - PROJECT EXAMPLE OVERVIEW AND REFERENCE

ATTACHMENT AF1: SECTION 1.1. B (One chart per project)	
PROJECT EXAMPLE OVERVIEW AND REFERENCE (Detailed description of projects on separate pages)	
Project Client	
Type of facility	
Project location	
Project value (\$)	
Project size in square feet	
End construction date	
Start and End date performance phase	
IPMVP Option Type (A, B, C or D)	
Savings Guarantee Y or N?	
Amount of Savings Guarantee	
Length of Finance period	
Is Comprehensive Maintenance included Y or N? (as defined in Appendix 1)	
Name and contact (include phone number and/or email address) of Project reference	

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT NUMBER AF2: SECTION 1.1 B (One chart per project)	
PROJECT EXAMPLE OVERVIEW AND REFERENCE (Detailed description of projects on separate pages)	
Project Client	
Type of facility	
Project location	
Project value (\$)	
Project size in square feet	
End construction date	
Start and End date performance phase	
IPMVP Option Type (A, B, C or D)	
Savings Guarantee Y or N?	
Amount of Savings Guarantee	
Length of Finance period	
Is Comprehensive Maintenance included Y or N? (as defined in Appendix 1)	
Name and contact (include phone number and/or email address) of Project reference	

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT NUMBER AF3: SECTION 1.1 B (One chart per project)	
PROJECT EXAMPLE OVERVIEW AND REFERENCE (Detailed description of projects on separate pages)	
Project Client	
Type of facility	
Project location	
Project value (\$)	
Project size in square feet	
End construction date	
Start and End date performance phase	
IPMVP Option Type (A, B, C or D)	
Savings Guarantee Y or N?	
Amount of Savings Guarantee	
Length of Finance period	
Is Comprehensive Maintenance included Y or N? (as defined in Appendix 1)	
Name and contact (include phone number and/or email address) of Project reference	

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

ATTACHMENT CM: CONTRACT MANAGER RESUME

ATTACHMENT CM: SECTION 1.2.1 (3)	
NAME	
TITLE	
Current Position – include length of time in position	
Employment History	
Education, licenses and certifications	
Five Year History of EPC Projects – provide project name, date of completion, value	
Describe the specific role and responsibilities this individual had for each listed project	
Provide a detailed description of the role and responsibilities this individual will have for the duration of this contract	
Provide photocopies of all licenses and certifications on separate pages	

Signature: _____

Date: _____

Printed Name of Authorized Representative: _____

**AMENDMENT 1
DATE: June 21, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023**

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

This Amendment is issued to clarify, add to, delete from, correct and/or change the BID documents to the extent indicated and is hereby made a part of the said BID documents on which the contract will be based. This Amendment becomes part of the bid package. COMAR 21.05.02.08 requires all Amendments issued to be acknowledged.

Issued by:

**State of Maryland
Department of General Services
Office of Procurement and Logistics
301 W. Preston Street - Room M-3
Baltimore, Maryland 21201**

**Matthew Smith
DGS Procurement Officer
Matthew.Smith2@maryland.gov
410.767.3039**

Acknowledgment

Date

AMENDMENT 1
DATE: June 21, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. This amendment is being issued to acknowledge the attendees of the pre-bid conference held June 20, 2023.
2. Please note the MBE Utilization and Fair Solicitation Affidavit is NOT required at this stage of the proposal. However MBE requirements will be assigned during Phase 2. Please be advised RFP BPM037023 has been updated.

For any questions please contact the Procurement Officer.

END OF AMENDMENT #1

Wes Moore
Governor

Aruna Miller
Lt Governor



Atif Chaudhry
Secretary

Nelson E. Reichart
Deputy Secretary

OFFICE OF STATE PROCUREMENT

PRE-PROPOSAL CONFERENCE SUMMARY

June 20, 2023 10:00 am Local

DGSR3600014 / BPM037023

Project Title: Energy Service Companies – Indefinite Delivery Contract (IDC) 9.0

Ladies/Gentlemen:

The Department of General Services conducted a Pre-Proposal Conference Call for Energy Service Companies – IDC 9.0 on June 20, 2023 at 10:00 am local. An attendance list with the names of attendees has been distributed along with this Summary.

This Summary is being issued to document the Pre-Proposal Conference. The Procurement Officer, Matthew Smith, convened the conference at 10:02 am and recognized the Office of Energy & Sustainability personnel, the Office of State Procurement Senior Compliance Officer and all vendors present.

Mr. Smith introduced the procedures regarding the Request for Proposal, where on eMaryland Marketplace (eMMA) it may be found, how to submit a proposal, all documents necessary for a complete submission and stated the RFP required a Technical Portion only, no Financial Portion is required. Also stressed was the importance and requirement of the Minimum Qualifications and the MBE requirements.

Mr. Smith opened the floor to questions with vendors stating their questions will be submitted in writing due to the lengthy explanations involved. Topics to be addressed in subsequent amendments are the MBE requirements of the RFP, an understanding of the evaluation sheet and clarifications on what should be submitted per Tab per the RFP.

Mr. Smith asked that any additional questions to be submitted via email for an amendment to be created. The conference was concluded at 10:30 am.

Date Issued: June 21, 2023

By: *Matthew Smith*

Matthew Smith, CPP, CMPO + GPS



DGSR3600014 / BPM030723 - Energy Service Company IDC 9.0

Pre Bid Conference June 200, 2023 10:00am

Video call link: <https://meet.google.com/zcu-dpci-vrx>; Or dial: (US) +1 402-396-5238 PIN: 495 092 760#

Vendor	Representative	Phone	Email	In Attendance
ESG (Energy Systems Group)	Brett Daniels	410-981-6646	bdaniels@esg.com	Y
Noresco, LLC	Cherise Seals	443-830-0439	cseals@noresco.com	y
Noresco, LLC	Kimberly Wawrzekiewicz			Y
Schneider Electric	Chris Dellinger	240-469-5771	chris.dellinger@schneider-electric.com	y
Southland Energy	Stephanie Bridgeforth	800-613-6240	Sbridgeforth@southland.com	Y
Veregy	Adam Shuster		ashuster@veregy.com	y
Veregy	Garry Montgomery		gmontgomery@veregy.com	y
Veregy	Lisa Schulz	614-205-8996	lschultz@veregy.com	Y
ABM	Debbie Brady		debbie.brady@abm.com	Y
ABM	Frank LeBlanc			Y
	John Poggi			y
	Larry Pitts			y
	Alicia Singleton			y
	Kofi Brown			y
	Tyler Nichols			y
Office of State Procurement	Shirley Jackson			y
Office of Energy & Sustainability	Tobias Fitzick			y
Office of Facilities Management & Development	Will Andalora			y
Office of Energy & Sustainability	David St. Jean			y
Office of Energy & Sustainability	Richard Louis			y

AMENDMENT 2
DATE: June 26, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

This Amendment is issued to clarify, add to, delete from, correct and/or change the BID documents to the extent indicated and is hereby made a part of the said BID documents on which the contract will be based. This Amendment becomes part of the bid package. COMAR 21.05.02.08 requires all Amendments issued to be acknowledged.

Issued by:

State of Maryland
Department of General Services
Office of Procurement and Logistics
301 W. Preston Street - Room M-3
Baltimore, Maryland 21201

Matthew Smith
DGS Procurement Officer
Matthew.Smith2@maryland.gov
410.767.3039

Acknowledgment

Date

AMENDMENT 2
DATE: June 26, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. Please be advised of the following updates:
 - a. The Pre-Bid Conference Attendance List has been updated and attached to this amendment.
 - b. A sample of the Technical Proposal Evaluation Criteria to be used is attached to this amendment.

2. The following questions have been raised in regard to this solicitation.

Q1. Regarding the new minimum qualifications, (Offeror) does not have a rating of unsecured debt so we are looking to submit with a parent guarantee. Would our parent, who is a utility holding company, need to be registered with SDAT at the time of submission or just before any contracts were issued to (Offeror) w/ parent company signature (per the sample contract, clause 40, page 111 & page 115 of the RFP)?

A1. Please refer to Sections 4.13 – Offeror Responsibilities and 4.18 Verification of Registration and Tax Payment. Additionally, Offerors are to be registered and in Good Standing with the State of Maryland prior to any contract execution.

Q2. On Page 7 of 128, Section Energy Service Companies Corporate Experience - Item B (1): Please define the “sample project plan” mentioned, in more detail, regarding what is eligible and *not* eligible to comply with the “sample project plan.” Does that include and make an Energy Audit eligible and the subsequent Scope of Work that is implemented for a referenced project?

A2. As stated in **Section 1.1 Energy Service Companies Corporate Experience; Paragraph B (1):** “Sample Project Plan *which shall comprise of* an engineering feasibility study conducted by the Offeror’s project team, in correlation to Attachment AF1, AF2 or AF3. The document shall be clearly identified as to which Attachment it relates to and labeled as “Sample Project Plan.” The study *shall include* detailed energy and economic calculations preliminary design and specifications, narrative clearly indicating scope of work.”

For any questions please contact the Procurement Officer.

END OF AMENDMENT #2

AMENDMENT 3
DATE: June 27, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

This Amendment is issued to clarify, add to, delete from, correct and/or change the BID documents to the extent indicated and is hereby made a part of the said BID documents on which the contract will be based. This Amendment becomes part of the bid package. COMAR 21.05.02.08 requires all Amendments issued to be acknowledged.

Issued by:

State of Maryland
Department of General Services
Office of Procurement and Logistics
301 W. Preston Street - Room M-3
Baltimore, Maryland 21201

Matthew Smith
DGS Procurement Officer
Matthew.Smith2@maryland.gov
410.767.3039

Acknowledgment

Date

AMENDMENT 3
DATE: June 27, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. Please be advised the Pre-Bid Attendance Sheet listed an incorrect email for Stephanie Bridgeforth of Southland Industries. The correct email is: sbridgeforth@southlandind.com
2. The following questions have been raised in regard to this solicitation.

Q1. Section 4.28 requires that the Non-Disclosure Agreement (NDA) in Attachment I be submitted with the proposal. Under the first paragraph in the Recitals section, the provided NDA specifies it is only applicable “WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for...”. This statement says the NDA is only required for Contractors awarded a Contract after the RFQ. Can you confirm a signed NDA is not required to be submitted with our proposal?

A1. A Non-Disclosure Agreement IS a required document of this RFP. The agreement shall be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing it is suggested that this document is completed & submitted with the Proposal.

Q2. Section 4.28 requires that the Non-Disclosure Agreement (NDA) in Attachment I be submitted with the proposal. Form I-3 as part of the NDA is only required when Contractors are returning information that is subject to an NDA. Since we are not returning any information with the proposal, can you confirm that a signed form I-3 is not required to be submitted with our proposal?

A2. The NDA is a required document of the RFP.

Q3. What tab letter should Section 5.3.2.G Experience and Qualifications of Proposed Staff be submitted under? The RFQ specifies Tab H, but should this be Tab G?

A3. Correct. Section 5.3.2 (G) – Experience and Qualification of Proposed Staff shall be listed under Tab G, not H. The RFP has been updated to reflect this.

Q4. Section 5.3.2.H Legal Action Summary doesn’t specify a Tab to be submitted under. Should this be Tab H?

A4. Correct. Section 5.3.2 (H) – Legal Action Summary shall be listed under Tab H. The RFP has been updated to reflect this.

Q5. Under Scoring Criteria 6.2.2 Offeror Prior Project Experience, Current or Prior State Contracts is listed, what tab should this content be submitted under?

A1. Please submit the Current or Prior State Contracts with the Sample Project Plan, Section 1.1 (B) (1).

For any questions please contact the Procurement Officer.

END OF AMENDMENT #3

**AMENDMENT 4
DATE: July 5, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023**

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

This Amendment is issued to clarify, add to, delete from, correct and/or change the BID documents to the extent indicated and is hereby made a part of the said BID documents on which the contract will be based. This Amendment becomes part of the bid package. COMAR 21.05.02.08 requires all Amendments issued to be acknowledged.

Issued by:

**State of Maryland
Department of General Services
Office of Procurement and Logistics
301 W. Preston Street - Room M-3
Baltimore, Maryland 21201**

**Matthew Smith
DGS Procurement Officer
Matthew.Smith2@maryland.gov
410.767.3039**

Acknowledgment

Date

AMENDMENT 4
DATE: July 5, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. The following questions have been raised in regard to this solicitation.

Q1. Are MBE Forms D-4A , D-4B, and D-5 to be completed and returned at this stage of the proposal?

A1. Per Amendment 1, the MBE Utilization and Fair Solicitation Affidavit and additional MBE forms are NOT required at this phase.

Q2. Are we to complete and return Attachment F Living Wage Affidavit of Agreement at this stage of the proposal?

A2. Yes. This Attachment may be found here:

<https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf>

Q3. Are we to complete and return Attachment H Conflict of Interest Affidavit and Disclosure at this stage of the proposal?

A3. Attachment H – Conflict of Interest Affidavit is NOT required.

For any questions please contact the Procurement Officer.

END OF AMENDMENT #4

AMENDMENT 5
DATE: July 6, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

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Acknowledgment

Date

AMENDMENT 5
DATE: July 6, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. The following questions have been raised in regard to this solicitation.

Q1. Regarding some information requested, I am unsure of what section to place them in. What section should Financial requirements and Insurance be placed? Same with the Guarantee information?

A1. This phase of the RFP does not require Financial Information such as pricing and is not to be included with your submission. The Financial Requirements as required in Section 1.1 (B) (2) shall be included with the required documents submitted under Tab G – Experience & Qualification of Proposed Staff.

Per Section 3.5 – Insurance Requirements, within five (5) days of notice of award, vendor shall provide the Certificate of Insurance as specified.

Per Section 5.3.2 (E) please submit the Guarantee under Tab E as this is a Minimum Qualification.

Q2. What the purpose for requiring a Word submission?

A3. This is the preference of the State.

Q3. On page 75 of the RFP, there are no requirements listed under Tab F. What information is required under Tab F?

A3. The Offeror's Technical Response to the RFP Requirements and Proposed Workplan is to be submitted under Tab F.

Q4. On page 80 of the RFP, it lists that Attachment F needs to be submitted with the proposal but on page 88 it states that Attachment F is not required. Can the State confirm if Attachment F is Yes, required or No, not required?

A4. Attachment F – Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement **IS** a requirement of the RFP.

Q5. On page 80 of the RFP, it lists that Attachment H needs to be submitted with the proposal but on page 90 it states that Attachment H is not required. Can the State confirm if Attachment F is Yes, required or No, not required?

A5. Attachment H – Conflict of Interest Affidavit and Disclosure is a requirement of the RFP.

Q6. On page 82, the Labor Resume Form shows a Y that it applies but under the When to Submit, it shows Not Applicable – Should the Labor Resume Form be submitted with the Proposal, at a later date or not at all?

A6. The Labor Resume Form is **NOT** applicable to this RFP.

Q7. Is it the intent to include Attachment AD and the Organizational Chart in both Tabs E and G? [Page 8 and 75]

A7. Please provide Attachment AD and the Organizational Chart under Tab G.

Q8. On page 7, Section 1.1(B)(2) – If a Contractor does not have unsecured debt that requires Investment Grade Ratings, can an appropriate answer be to explain this in the Proposal or Is N/A sufficient OR is there another way to answer this part of the Financial Requirements of the proposal? I am unsure how to respond to the question as “Obtaining a Guarantor” does not seem to solve the request. Please elaborate on how best to meet this requirements and / or respond under the circumstances.

A8. Should this situation apply please provide a statement included in the appropriate Tab providing an explanation of why this requirement does not apply.

For any questions please contact the Procurement Officer.

END OF AMENDMENT #5

AMENDMENT 6
DATE: July 14, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

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Acknowledgment

Date

AMENDMENT 6
DATE: July 14, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. This solicitation has been extended by one (1) week. The new due date is July 27, 2023.
2. Per page 3, all questions relating to this solicitation were due July 6, 2023. An amendment shall be posted shortly to address questions which have been asked prior to this date and that are not yet addressed.
3. The following questions have been raised in regard to this solicitation.

Q1. Parent Guarantee - Instead of a Parent Guarantee, can other acceptable guarantees be provided? Can a surety bond or guaranteed energy savings performance bond be submitted instead?

A1. Surety bonds and guaranteed energy savings performance bond are both acceptable.

Q2. On page 81 of the RFP, it lists that Attachment N needs to be submitted 5 days after recommended award but on page 116 it states that Attachment N is required. Does Attachment N need to be submitted 5 days after the recommended award to establish a list of qualified Energy Service Companies who will have the opportunity to compete on potential EPC projects?

A2. Attachment N is required five (5) days after recommended award.

Q3. With regards to the State's response of the "Offeror's Technical Response to the RFP Requirements and Proposed Workplan is to be submitted under Tab F.", on what page number can the specific RFP Requirements be found and what page number provides details as to what the Proposed Workplan should include?

A3. Please see the below for the following to be provided under Tab F – Offeror Technical Response to RFP Requirements and Proposed Work Plan:

- A. Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB F)

- 1) The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order, and shall contain a cross reference to the requirement.
- 2) Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
- 3) The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP **Section 2**, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- 4) Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal.
- 5) The Offeror shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.
- 6) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.7**.
- 7) The Offeror shall provide a Backup solution/ strategy recommendation as part of its Proposal. The Offeror shall include a deliverable description and schedule describing the proposed Deliverables per **Section 2.6.33**.

For any questions please contact the Procurement Officer.

END OF AMENDMENT #6

**AMENDMENT 7
DATE: July 17, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023**

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

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Acknowledgment

Date

AMENDMENT 7
DATE: July 17, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. The following questions have been raised in regard to this solicitation.

Q1. If they don't include an MBE in the original solicitation process and are able to bid without sourcing any MBEs or making any efforts to vet them, what is the guarantee that they will follow through on the stipulated diversity spend?

A1. As this solicitation consists of two phases, the MBE submission is only required during the second phase. If a vendor submits a bid under either phase and does not include the required information, the vendor may be found nonresponsive and not responsible.

Q2. Can we get reports on their actual diversity spend, what companies they vetted, and how much of their total project award size went to MBEs?

A2. This information is not currently available.

Q3. If they want to wait till, they are awarded and include MBE's on TORFP's, what is the guarantee that they'll (Prime) continue to partner with that MBE for the remainder of the project?

A3. The offeror cannot wait until contract award prior to naming the MBE as it is a requirement of the solicitation, (phase two.) Once an MBE is named on the D1-A form and awarded as part of the contract, a vendor cannot remove that MBE without cause. Please refer to COMAR 21.11.03.13 and 21.11.03.12.

Q4. What stipulations if any will be put in place to ensure that any diversity spend directly affects Maryland businesses? Are Prime's going to be required to source Maryland MBEs? Can we get a record of the MBEs that participated in the ESCO 8.0 and how many of them were Maryland based?

A4. Certified MBE's may be found through the MDOT website:
<https://marylandmdbe.mdbecert.com/?TN=marylandmdbe>. A report of ESCO 8.0 MBE participation is not available.

Q5. Can the State please clarify that they would like the respondent to include the Minimum Qualification 1.1.B.(2) Financial Requirements to be included in Tab G of the response

instead of Tab E Minimum Qualifications? If so, can the State please clarify where the respondent should include 1.1.B.(2) Financial Requirement within Tab G?

A5. Per Amendment 5, the Financial Requirements required per Section 1.1 (B) (2) shall be included under Tab G. This may be inserted after the Organizational Chart.

For any questions please contact the Procurement Officer.

END OF AMENDMENT #7

**AMENDMENT 8
DATE: July 21, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
Office of State Procurement
ITB NUMBER: DGSR3600014 / BPM0037023**

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Acknowledgment

Date

AMENDMENT 8
DATE: July 21, 2023
STATE OF MARYLAND.
DEPARTMENT OF GENERAL SERVICES
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ITB NUMBER: DGSR3600014 / BPM0037023

CONTRACT TITLE: Energy Service Companies Indefinite Quantity (IDC) 9.0

ATTENTION ALL BIDDERS:

1. This solicitation has been extended through August 1, 2023, 2:00 pm Local Time.

For any questions please contact the Procurement Officer.

END OF AMENDMENT #8