



DEPARTMENT OF GENERAL SERVICES

REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. MDDGS31037983

Issue Date: May 14, 2018

INDEFINITE DELIVERY CONTRACT (IDC)

I.D. No. EPC-IDC-8.0

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

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

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

Title: Indefinite Delivery Contract (IDC 8.0)
Solicitation No: MDDGS31037983

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

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with the State of Maryland is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the Proposal 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
RFP KEY INFORMATION SUMMARY SHEET**

Request for Proposals: Indefinite Delivery Contract (IDC 8.0)

Solicitation Number: MDDGS31037983

RFP Issue Date: May 14, 2018

RFP Issuing Office: Department of General Services

Procurement Officer: Gwendolyn Hudson
Department of General Services
301 West Preston Street, Suite M-3
Baltimore, Maryland 21201
Phone: 410-767-7662 Fax: 410-333-5509
E-mail: gwendolyn.hudson@maryland.gov

Contract Monitor: David St. Jean, Director
Office of Energy Performance & Conservation
Department of General Services
301 West Preston Street, Suite 1542
Baltimore, Maryland 21201
Phone: 410-767-4472(Fax: 410-767-4508)
E-mail: david.stjean1@maryland.gov

Proposals are to be sent to: Department of General Services
Management Support/BPW
301 West Preston Street, Suite M-6
Baltimore, Maryland 21201
Attention: Gwendolyn Hudson

Pre-Proposal Conference: May 22, 2018 at 10:00 a.m. Local Time
Executive Conference Room
301 West Preston Street
Baltimore, Maryland 21201

*****All Offerors are to submit all questions on the Q & A Tab in eMaryland Marketplace*****

**Proposal Due (Closing)
Date and Time** June 14, 2018 at 2:00 p.m. Local Time

Contract Duration: See Section 2.4

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

VSBE Subcontracting Goal: 0%

Contract Type: Request For Proposal / Energy Performance

SBR Designation: No

Federal Funding: No

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SECTION 1 – MINIMUM QUALIFICATIONS

1.1 Offeror Minimum Qualifications

No Minimum Qualifications.

For evaluation criteria see SECTION 6.

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SECTION 2 – SCOPE OF WORK: CONTRACTOR REQUIREMENTS

2.1 Summary Statement

- 2.1.1** The State of Maryland has utilized Energy Performance Contracts (EPCs) to reduce energy consumption of State entities for over a decade and through this Request For Proposals (RFP) plans to continue utilizing these contracts to achieve an even greater energy reduction for the State.
- 2.1.2** 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, as outlined below:
- 2.1.3** Selection Phase – During which Offerors have an opportunity to bid on a particular project. Provide an initial competitive proposal that details a plan to reduce energy and energy related maintenance costs. This proposal will be submitted as the Phase I proposal for review and selection by the state.
- 2.1.4** 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.
- 2.1.5** 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.
- 2.1.6** Phase III - Provide measurement & verification and energy savings guarantee. Additionally, this phase will include maintenance services.
- 2.1.7** Progression of project to construction: Selection Phase (all firms)→ Phase I contract awarded to one firm→ Phase I study (180 days)→Phase II proposal presented to Board of Public Works→Approved Phase II contract signed→Notice to Proceed→CPM delivered by firm (14 days)→Construction begins.
- 2.1.8** 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 Contract Type

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

2.3 Contract with government organizations other than DGS

- 2.3.1** Pursuant to Article 41, Section 18-201 of the Annotated Code of Maryland, except as provided in (b), the following entities may purchase materials, supplies, and equipment under this contract:
- a. A county or Baltimore City;
 - b. A municipal corporation;
 - c. A governmental agency in the State with Primary Procurement Authority;
 - d. A public or quasi-public agency that:
 - i. receives State money; and

- ii. is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
- e. A private elementary or secondary school that:
 - i. either has been issued a certificate of approval from the state Board of Education or is accredited by the Association of Independent Schools; and
 - ii. is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code; or
 - iii. A non-public institution or higher education under Section 17-106 of the Education Article.
 - iv. A government unit outside Maryland may use this contract if the qualified contractor extends such to them.

2.3.2 A private elementary or secondary school or a nonpublic institution of higher education may not purchase religious materials under this contract.

2.3.3 The right to purchase under this section shall be in addition to, but not in substitution for, the applicable purchasing power granted to any of the listed entities pursuant to any statutory or charter provision.

2.3.4 All purchases under this contract by any such entity which is not a unit or agency of the State of Maryland for which the State of Maryland may be held liable in contract (1) shall constitute a purchase or contract between the Contractor and that entity only, (2) shall not constitute a purchase or contract of the State of Maryland, (3) shall not binding or enforceable against the State of Maryland or any of its units or agencies, and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. Contractor bears the risk of determining whether or not any entity from which the Contractor receives an order under the contract is a unit or agency of the State of Maryland such that the contract may be enforced against the State of Maryland.

2.4 Contract Duration

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

2.5 Background and Purpose

2.5.1 Responses to this RFP will be evaluated and awarded based on the criteria set forth in Section 6.

2.5.2 Accepted Offerors under this IDC will receive notice of the Owners identified EPC projects in letters issued by the Procurement Officer. These letters will contain information on the projects and project kickoff meeting.

2.5.3 Accepted Offerors under this IDC are required to attend the kickoff meeting prior to the Selection Phase, but ARE NOT REQUIRED to provide a Phase I proposal on each identified project. Offerors that plan to submit a proposal on an identified EPC project will follow Section 2.3. A single Offeror will be selected to proceed to Phase I.

2.5.4 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 analysis leads to the Phase II proposal.

- 2.5.5** If the firm chosen to perform the Phase I study does not produce an acceptable Phase II proposal, the firm with the second highest evaluation score will replace the initial firm in Phase I.
- 2.5.6** Upon approval of the Phase II proposal by the State and the Board of Public Works, the successful ESCO will have up to 365 calendar days to complete the design and construction work, unless a different timeline is approved by the procurement officer. There will be timeline milestones during Phase II which, if not met by Offeror, will result in financial penalties as described in Section 3.8.2.
- 2.5.7** Measurement and Verification of savings guarantee. The 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 which can be up to 15 years.

2.6 Scope of Work - Requirements

2.6.1 The ESCO shall provide for each project:

- 2.6.1.1 All necessary study, investigation, design, construction, training, monitoring and verification, and maintenance for the complete installation of ECMs under the conditions required in this RFP.
- 2.6.1.2 Complete construction drawings, specifications, and equipment submittals for review and approval by the State of Maryland.
- 2.6.1.3 Optional project financing, directly to the State that will allow the State of Maryland to pay all costs out of the savings resulting from the installation of the proposed system. Any third-party financing arrangements must be made between the ESCO and the third party.
- 2.6.1.4 A program that will result in guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract. Program costs include capital, maintenance services, administrative and other costs identified herein.
- 2.6.1.5 Analyze all reasonable energy conservation measures, and provide rationale for not including any of the potential ECMs.
- 2.6.1.6 A Certificate of Insurance, performance bond or irrevocable letter of credit prior to any funding of the projects.
- 2.6.1.7 Monitoring, measurement and verification of energy and cost avoidance throughout the contract period. This may require measurements to be recorded during the Phase I study phase.
- 2.6.1.8 Comprehensive maintenance service, up to and including full replacement, for all installed equipment, throughout the performance period.
- 2.6.1.9 All engineering and design work shall be performed in accordance with the Maryland Department of General Services (DGS) Procedures Manual (<http://dgs.maryland.gov/Documents/ofp/Manual.pdf>) unless noted otherwise herein.
- 2.6.1.10 All energy audits, feasibility studies, plans and specifications shall be prepared under the supervision of Professional Engineers, licensed in the State of Maryland at the time of ESCO's project assignment.

2.6.2 The Contractor Shall:

2.6.2.1 Supervise and direct all phases of the work, using its best skill and attention. The Contractor shall be solely responsible for all feasibility studies, design and construction means methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the contract, including measurements and verification.

2.6.2.1.1 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.

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

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

2.6.3.1 The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.

2.6.3.2 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.

2.6.3.3 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)

2.6.4.1 The Contractor shall do no Work without approved contract drawings, specifications, and/or instructions. For an approved project, drawings shall be provided by the Contractor as required in Section 3 - Scope of Work. Drawings shall in general be drawn to scale with major equipment and location dimensions clearly indicated, and symbols used shall indicate materials and structural and mechanical requirements. Drawings shall be in conformance with the DGS Procedure Manual for Professional Services (latest edition) When symbols are used, those parts of the drawings are of necessity diagrammatic; and it is not possible to indicate all connections, fitting, fastenings, etc., which are required to be furnished for the proper execution of the Work. Diagrammatic indications of piping, ductwork, conduit and similar items in the Work are subject to field adjustment in order to obtain proper grading, fitting, passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments, at no increased cost to the State.

2.6.4.2 Copies Furnished: The Contractor shall furnish the State five (5) copies of the drawings and specifications.

2.6.4.3 Copies at the Site: The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the State. Additionally, one set of all contract drawings shall be maintained as/built drawings. As-built drawings shall be marked upon by the Contractor in the field on a regular basis to record all changes in the Work as they occur, and the exact location of all exposed and concealed pipe runs, valves, plugged outlets, cleanouts, and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate "as-built" record. The location of pipes or control points concealed underground, under concrete, in chases or above hung ceilings shall be dimensioned. "As-built" drawings, both hard copy and on CD, shall be delivered to the State, as a condition precedent to final acceptance of Work.

2.6.4.4 Ownership: All documents remain the property of the State. They must not be used on other Work. They shall be returned to the State upon its completion.

2.6.4.5 Dimensions: The Contractor shall carefully check all dimensions prior to execution of the particular Work. Dimensions for items to be fitted into construction conditions at the job will be taken at the job and will be the responsibility of the Contractor. No extra will be allowed by reason of Work requiring adjustments in order to accommodate the particular item of equipment.

2.6.4.6 Specifications: Proper CSI formatted construction specifications (1995 version) shall be produced and submitted for the State's approval.

2.6.5 Shop Drawings & Submittals: (Phase II)

2.6.5.1 After checking and verifying all field measurements and after complying with applicable procedures specified in the contract documents, the Contractor shall submit to the State for review and approval, in accordance with the Contractor's schedule, shop drawings or other submittals which will bear a stamp or specific written indication that the Contractor has satisfied their responsibility under the contract documents with respect to the review of such submissions. The data on the shop drawing will be completed with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the State to review the information as required. These drawings shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.

2.6.5.2 All shop drawings must show the name and location of the project and the Department contract number.

2.6.5.3 Size of Drawings: All shop drawings and details submitted to the State for approval shall be printed on sheets of the same size as the contract drawings specified in the Department of General Services Procedures Manual for Professional Services (latest edition). When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the required drawings, this is acceptable. Sheets 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 1/2-in. by 11-in.) are acceptable for schedules and small details.

2.6.5.4 Items for Which Shop Drawings Will Be Required: Shop drawings shall be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware and all heating, ventilating, piping, plumbing and electrical items requiring special fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.

2.6.5.5 Copies Required: Contractor shall supply five (5) copies. Two (2) copies shall be returned to the Contractor after approval.

2.6.5.6 Examination and Approval: The State will examine and return shop drawings with reasonable promptness, noting desired corrections, or accepting or rejecting them. The Contractor shall assume a minimum review time of two (2) weeks when submitting items for the state's approval.

2.6.5.7 Field Dimensions and Conditions: The State is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor. No consideration will be given to change orders due to existing field conditions.

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

2.6.6 Cost and Price Certifications: (Phase II)

- 2.6.6.1 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 a mutually determined specified date prior to the conclusion of any price discussions or negotiations.
- 2.6.6.2 The price under this contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.
- 2.6.6.3 The Contractor is allowed a maximum of 10% for profit and up to 15% overhead for work performed, subject to negotiation by the State or the using agency/customer. The using agencies have the right to negotiate a lower rate particularly for projects where the subtotal cost is above \$5 million.
- 2.6.6.4 Pricing under this contract is based on Open Book Pricing. Projects assigned under this IDC shall be totally transparent and collaborative from start to finish, with full disclosure of all costs. The Contractor is required to maintain a full record of particulars of the cost of performing the obligations under this Contract; and when requested by the State, ESCO shall provide a summary of any of the costs, including details of any funds held by the Contractor specifically to cover such costs. It is specified, and compliance requires, that the Contractor 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:
- a. Direct labor and indirect labor costs,
 - b. Direct materials and Subcontract costs;
 - c. Overhead costs analyzed to identify appropriate categories such as administration;
 - d. Payment details to suppliers and Subcontractors including canceled checks;
 - e. Capital expenditure and such revenue expenditure as not detailed above;
 - f. Other available items relating to the Contractor's costs, income and profit as the
 - g. State may reasonably require; cash flow statements of the Contractor,
 - h. Rebates and Incentives acquired from utility companies,

i. And government programs for energy efficiency or renewables including Federal 179 D tax incentive.

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

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

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

2.6.7.2 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.

2.6.8 Changes in the Work:

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

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

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

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

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

2.6.8.6 No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

- 2.6.8.7 When changes in the work require modification of the Contract Price by change order, such modification shall be accomplished as follows: Any modifications to Phase II work or price must be approved by Procurement Officer, within the limits of their authority, or the Board of Public Works.
- 2.6.8.8 No modification to the contract price shall be allowed unless the Owner requests additional services, and this work is approved by the procurement officer and/or BPW. Under no circumstances shall the contract price be increased due to field conditions different than assumed by the Contractor, or additional design required due to errors or omissions of Contractor and/or architectural/engineering sub- consultants/ subcontractors.
- 2.6.8.9 For all changes in the work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully-itemized breakdown of quantities, prices, man-hours and hourly rates which shall bear the original signature of a representative of the subcontractor authorized to act for the subcontractor. The Contractor shall furnish a detailed explanation and justification for the proposed change. If requested by the Owner, the Contractor shall submit proposals from suppliers or other supporting data required to substantiate costs.

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

- 2.6.9.1 When unit prices are stated in the Contract, by application of such unit prices.
- 2.6.9.2 A lump sum price, if agreed upon by both the State and Contractor. Payment to the Contractor shall be added to the project financed capital cost amount (unless capital funding is available). The revised capital cost amount will not be paid to the Contractor until the construction is 100% completed and accepted by the State.
- 2.6.9.3 If job conditions, or the extent of a nature of the change, warrant it, or if the State and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the work may be done at the State's option on the basis of a 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.
- 2.6.9.4 If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including engineering / design fees, project management, overhead and profit, however, the Contractor and the subcontractor could be allowed to retain a sum not in excess of three percent (3%) for handling.
- 2.6.9.5 If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes of the work.
- 2.6.9.6 Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with their own forces will be based upon the monetary value of the work in accordance with the following schedule (excluding items included in overhead and profit):
- 2.6.9.7 For work performed by a subcontractor with its own forces, the contractor shall submit cost or price information and shall certify that, to the best of his knowledge, the information submitted is accurate, complete, and current in accordance with COMAR 21.06.04.
- 2.6.9.8 On all change in the work, the Contractor will be reimbursed for its 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.

- 2.6.9.9 The cost of foremen and superintendents may be added only when the change order makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic Contract.
- 2.6.9.10 The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the State and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors.
- 2.6.9.11 If the Contractor and the State cannot agree as to the extent the contract time shall be increased for extra work or the extent the Contract time shall be reduced for Work omitted by the State, the increase or decrease, as the case may be, shall be determined by the Procurement Officer. Any disagreement with this decision may be appealed by the Contractor under the Disputes Clause.
- 2.6.9.12 Notwithstanding any provisions in the contract documents, the State shall not be liable to the Contractor, for any Phase II work, except from guaranteed cost savings.
- 2.6.9.13 Construction Change Directive: The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, the following: Job supervision (project manager, construction foreman/supervisor) and field office expense if used by contractor, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, use of small tools or equipment to job location, and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly-established principal office, branch office or similar facilities.
- 2.6.9.14 Construction Change Directive Labor: For all labor, including design services, and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said persons are actually engaged in such work. The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.
- 2.6.9.15 Construction Change Directive Materials: For materials accepted by the State and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).
- 2.6.9.16 Construction Change Directive Equipment: For any machinery or special equipment (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Contract. For purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.
- 2.6.9.17 Construction Change Directive 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.
- 2.6.9.18 Construction Change Directive 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).
- 2.6.9.19 Construction Change Directive 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.

2.6.9.20 Construction Change Directive Statements: No payment will be made for work performed on a Construction Change Directive basis until the Contractor furnishes the Procurement Officer duplicate itemized statements of the cost of such Construction Change Directive work detailed as to the following:

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

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

2.6.9.23 Quantities of materials, prices, and extensions.

2.6.9.24 Transportation of materials.

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

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

2.6.10 Unauthorized Work: (Phase II & Phase III)

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

2.6.11 Conformity with Contract Requirements: (Phase II)

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

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

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

2.6.12 Adjacent Work: (Phase II)

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

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

2.6.13 Cooperation with Utilities: (Phase II)

2.6.13.1 It is understood and agreed that the Contractor has considered in its proposal all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by them due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto, if required for installation and operation of the Contractor's equipment.

2.6.13.2 The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.

2.6.13.3 At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. Contractor is responsible to notify the Miss Utility, prior to start of work.

2.6.13.4 The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.

2.6.13.5 In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

2.6.14 Authority and Duties of State Project Managers and Inspectors:

2.6.14.1 State inspectors and other State personnel will be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the Contract, or to approve or accept any portion of the complete project. The inspectors are authorized to call to the attention of the Contractor any failure of the work or materials to conform to the Contract. The inspectors are authorized to reject materials or suspend the work until any questions at issue can be referred to and decided by the Procurement Officer. Inspectors will perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.

2.6.14.2 The inspector will in no case act as foreman or perform other duties for the Contractor, or interfere with the management of the work by the latter.

2.6.14.3 Any advice which the inspector may give the Contractor shall not be construed as binding the State in any way, or releasing the Contractor from fulfilling all the terms of the Contract. The duty of the inspector on the project is to observe the progress of the work and to report any deviations from the requirements of the contract documents; however, should the inspector fail to report any such deviation from the Contract

requirements, this does not release the Contractor from fulfilling all of the terms of the Contract. Actions of the inspectors are for the benefit of the State only.

2.6.14.4 Where there is disagreement between the Contractor and the inspector, the inspector will advise the Procurement officer who will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order served from the procurement officer suspending the work and explaining the reason for such shutdown. As soon as the inspector is advised of the delivery of the shutdown order, the inspector will immediately leave the site of the work and any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

2.6.14.5 All work, including the fabrication and source of supply, is subject to observation by the Department, and those agencies required by law to inspect specific items. The State is not responsible fiscally or legally for the actions of county, municipal, or other local officials.

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

2.6.14.7 If the specifications, the Department's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the State timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the State shall be made promptly and where practicable at the source of supply. Any work covered without approval of the Department must, if required by the Department, be uncovered for examination at the Contractor's expense.

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

2.6.15.1 All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.

2.6.15.2 Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the Contract requirements or shall be remedied otherwise in an acceptable manner approved or authorized by the Procurement Officer.

2.6.15.3 Upon failure on the part of the Contractor to comply promptly with any order of the State, made under the provisions of this Section, the State will have the authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to cause the costs to be deducted from any monies due or to become due the Contractor under this Contract.

2.6.16 Maintenance of Work During Construction: (Phase II)

2.6.16.1 The Contractor shall maintain the work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.

2.6.16.2 All cost of maintenance work during construction and before final acceptance shall be included in the price proposal and the Contractor will not be paid any additional amount for such work.

2.6.16.3 In the event that the Contractor's work is halted by the State for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided herein as may be necessary during the period of suspended work or until the Contractor has been declared in default.

2.6.16.4 All work associated with this IDC is intended to be cost neutral to the State. All work and/or inspection of contractor's work needed to be performed by State forces after hours, on weekend or Holidays, whether anticipated or unanticipated, the ESCO shall account for such additional cost in his proposal, or an equivalent amount shall be deducted from the ESCO monthly invoice.

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

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

2.6.18 Materials: (Phase II, Phase III)

2.6.18.1 All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the State in writing of the sources from which they propose to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract.

2.6.18.2 Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitation as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, fishing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in this RFP shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, or regulations.

2.6.18.3 Approval: All materials submitted in the Contractor's specifications and as required in this RFP are subject to the State's approval as to conformity with the type, quality, design, color, etc. No work for which approval is necessary shall be completed until written approval is given by the State. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications.

2.6.18.4 New Materials: Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the Procurement Officer.

2.6.18.5 Quality: All materials shall be of the best quality of the respective kinds.

2.6.18.6 Samples: The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.

2.6.18.7 Proof of Quality: The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. The Contractor shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in these General Conditions.

2.6.18.8 Standard Specifications: When no specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then:

- 2.6.18.9 For items not otherwise specified below, the latest edition of the applicable American Society for Testing and Materials specification is the applicable specification.
- 2.6.18.10 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.
- 2.6.18.11 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.
- 2.6.18.12 For items generally considered as site work, the applicable portions of the Maryland State Highway Administration standard specifications are the applicable specification.
- 2.6.18.13 For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical code are the applicable specification.
- 2.6.18.14 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.

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

- 2.6.19.1 Materials shall be so stored as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment; such storage areas must be restored to their original condition by the Contractor at his expense.
- 2.6.19.2 All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50 °F).
- 2.6.19.3 All valves shall be stored under roof on wood pedestals, aboveground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer on oiling, protection and maintenance of equipment during storage. It shall be the Contractor's complete responsibility for the storage and care of the equipment and materials. Material not properly stored prior to installation shall not be considered for payment.
- 2.6.19.4 Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
- 2.6.19.5 Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract documents as to the "Limit of Contract."
- 2.6.19.6 Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- 2.6.19.7 Explosives. Explosives shall not be used on projects covered under this contract.
- 2.6.19.8 Paints.
- 2.6.19.9 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.

2.6.19.10 Oily rags, waste, etc., must be removed from the work site at the close of each working day.

2.6.20 Substitutions: (Phase II, Phase III)

2.6.20.1 Should the Contractor desire to substitute another material for one or more specified by name in the RFP or the approved specifications, the Contractor shall apply in writing, for such permission and state the credit or extra involved by the use of such material. The State will not consider the substitution of any material different in type of construction methods unless such substitution affects a benefit to the State.

2.6.20.2 The Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material" by the State when the Contractor has not designated such materials as a "substitute," shall not be binding on the State nor release Contractor from any obligations of his Contract, unless the State approves such "substitution" in writing expressly acknowledging the substitution.

2.6.21 Approved Equals: (Phase II, Phase III)

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

2.6.22 Contractors Options: (Phase II, Phase III)

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

2.6.23 Tests: (Phase II, Phase III)

2.6.23.1 If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested, or approved, the Contractor shall give the State timely notice of its readiness so the State may observe such inspection, testing, or approval. The Contractor shall bear all costs of such inspections, tests, or approvals.

2.6.23.2 If the State determines that any work requires special inspection, testing, or approval which the contract documents do not include, the State will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in A., above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the contract documents, the Contractor shall bear all costs thereof, including compensation for the State's additional services made necessary by such failure; otherwise the State shall bear such costs, and an equitable adjustment will be made in the Contract price.

2.6.23.3 Required certificates of inspection, testing or approval shall be obtained by the Contractor and promptly delivered by them to the State. The work shall not be considered 100% complete until such certifications are in the possession of the State.

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

- 2.6.24.1 It is imperative that the Contractor complete 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, will result in financial penalties as described in Section 3.8.2.
- 2.6.24.2 The Contractor must include Milestones in the CPM. Typical milestones include: 95% Drawing submission, major equipment installation schedule, commissioning, training, substantial completion, etc.
- 2.6.24.3 The date of commencement of the work is the date established in a Notice to Proceed signed by the Project Manager.
- 2.6.24.4 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

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

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

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

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

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

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

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

2.6.28 Scheduling: (Phase I, Phase II)

2.6.28.1 Preparation of Work Schedule. The Contractor shall prepare a Critical Path Method (CPM) schedule setting forth his dates for completing various portions of the work. Included among the tasks set forth on the schedule shall be the critical design completion dates, submittal dates (to the State), and dates for return of the approved submittals. The schedule shall be reviewed by the State for approval of the time within which the State must evaluate the Contractor's submittals. The State's approval of the Contractor's schedule does not constitute an approval of the entire schedule; it merely constitutes an approval of that portion of the schedule that relates to the State's review of submittals. There will be timeline milestones during Phase II which, if not met by Offeror, will result in financial penalties as described in Section 3.8.2.

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

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

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

2.6.29 Suspension of Work:

2.6.29.1 The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the State.

2.6.29.2 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.

2.6.30 Partial Acceptance: (Phase II)

2.6.30.1 If during the construction of work the State desires to occupy any portion of the project, the State will have the right, at its sole option and discretion, to occupy and use those portions of the project which in the opinion of the Procurement Officer, can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the State for maintenance, heat, light, utilities, and insurance are mutually agreed to by the Contractor and the State.

2.6.30.2 Partial occupancy shall in no way relieve the Contractor of his responsibilities under the contract.

2.6.31 Substantial Completion & Final Acceptance: (Phase II)

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

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

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

2.6.33 Guarantees: (Phase II, Phase III)

- 2.6.33.1 The Contractor guarantees cost avoidance for the life of the Contract, commencing on the date fixed by the financing agent.
- 2.6.33.2 That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.
- 2.6.33.3 That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, have been installed in accordance with specifications, all applicable codes and manufacturers recommendations, and shall operate with ordinary care and attention in a satisfactory and efficient manner.
- 2.6.33.4 That the Contractor will re-execute, correct, repair, or remove and replace with proper work, without cost to the State, any work found not to be as guaranteed by this Section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this Section.
- 2.6.33.5 That the entire work shall be water-tight and leak-proof.
- 2.6.33.6 That the actual adjusted cost avoidance for the life of the Contract will be no less than the guaranteed savings as defined in the Contract.

2.6.34 Scope of Payment (Phase I Payment):

- 2.6.34.1 Should the recommendations contained in Phase I fail to meet the State's objectives for the project (as outlined in Scope of Work within this RFP), or is deemed unreasonable, unworkable, or cost excessive by the State, the State will have no obligation to pay the Contractor the fee associated with Phase I.
- 2.6.34.2 Should the recommendations, including capital cost, yearly maintenance cost, and guaranteed savings, meet or exceed the State's objectives (as outlined in the Scope of Work within this RFP) as determined by

the State, and the State elects to proceed with Phase II of the project, the cost of the study shall be included in the Contractor's ECM capital cost, within the financial Phase II Proposal, and financed by the State, either through the Contractor or privately. In either case, the payment to the Contractor shall be the same as noted in above.

2.6.34.3 Should the recommendations contained in the Phase I proposal meet or exceed the State's objectives and all contract requirements as determined by the State, and the State for any reason, does not proceed with Phase II, then the ESCO shall be paid the previously agreed upon cost of Phase I based on the Phase I proposal.

2.6.35 Scope of Payment (Phase II Payment):

2.6.35.1 The State will hold 10% of each monthly payment as retainage. The State will release half the retained amount within 120 days of satisfactory completion of the project, and the remaining amount will be released within 6 months after release of the first half. The retainage will be held to insure 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.

2.6.35.2 The State agrees to pay the Contractor on the following basis as compensation for the Contractor's services: Total ECM capital cost, as quoted in the Contractor's Final Phase II proposal, including engineering feasibility study, preparation of comprehensive energy plan, design, construction documents, construction, training and start-up. The cost or contract value of any ECMs not operating to the expected performance levels will be the responsibility of the ESCO. Payments during Phase II will be made based on a schedule of values created by the contractor and approved by the State.

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

2.6.36 General Payment:

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

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

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

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

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

2.6.37 Employees & Consultants:

- 2.6.37.1 Qualification of Employees: Only personnel thoroughly trained and skilled in the task assigned to them may be employed on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work. A full time, Maryland certified Engineer shall be assigned to represent the ESCO on each and every project during the Phase I and Phase II of the projects.
- 2.6.37.2 Licensed Employees: When Municipal, County, State, or Federal laws require that certain personnel (electricians, plumbers, architects, engineers, etc.) be licensed, then all such personnel employed on the work shall be so licensed.
- 2.6.37.3 Quantity of Labor: The Contractor shall employ on the work, at all times, sufficient personnel to complete the work within the time stated in the Contract.
- 2.6.37.4 Work Areas. The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or direction of the Department.

2.6.38 Methods and Quality:

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

2.6.38.6 Employee Safety: The Contractor shall designate a responsible member of his organization, on the work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards required under the Contract. The name and position of the person so designated shall be reported to the Department by the Contractor at the commencement of the work.

2.6.39 Subcontracts:

2.6.39.1 The Contractor shall, as soon as practicable and before the execution of the Phase II Contract, notify the Department in writing, of the name of subcontractors proposed for the principal parts of the work and for such others as the State may direct and shall not employ any that the Department may object to as incompetent or unfit.

2.6.39.2 The Contractor agrees that the Contractor is as fully responsible to the State for the acts and omissions of their subcontractors at any time and of persons either directly employed by them, as it is for the acts and omissions of persons directly employed by the subcontractors.

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

2.6.40 Relation of the Contractor & Subcontractor:

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

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

2.6.41 Construction Safety & Health Standards: (Phase II)

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

2.6.42 Contingency Work: (Phase II)

All work 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 sub-contractor allowed overhead and profit as per the change order section.

2.7 The Selection or Pre Award Phase

2.7.1 The Selection or Pre Award Phase

- 2.7.1.1 Using Agencies interested in an Energy Performance Contract shall coordinate with DGS and Maryland Energy Administration (MEA), to gather pertinent data and establish performance goals.
- 2.7.1.2 All qualified ESCOs under this IDC will receive written notification of the intent of an agency to enter into an EPC approximately 10 working days prior to the initial meeting with qualified ESCOs, the agency, DGS and MEA representatives.
- 2.7.1.3 The purpose of the initial meeting is to introduce the goals of the agency to the ESCOs, as well as to discuss the facility mission, building systems, operating patterns and critical needs. 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.
- 2.7.1.4 All proposing ESCOs are required to attend the subsequent kick-off meeting. Meetings for individual firms will not be allowed.
- 2.7.1.5 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. 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 of 15 years, 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

- 2.7.2.1 A single ESCO will advance to Phase I based on a competitive review of its Phase I proposal.
- 2.7.2.2 A Phase I proposal will only be accepted from pre-qualified ESCOs in attendance at the Selection Phase meeting and at all scheduled Selection Phase site walks. ESCOs must be represented in person at these meetings by some or all of the individuals listed as the Project Manager, Mechanical Engineer, Electrical Engineer, Structural Engineer and/or Certified Energy Manager. The request for a specific team member or members will be made by written notification of the intent of an agency to enter into an EPC. In order to substitute a team member the ESCO must follow the policies set forth in section 3.10 Substitution of Personnel.
- 2.7.2.3 Each ESCO will have up to 60 days 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, meet the level and scope defined in the Phase I proposal, in response to the evaluation factors listed below. Failure to meet the minimum energy performance level, maximum cost and scope defined in the Phase I proposal will constitute grounds for immediate termination of the Phase I contract by the State.
- 2.7.2.4 An evaluation committee will be convened to review and score each Phase I 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 insure 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.
- 2.7.2.5 The committee will evaluate and score each proposal, according to the following criteria, listed in relative order of importance:

- 2.7.2.6 First year guaranteed Cost Avoidance for the facility for a 13 year term 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, in order to be included.)
- 2.7.2.7 Overall environmental benefit, including annual CO2 reduction and water consumption reduction.
- 2.7.2.8 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 cost, and simple payback.
- 2.7.2.9 Calculation method used to determine energy savings for each ECM.
- 2.7.2.10 Cost of Phase I study.
- 2.7.2.11 Proposed method of savings Guaranty in accordance with the Scope of Work Phase II Section.
- 2.7.2.12 Prior to an award decision, firms may be invited to an oral interview, following submission of a Phase I proposal. The State intends to select one firm for a Phase I award, based on the evaluated proposal resulting in the highest combined score. Prior to reaching a decision on an award, the State may, at its sole discretion, invite one or more firms to submit a Best and Final Offer (BAFO). In the event the State requests a BAFO(s), the final award decision will be based solely on the BAFO submission(s).

2.8 Phase I - The Preliminary Design and Development Phase

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 objective shall be to identify technical solutions in order to maximize energy and cost savings and provide a definitive estimate of costs and savings resulting from the proposed energy conservation measures. The ESCO will guarantee the aggregated costs and savings of all approved work. The project as a whole must meet minimum energy reduction requirements, meet minimum expectations of equipment replacement, acceptable costs, and be fully funded with guaranteed energy savings to proceed to Phase II.

- 2.8.1** Conduct a comprehensive energy audit, including a detailed engineering feasibility study of the energy and utility systems serving the facility, and effectively analyze all existing systems, equipment, operations and utility costs. Identify technical solutions in order to maximize energy and cost savings as well as operational and maintenance savings. (Operational and maintenance savings must be clearly defined by the agency and the States' project manager. Facility labor costs savings associated with all upgrades may only be included by approval from the agency and project manager.) Further, provide a definitive estimate of all costs and savings expected to result from the proposed energy conservation measures. The ESCO shall consult utility and fuel supply companies prior to effectively conducting analysis of existing systems and utility costs. The ESCO shall also field verify existing conditions to accurately design and locate the installation of new equipment, retrofits or expansion of existing systems.
- 2.8.2** Identify and recommend potential Energy Conservation Measures (ECMs) for the facility. ECMs must be designed using a system-wide approach, for the optimization of building operations. If a type of light fixture or lighting system is to be upgraded, it should be upgraded throughout the facility. If a type of mechanical system is to be upgraded, it should be upgraded throughout the facility. If the Building Automation System is to be upgraded, the new system should be implemented throughout the facility, replacing any other BAS entirely. Additionally, mechanical systems to be upgraded are not to be upgraded on a piecemeal basis. In other words, if

a chiller is to be replaced, all associated components are to be replaced with it, including pumps, valves, instrumentation, etc.

- 2.8.3** Identify and quantify deferred maintenance items that qualify as energy cost reduction measures to be included in the project. Provide comprehensive technical analysis including but not limited to: building envelope (roofing, windows, glass, walls, insulation, etc.) automatic temperature control systems, HVAC and HVAC controls, electrical systems, energy efficient lighting retrofit, chiller and boiler operation, including distribution systems, ductwork cleaning, and coils. All systems must be evaluated and supporting documentation provided regardless of inclusion in the project. Items selected to be included in the project shall meet the requirements of the RFP and support any Master Plan for the facility.
- 2.8.4** Identify and evaluate water conservation measures.
- 2.8.5** Assess the feasibility of the replacement or upgrade of electrical, steam, and natural gas distribution systems.
- 2.8.6** 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.
- 2.8.7** Assess the feasibility and implement plans, if approved, for new energy management systems and automatic controls.
- 2.8.8** Assess the feasibility of distributed generation, including economic benefits from utility rebates and/or participation in demand side management programs.
- 2.8.9** Assess the feasibility of renewable and/or innovative technology applications. The Offerors objective shall be to identify technical solutions in order to maximize energy savings.
- 2.8.10** The Phase II Proposal must be calculated on a 13-year term to allow for the fluctuation in the interest rate during the construction phase.
- 2.8.11** Ensure that the project plan conforms to all requirements of applicable utility energy conservation rebate incentive programs, in order to minimize cost and payback period.
- 2.8.12** All ESCO's must examine the installation of renewables for all State projects as part of the Phase I study.
- 2.8.13** Provide itemized costs for the following:
 - 2.8.13.1 Detailed total fee for engineering and design
 - 2.8.13.2 Detailed total cost of construction period interest
 - 2.8.13.3 Detailed total Material and equipment costs
 - 2.8.13.4 Detailed total Labor costs
 - 2.8.13.5 Funding interest rate
 - 2.8.13.6 Cost of the study
 - 2.8.13.7 Cost of the guarantee.

2.8.14 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:

- 2.8.14.1 Energy savings (dollars)
- 2.8.14.2 Operational and maintenance savings (dollars)
- 2.8.14.3 Water savings (dollars)
- 2.8.14.4 Debt service, including SALP repayments
- 2.8.14.5 Maintenance costs
- 2.8.14.6 Training and M&V costs
- 2.8.14.7 DGS annual monitoring and verification costs (if applicable).
- 2.8.14.8 DGS annual Project Management costs (if applicable).

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

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

2.8.16 Cooling System:

The ESCO shall provide a schematic diagram of the existing and the proposed cooling system. The schematic diagram of the existing system shall indicate location and arrangement of major existing equipment and shall indicate ratings and performance parameters (e.g. flow rates, temperatures, and heat transfer rates), and sizes. Any unique control requirements should be noted. Include recommendations about the acceptability of the performance of the associated equipment to remain in service. Recommendations should include 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:

2.8.16.1 Chiller:

- 2.8.16.1.1 Nominal capacity (tons) at specified entering and discharge evaporator temperatures
- 2.8.16.1.2 Nominal design efficiency at nominal capacity (kW/ton)
- 2.8.16.1.3 Refrigerant type
- 2.8.16.1.4 Fluid (water, glycol)
- 2.8.16.1.5 Evaporator entering and discharge temperatures
- 2.8.16.1.6 Condenser entering and discharge Temperatures
- 2.8.16.1.7 Electrical Characteristics (HP, Phase, Volts, Hz)
- 2.8.16.1.8 Compressor type (reciprocating, centrifugal, rotary screw)
- 2.8.16.1.9 Capacity control method
- 2.8.16.1.10 Electrical characteristics (HP, volts, phase, HZ)
- 2.8.16.1.11 List of Acceptable Manufacturers

2.8.16.2 Cooling Tower:

- 2.8.16.2.1 Nominal duty (tons)
- 2.8.16.2.2 Fluid (water, glycol)
- 2.8.16.2.3 Entering and leaving fluid temperatures
- 2.8.16.2.4 Ambient air temperature (DB and WB)
- 2.8.16.2.5 Electrical characteristics (HP, volts, phase, HZ)
- 2.8.16.2.6 List of Acceptable Manufacturers

2.8.16.3 Pump:

- 2.8.16.3.1 Type (horizontal split case, end suction, etc.)
- 2.8.16.3.2 Capacity (GPM)
- 2.8.16.3.3 Minimum NPSH
- 2.8.16.3.4 RPM
- 2.8.16.3.5 Minimum operating efficiency
- 2.8.16.3.6 Mounting (base, inertia pad, vibration isolators)
- 2.8.16.3.7 Electrical characteristics (HP, volts, phase, HZ)
- 2.8.16.3.8 List of Acceptable Manufacturers

2.8.17 Heating System:

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

2.8.17.1 Boiler:

- 2.8.17.1.1 Fuel (Primary/Secondary, if applicable)
- 2.8.17.1.2 Output Rating (MBH)
- 2.8.17.1.3 Maximum Firing Rate (SCFH)

- 2.8.17.1.4 Operating Pressure or GPM
- 2.8.17.1.5 Boiler Type (Cast-Iron Sectional, Firetube, etc.)
- 2.8.17.1.6 Electrical Characteristics (HP, Phase, Volts, Hz)

2.8.17.2 Heat Exchanger:

- 2.8.17.2.1 Fluid Types
- 2.8.17.2.2 Flow Rates
- 2.8.17.2.3 Entering Temperature for Both Fluids
- 2.8.17.2.4 Leaving Temperature for Both Fluids
- 2.8.17.2.5 Heat Exchanger Type (Plate & Frame, Shell & Tube, etc.)
- 2.8.17.2.6 List of Acceptable Manufacturers

2.8.17.3 Pump:

- 2.8.17.3.1 Type (horizontal split case, end suction, etc.)
- 2.8.17.3.2 Capacity (GPM)
- 2.8.17.3.3 Minimum NPSH
- 2.8.17.3.4 RPM
- 2.8.17.3.5 Minimum operating efficiency
- 2.8.17.3.6 Mounting(base, inertia pad, vibration isolators)
- 2.8.17.3.7 Electrical characteristics (HP, volts, phase, HZ)
- 2.8.17.3.8 List of Acceptable Manufacturers

2.8.18 HVAC System:

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

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

2.8.18.1 Air Handling Unit:

- 2.8.18.1.1 Airflow rate (CFM)
- 2.8.18.1.2 External Static Pressure (in. WG)
- 2.8.18.1.3 Total Cooling Capacity Sensible Cooling Capacity
- 2.8.18.1.4 Sensible Heating Capacity
- 2.8.18.1.5 Entering Air Temperature
- 2.8.18.1.6 Leaving Air Temperature
- 2.8.18.1.7 Design Space Temperature
- 2.8.18.1.8 Design Outdoor Air Temperature Minimum Outdoor Air (%)
- 2.8.18.1.9 Electrical Characteristics (HP, BHP, RPM, Phase, Volts, Hz)
- 2.8.18.1.10 List of Acceptable Manufacturers

2.8.18.2 Exhaust Fan:

- 2.8.18.2.1 Airflow Capacity
- 2.8.18.2.2 Fan RPM
- 2.8.18.2.3 Electrical Characteristics (HP, BHP, Phase, Volts, Hz)
- 2.8.18.2.4 List of Acceptable Manufacturers

2.8.19 Lighting:

The ESCO shall conduct a detailed room-by-room survey to identify existing fixtures, lamps ballasts and wiring arrangements. Where lighting renovations include alterations to existing configurations, zonal calculations shall be provided. ESCO shall evaluate existing conditions, including illumination levels, and recommend new lighting designs, where applicable. All lighting improvement shall be consistent with the building interior design and to insure that the new upgrade is harmonized with the existing lighting fixture design. It is unacceptable to replace some fixtures or parts of fixtures in the same room or hall, while leaving other, older fixtures untouched. ESCO shall request specific approval from the State if unable to comply with the preceding. Provide 11X17 floor layout clearly identifying rooms in a corresponding manner with lighting calculation spread sheets.

2.8.20 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:

2.8.20.1 Temperatures (zone, outdoor, air, water, and other working fluids)

2.8.20.2 Flow rates (air, water, and other working fluids)

2.8.20.3 Equipment Status (on/off, enable/disable, alarm)

2.8.20.4 Alarm conditions

2.8.20.5 Analog control and status signals (valves, dampers, VFDs)

2.8.20.6 System modes

2.8.20.7 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.

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

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

2.8.23 Commissioning to be performed by a third party firm approved by the state.

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

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

- 2.8.25.1 All subcontractors quotes
- 2.8.25.2 Detailed engineering fees
- 2.8.25.3 Construction labor
- 2.8.25.4 Materials
- 2.8.25.5 Major equipment cost
- 2.8.25.6 Rebates/incentives

2.8.26 Construction cost estimate:

2.8.27 Demolition Costs

2.8.28 New Work listed by system Cost, including but not limited to:

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

2.9 Phase II - The Final Design and Construction Phase

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

- 2.9.1** Upon the State's approval of the recommendations of a Phase II proposal, including a determination of fair and reasonable price for capital and yearly maintenance costs, the ESCO will implement the comprehensive energy efficiency and guaranteed savings program, provide the funds necessary to cover all of the costs associated with

the program and provide a guarantee of the level of energy and energy related operational cost avoidance to be achieved throughout the payback period.

2.9.2 Final Design and Specifications. Before installation of the proposed ECMs, the ESCO shall prepare detailed construction plans and specifications for the installation of all equipment and systems proposed under Phase I; and shall include, but not be limited to the following:

2.9.2.1 A critical path method (CPM) diagram shall be submitted within 14 days of the execution of the Phase 2 contract. The CPM diagram shall outline activities for the first 90 days of construction. Include a skeleton diagram for the remainder of the work with the preliminary diagram. This preliminary diagram must be approved prior to the first requisition being processed. Include each significant construction activity. Coordinate each activity with other activities and schedule each construction activity in the proper sequence.

2.9.2.2 Site plans and floor plans showing equipment location, ductwork and piping routing, and connections to existing systems. Also include valves, fittings, instrumentation, utility meter locations, and electrical connections. Include electrical wiring schematics, wire and conduit sizes. Include plumbing isometric diagrams and drawings showing connections to all HVAC equipment.

2.9.2.3 Automatic temperature control (ATC) sequence of operations, logic and wiring -diagrams.

2.9.2.4 Equipment schedules, including acceptable manufacturers, model numbers, ratings and operating characteristics.

2.9.2.5 Construction specifications indicating material, sizes, and thicknesses being used in construction components and equipment components, pressure and temperature ratings of system components, national standards or national laboratory testing standards being met (NFPA, ASHRAE, ASME, UL, NEC, ASTM, etc.), methods of installation, electrical ratings of electrical components, and any special requirements relating to this installation

2.9.2.6 A complete description of any modifications to existing HVAC, electrical or plumbing systems.

2.9.2.7 Lighting retrofit plans and specifications.

2.9.3 Execution shall include but not be limited to the following:

2.9.3.1 Furnishing and installation of 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.

2.9.3.2 Schedule of values, clearly identifying and describing dates, items, and scheduled percent of project completion (required for State progress payment approval).

2.9.3.3 Completions of all punch list items.

2.9.3.4 Submittal of all applicable Operating and Maintenance manuals to Using Agency.

2.9.3.5 On-site training and education of facility maintenance and operating personnel in the functions, operations and maintenance of all equipment installed under the project. This is to be performed after all commissioning work has been completed; not done as a part of commissioning or acceptance testing

2.9.3.6 Compliance with any change orders.

2.9.3.7 Electrical inspection certificate, issued by a State approved independent inspection company.

2.9.3.8 Boiler inspection by Department of Labor, Licensing, and Regulation (if applicable).

2.9.4 Commissioning

2.9.4.1 Prior to final acceptance by the State, the ESCO shall demonstrate to the satisfaction of the State that all components, systems, and processes required to fully verify proper operation and guaranteed cost avoidance, are complete, properly functioning and are commissioned by an impartial and independent third party firm approved by DGS.

2.9.4.2 Commissioning of all major systems and equipment, including complete point-to-point checkout of all Building Automation Systems controls and verification of all control graphics. Commissioning plans are to include equipment testing and operational verification. Commissioning and testing work is to be coordinated with and observed by DGS or the Using Agency.

2.9.4.3 Prior to final acceptance by the State, the ESCO shall submit to the State for approval, a Commissioning Plan. The plan shall include a detailed specification of all procedures, including preliminary check-out, sequence of operations of major equipment, and functional performance testing, which must be executed to demonstrate and verify proper data collection, processing, communication, and report preparation capability. The Commissioning Plan must be submitted in time to allow the State to conduct a thorough review, without causing delay in the ESCO's timely completion of the work.

2.9.4.4 The ESCO shall prepare and submit to the State for approval, detailed documentation of all conditions, requirements and the results of all final inspections and functional performance tests. Where a pre-existing client owned Energy Management System (EMS) is available, or the ESCO has installed a new EMS under the scope of the ESCO shall, prior to final acceptance by the State, put in place trend logs to continuously record runtime on each item of equipment under the scope of the project, space temperatures, water loop temperatures, flow rates, power consumption, and any other parameters which are required to demonstrate operational performance and cost avoidance.

2.9.4.5 Prior to final acceptance, the ESCO must furnish written documentation, which demonstrates, to the satisfaction of the State, that all equipment operating schedules, temperature set points, equipment sequences of operation, power, temperature, flow measurement instrumentation, and safety alarms have been in place and operating satisfactorily, for a minimum of two weeks, continuously. Documentation of any overrides or other programming changes must be submitted, in writing, and include date and time of change, person implementing the change, and reason for the change. The State will not grant final acceptance of the project unless the ESCO fully comply with these requirements.

2.9.4.6 The State shall be notified in advance, of the schedule of any final inspections and functional performance tests.

2.9.5 Provision of an acceptable project financing plan to cover 100% of the costs of developing and implementing the approved comprehensive energy efficiency and guaranteed savings program.

2.9.6 The ESCO shall recover all costs of the feasibility study, engineering design, equipment procurement, installation, maintenance, training, support services and finance charges over the life of the contract. Payments by the Using Agency will be solely from the guaranteed cost avoidance and payments will never be greater than the actual cost avoidance generated.

2.9.7 The financing shall be severable from all other aspects of this project and is subject to the fiscal non-appropriation clause.

2.9.8 Conditions of Work and Job Site Visit

2.9.8.1 Site Investigation: By submitting a Phase II Proposal, the ESCO acknowledges that it has investigated and satisfied itself as to the actual conditions affecting the work, including but not restricted to those bearing upon the physical conditions at the site, the formation and conditions on the ground, and the character of equipment and facilities prior to and during prosecution of the work.

2.9.8.2 Any failure of the Offeror to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The State will not be responsible for any conclusions or interpretations made by the ESCO on the basis of information made available in this RFP.

2.9.9 Energy Savings Guarantee/Project Financing

2.9.9.1 The ESCO shall provide an energy savings guarantee, whereby the ESCO guarantees that a certain level of energy and energy related operating and maintenance savings will accrue as a result of implementing the approved comprehensive energy efficiency and guaranteed savings program, and that if the actual savings achieved is less than the guaranteed savings, the ESCO will reimburse the State an amount equal to the difference between the actual savings and the guaranteed savings.

2.9.9.2 Each ESCO shall provide a method of securing the energy savings to the State. The method will be determined by the State on a project by project basis, depending on the nature of the surety markets. If self-insured, the ESCO may provide a parental guarantee or an irrevocable letter of credit, payable to the State and issued by a solid financial institution, approved by the State. As an alternative, the ESCO shall provide, for a period mutually agreed to by the State and ESCO, a performance bond issued by a bonding agency, or an insurance policy issued by a reputable insurance company who has provided similar policies for similar projects, and are approved by the State. Insurance policies and bonds shall provide for direct payment of the shortfall amount to the State, as well as allow the State to file a claim against the surety instrument in effect.

2.9.9.3 Prior to the initiation of Phase II of each project, the ESCO shall provide an indexed rate of interest which reflects the cost of the financing to be provided by the ESCO. The effective rate of interest the ESCO proposes to charge for this contract will be determined and fixed on the funding date based on the index.

2.9.9.4 The State shall, at its sole option, determine whether or not to accept the financing offered by the ESCO or arrange an alternate means of financing. No payments by the State for the capital costs (design, construction, training, and startup services) shall be made to the ESCO until 100% completion and acceptance of all ECM installations by the State. Payments by the State (including capital cost principal & interest cost of the guarantee, and maintenance costs) for the duration of the project, shall be solely from the guaranteed cost savings.

2.9.10 Capacity to Perform Work

The successful ESCO shall maintain an adequate staff to provide the services required herein with the professional quality and timeliness required. Preferably, the same personnel shall be utilized for the duration of each project. 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.

2.9.11 Schedule

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

2.10 Phase III - The Performance Period

2.10.1 Performance Period Commencement

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

2.10.1.2 Pursuant to the preceding, the performance period shall commence on the earlier of:

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

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

2.10.2 Energy Reduction and Cost Avoidance

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

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

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

2.10.3 Comprehensive Maintenance and Warranty Services

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

2.10.3.2 Provide itemized list to include each unit of equipment and the applicable service schedule.

2.10.4 Measurement and Verification

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

2.10.4.2 The applicable sections of the most recently published version of the International Performance Measurement and Verification Protocol, (IPMVP).

2.10.4.3 The applicable sections of the most recently published version of the Federal Energy Management Program M&V Guidelines: Measurement and Verification for Federal Energy Projects, (FEMP)

2.10.5 Methodology

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

2.10.5.2 The ESCO, in consultation with the State, shall develop the appropriate M&V methodology or methodologies, during the technical feasibility study phase (Phase I). Each methodology or procedure must be approved by the State prior to implementation, and no substitutions will be permitted without explicit approval of the State.

2.10.5.3 Throughout the baseline and guarantee performance periods, ESCO shall conduct regular inspections and maintenance to insure that all instrument accuracy remains within acceptable tolerances. 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.

2.10.5.4 Documentation of any overrides or other programming changes must be submitted, in writing, and include date and time of change, person implementing the change, and reason for the change. The State will not accept performance results unless the ESCO fully complies with these requirements.

2.10.6 M&V Plan and Methodology

2.10.6.1 The ESCO shall prepare and include, as a separate section of the final Phase I technical feasibility study, a detailed M&V plan. The plan shall indicate and describe the proposed IPMVP and/or FEMP methodology or methodologies, to be employed throughout the project, for baseline development and ongoing monitoring during the guarantee period.

2.10.6.2 Unless otherwise directed, the State requires, as part of the M&V Plan, installation of metering, instrumentation and related software, during Phase 1 for various purposes, including verifying existing equipment performance, to refine energy reduction estimates and guarantee cost avoidance, development of performance baselines, and ongoing monitoring during the guarantee period.

2.10.6.3 Prior to installation of metering, the ESCO shall prepare and present to the State for review and approval, a detailed metering plan. The plan shall clearly identify meter locations, measured parameters (temperature, flow rate, electrical power, etc.), units and frequency of measurements. In addition, the plan shall indicate proposed meter manufacturer(s), model number(s) and specification of instrument accuracy.

2.10.6.4 ESCO shall indicate details of energy and cost avoidance calculations. Details shall include formulas, constants, and unit conversion factors, assumed or measured values and calculation algorithms.

2.10.6.5 The M&V plan shall be summarized in table format. In addition, accompanying documentation shall describe how each methodology is to be implemented.

2.10.6.6 For ECM specific methodologies, the following shall also be specified:

2.10.6.7 FEMP Option A: Retrofit Isolation with Key Parameter Measurement

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

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

2.10.6.8 FEMP Option B: Retrofit Isolation with All Parameter Measurement

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

- 2.10.6.8.1.1 Power (watts, kilowatts)
- 2.10.6.8.1.2 Energy (watt-hours, kilowatt-hours, therms)
- 2.10.6.8.1.3 Temperature (°F, °C)
- 2.10.6.8.1.4 Flow rate (gallons per minute, cubic feet per minute)
- 2.10.6.8.1.5 Measurement frequency and duration, e.g.:
- 2.10.6.8.1.6 One-time
- 2.10.6.8.1.7 Interval (e.g., one each 15 minutes, 24 hours, 30 days)
- 2.10.6.8.1.8 Continuous

2.10.6.8.2 Measurement Method, e.g.:

- 2.10.6.8.2.1 Hand held instrument
- 2.10.6.8.2.2 Portable data logger
- 2.10.6.8.2.3 Field mounted instrument or data collection panel

2.10.6.8.3 Communications interface, e.g.:

- 2.10.6.8.3.1 Manually read
- 2.10.6.8.3.2 Telephone dialup
- 2.10.6.8.3.3 Wireless
- 2.10.6.8.3.4 Using Agency LAN
- 2.10.6.8.3.5 Web based

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

- 2.10.6.8.5 Savings are predicted to be greater than about 10% to 20% of the overall consumption measured by the utility or sub-meter.
- 2.10.6.8.6 At least 12 and preferably 24 months or more of pre-installation data are used to calculate a baseline model.
- 2.10.6.8.7 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.

2.10.6.9 Performance Baseline

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

- 2.10.6.9.1 Electric energy consumption, demand and cost
- 2.10.6.9.2 Natural gas and fuel oil consumption and cost
- 2.10.6.9.3 Water consumption and cost
- 2.10.6.9.4 Other utility consumption and cost
- 2.10.6.9.5 Operating hours of heating, cooling and ventilating equipment
- 2.10.6.9.6 Operating hours of lighting systems
- 2.10.6.9.7 Facility occupancy levels
- 2.10.6.9.8 Facility square footage
- 2.10.6.9.9 Weather severity (heating and cooling degree days)

- 2.10.6.10 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.
- 2.10.6.11 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.
- 2.10.6.12 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.
- 2.10.6.13 Baseline units and cost shall be developed and presented in a format consistent with applicable utility tariffs and rates.

2.10.6.14 Sampling Plan

- 2.10.6.14.1 For certain ECMs, which encompass multiple units of a similar equipment type, and monitored through FEMP Option A or B, the ESCO may elect to perform measurements of a statistical random sample selected from the population, for the purpose of establishing baseline or guarantee performance.
- 2.10.6.14.2 Prior to performing measurements, the ESCO shall prepare a detailed sampling plan, indicating sample size and measurement locations. The sampling plan must be carefully designed, based on recognized statistical techniques, in accordance with procedures set forth in FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects, Ver. 3.0 Appendix B. Prior to implementation, the Sampling Plan must be submitted to the State for review and approval.

2.10.6.15 Energy Rates

- 2.10.6.15.1 Unless explicitly approved by the State, all performance results (baseline and guarantee period) shall be based on costs determined through application of applicable utility rate tariffs and schedules to energy units. Electricity costs and cost avoidance, in particular, must be based on the application of time-of-use (TOU) energy rates, where in effect, and separate demand rates, to energy and demand units, respectively. Where tiered rate schedules apply, costs shall be determined through application of specific charges to energy units in each rate tier. In addition, the application of rate schedules shall include an explicit itemization of fixed charges, such as customer charges, minimum charges, and all applicable surcharges.
- 2.10.6.15.2 The ESCO shall include, in the final Phase I technical feasibility study, applicable baseline energy rates and/or utility rate schedules, for each energy type. Where utility rate schedules are not available (e.g., fuel oil rates), the ESCO shall include documentation, supporting the baseline rate.
- 2.10.6.15.2.1 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.

- 2.10.6.15.2.2 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.

2.10.6.15.3 Energy and Cost Avoidance Calculation

2.10.6.15.3.1 Energy units avoidance during any period shall be calculated as the difference between baseline units consumed, adjusted for variation in weather severity and operational characteristics, and actual units consumed, during the period.

2.10.6.15.3.2 Energy cost avoidance during any period shall be presented using a baseline vs. post retrofit utility bill model. Cost avoidance shall be calculated as the difference between baseline energy cost and actual cost, during the period. Baseline cost shall be calculated using baseline units, adjusted for variation in weather severity and operational characteristics 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.

2.10.6.15.4 Applicable Energy Rates

2.10.6.15.4.1 For measures which achieve cost avoidance through energy unit reduction, applicable rates shall be baseline rates or current rates, whichever result in the greater baseline cost.

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

2.10.6.15.5 Reconciliation of Actual vs. Guaranteed Savings

2.10.6.15.5.1 The guarantee monitoring period shall commence on the earlier of: the date of first scheduled loan repayment, as designated by the Treasurer's Office or other financing institution; or the first day of the first full month, following final acceptance by the State, and shall continue for the term specified.

2.10.6.15.5.2 In the event that the State deems it necessary to delay final acceptance beyond the date of the first scheduled loan repayment, and to the extent that such delay is judged by the State to be due to failure of the ESCO to satisfactorily complete the work in a timely manner, the guarantee monitoring period shall commence on the date of the first scheduled loan repayment, and the ESCO will nevertheless be liable for the entire first year's guaranteed cost avoidance, at the end of the first twelve months of the monitoring period.

2.10.6.15.5.3 If the actual cost avoidance is greater than the ESCO's guaranteed cost avoidance, then the State shall retain the difference.

2.10.6.15.5.4 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 ESCO shall submit documentation verifying temperature set points, operating hours or other parameters stipulated in the Phase 2 proposal. If a deviation from Phase 2 proposal parameters by the State has resulted in lower than expected cost avoidance, then the amount due to the State may be reduced by the difference between the expected cost avoidance and actual cost avoidance.

2.10.6.15.5.5 Any payment due the State shall be made within 60 days of the yearly anniversary date of the completion of the ECM installation. Failure to submit payment during this time frame may result in the State filing a surety claim against the ESCO for the amount due.

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

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

2.10.6.16 Products and Special Services

2.10.6.16.1 Energy Accounting Software

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

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

2.10.6.16.2 Internet Data Acquisition

2.10.6.16.2.1 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.

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

2.10.6.16.3 Instrumentation

2.10.6.16.3.1 Electric Power and Energy

2.10.6.16.3.1.1 All devices employed to meter electric power use shall be capable of metering continuous RMS voltage, current, power

and power factor at accuracy within +/- 1.0% of actual value, over the entire load range.

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

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

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

2.10.6.16.4 Temperature

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

2.10.6.16.4.2 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.

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

2.10.6.16.5 Pressure

2.10.6.16.5.1 All pressure sensing devices shall have accuracy within +/- 1% of full scale.

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

2.10.6.16.6 Flow Rate

2.10.6.16.6.1 All devices employed to meter flow rate of liquid media shall have accuracy within +/- 1.0 % of actual flow or better.

2.10.6.16.6.2 Approved flow metering devices shall include orifice, venturi, turbine or ultrasonic types.

2.10.6.16.6.3 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.

2.10.6.16.6.4 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.

2.10.6.16.6.5 Flow rates in variable volume flow systems shall be verified, using approved instrumentation, by continuous measurement throughout the monitoring period.

2.10.6.16.7 Energy and Cost Avoidance Reports

2.10.6.16.7.1 The ESCO shall provide a detailed report of energy and cost avoidance performance, at least once a year. During years one through three of the guarantee performance period, or as directed by the State, ESCO will provide informal semi-annual performance updates.

2.10.6.16.7.2 Reports shall clearly indicate energy baselines, monitoring period energy usage, applicable rates and any adjustments to energy and cost baselines.

2.10.6.16.8 Results shall be compiled into an integrated report and presented by the ESCO in person, at a time and location acceptable to the State. In-person ESCO representatives must include:

2.10.6.16.8.1 M&V specialist with principal responsibility for report preparation

2.10.6.16.8.2 Lead service technician assigned to the project

2.10.6.16.8.3 Operations manager assigned to the project or relevant region or business sector under which the project falls

2.10.6.16.8.4 Principal account executive assigned to the project

2.10.6.16.9 Though the State may request an advance report for review, note that “mail in” reconciliation reports will not be acceptable. The State reserves the right to edit and revise the format and presentation of any reports, including ESCO standardized reports, to conform to a format more acceptable to the State.

2.10.6.16.10 All 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. Report formats shall be such that the State can easily confirm the logic, formulas, and calculation algorithms, in order to independently validate performance results. Reports shall be provided in hard copy and electronic media format. Electronic format shall include spreadsheets, database files, text documents and portable data files (PDF) and shall be made available in portable media format designated by the State. All calculations, documentation and analysis supporting baseline and final performance results shall be included. M&V reports submitted by ESCO must include as a minimum the following information:

2.10.6.16.10.1 Performance year, period of the report, date of the report submission and the EPC number.

2.10.6.16.10.2 Executive Summary, which list the EPC contract date, completed date, list of the ECMs with the M&V options used, energy guarantee period. Project financial overview. Performance year financial overview, the amount of saving or shortfall. The Avoided CO₂ Emission in this performance year.

2.10.6.16.10.3 EPC Final cash flow. Updated one, if there is an amendment to the contract, which affect the project cost, or the guaranteed saving.

- 2.10.6.16.10.4 List of any changes post the baseline period with specific dates (Change in baseline year data and supported by document, square footage of any facility, accounts closed or new accounts).
- 2.10.6.16.10.5 List of the facilities, accounts numbers included in the EPC. 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.
- 2.10.6.16.10.6 Breakdown of energy, water cost and use saving by commodity for each year up to date.
- 2.10.6.16.10.7 Performance year cost and use saving by ECM.
- 2.10.6.16.10.8 Table to show total \$ saving in the performance year from each account, broken down to (Dollar saving and adjustments other than weather).
- 2.10.6.16.10.9 Tables to show all contract years guarantee cost avoidance, actual saving and cost avoidance variance.
- 2.10.6.16.10.10 Detailed cost avoidance calculations table for each account, and report from the M&V software used. Each table header should have the account number, service address, building name if applicable, baseline unit cost, actual unit cost, and regression equation.
- 2.10.6.16.10.11 Copy of all utility bills used, to audit the M&V report.
- 2.10.6.16.10.12 Documents to support the calculations of saving, and all the adjustments to the baseline reported in this performance year other than weather.
- 2.10.6.16.10.13 Cost Avoidance Acceptance Letter at the end of the report.
- 2.10.6.16.10.14 ESCO's must sent all the tables' calculations in Excel files.
- 2.10.6.16.11 To facilitate the State's review and verification of annual performance results, the ESCO shall provide copies of any utility bills for the base year and current reporting year, which are not available in the State's online utility database.

SECTION 3 – GENERAL REQUIREMENTS: CONTRACTOR REQUIREMENTS

3.1 Insurance Requirements

- 3.1.1** The Contractor shall maintain 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 limits of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.1.2** The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per claim and annual aggregate.
- 3.1.3** The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.1.4** The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and minimum a single loss retention not to exceed \$10,000.
- 3.1.5** 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 minimum the following:
- a. 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.
 - b. Commercial General Liability as required in Section 3.1.1.
 - c. Errors and Omissions/Professional Liability as required in Section 3.1.2.
 - d. Automobile and/or Commercial Truck Insurance as required in Section 3.1.3.
 - e. Crime Insurance as required in Section 3.1.4.
- 3.1.6** 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). This means the faces of 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.
- 3.1.7** 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.

3.2 Security Requirements

3.2.1 Employee Identification

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

3.2.2 Criminal Background Check

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 shall 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.

3.3 Problem Escalation Procedure

- 3.3.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.3.2 The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.
- 3.3.3 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 start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- a. The process for establishing the existence of a problem;
 - b. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
 - c. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
 - d. Expedited escalation procedures and any circumstances that would trigger expedited them;
 - e. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
 - f. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
 - g. A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

3.4 Invoicing

3.4.1 General

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

- (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; and
Amount due.
- (10) Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

3.4.1.2 The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or 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.

3.4.2 Invoice Submission Schedule

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

3.5 SOC 2 Type 2 Audit Report

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

3.6 MBE Reports

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

If this solicitation includes a MBE Goal (see Section 4.26), the Contractor and its MBE subcontractors shall provide the following MBE Monthly Reports based upon the commitment to the goal:

- (1) **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;
- (2) **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
- (3) **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.

3.7 VSBE Reports

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

3.8 Failure to Complete on Time / Liquidated Damages

- 3.8.1** Time is an essential element of the Contract and it is important that the work be vigorously prosecuted until completion.
- 3.8.2** For each day that any work shall remain incomplete beyond the Milestones specified in the Contract and this RFP, as described in the CPM, the Contractor shall be liable for liquidated damages in the amount of \$500.00 per day. An adjustment of the specified completion time(s) may be granted for approved change orders, or at the sole discretion of the State.
- 3.8.3** 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.
- 3.8.4** See also Attachment M-Contract, paragraph 36, which are liquidated damages for non compliance with Minority Business Enterprises (MBE).

3.9 End of Contract Transition

Not Applicable to this RFP.

3.10 Substitution of Personnel

3.10.1 Continuous Performance of Key Personnel. Unless substitution is approved per paragraphs 3.10.2-3.10.4 of this section, Key Personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Monitor.

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

3.10.2 Definitions. For the purposes of this section, the following definitions apply:

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.

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.

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.

3.10.3 Key Personnel General Substitution Provisions. The following provisions apply to all of the circumstances of staff substitution described in paragraph 3.10.4 of this section.

3.10.3.1 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.

3.10.3.2 The Contractor shall provide the Contract Monitor with a substitution request that shall include:

3.10.3.2.1 A detailed explanation of the reason(s) for the substitution request;

3.10.3.2.2 The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;

3.10.3.2.3 The official resume of the current personnel for comparison purposes; and

3.10.3.2.4 Any evidence of any required credentials.

3.10.3.3 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.

3.10.3.4 The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested Key Personnel replacement.

3.10.4 Replacement Circumstances

3.10.4.1 **Voluntary Key Personnel Replacement.** To voluntarily replace any Key Personnel, the Contractor shall submit a substitution request as described in paragraph 3.10.3 of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 3.10.4 (2) of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

3.10.4.2 **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 as per Section 3.10.4.1 of this section.).

Under any of the circumstances set forth in this paragraph 3.10.4.2, the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 3.10.3 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.

3.10.4.3 **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 3.10.3 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.

3.10.4.4 Directed Personnel Replacement.

3.10.4.4.1 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, as described in paragraph 3.10.4.4.2. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 3.10.3 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.

3.10.4.4.2 If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Key Personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

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SECTION 4 – PROCUREMENT INSTRUCTIONS

4.1 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) may be held at the date, time, and location indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible after the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See RFP Section 4.2.

In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Proposal Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Pre-Proposal Conference date. The Department will make a reasonable effort to provide such special accommodation.

Offerors will submit questions in writing only. All questions must be submitted on the “Q & A” Tab in eMM. All questions and responses will be published as an amendment to the solicitation on eMM.

4.2 eMaryland Marketplace

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

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

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

4.3 Questions

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.

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

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

4.4.1 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.

4.4.2 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.

4.4.3 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 respondents based on the highest ranked firms. A minimum score of 80% will be required in order to be selected.

4.5 Proposals Due (Closing) Date and Time

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.

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.

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.

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

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).

4.6 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

4.7 Economy of Preparation

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

4.8 Public Information Act Notice

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 5.4.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

4.9 Award Basis

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

4.9.1 Phase I Contracts will be awarded based on selection criteria as specified in Section 6.5, of this RFP.

4.9.2 Phase I Contracts awarded under this agreement may not exceed \$250,000.

4.9.3 Phase II contracts have no dollar limit.

4.9.4 Phase I and Phase II contracts must be approved by the Board of Public Works.

4.9.5 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.

4.10 Oral Presentation

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.

4.11 Duration of Proposal

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 (see Section 6.5.2.5) if requested. This period may be extended at the Procurement Officer’s request only with the Offeror’s written agreement.

4.12 Revisions to the RFP

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

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror’s Technical Proposal. Acknowledgement of the receipt of addenda to the

RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

4.13 Cancellations

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

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).

4.14 Incurred Expenses

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

4.15 Protest/Disputes

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

4.16 Offeror Responsibilities

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 4.26 "Minority Business Enterprise Goals" and Section 4.27 "Veteran-Owned Small Business Enterprise Goal").

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.

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.

4.17 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the 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 (see RFP Section 5.4.2.4).**

4.18 Proposal Affidavit

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.

4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit, a copy 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.

4.20 Compliance with Laws/Arrearages

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

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

4.21 Verification of Registration and Tax Payment

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

It is strongly recommended that any potential Offeror complete registration prior to the 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.

4.22 False Statements

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

- (a) In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) 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.

4.23 Payments by Electronic Funds Transfer

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. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption.

The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/X-1020130407.pdf.

4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of 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: <http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>.

4.25 Electronic Procurements Authorized

4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract.

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

4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP Section 4.23 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section 4.25.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:

4.25.4.1 The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:

- (a) The solicitation (e.g., the RFP);
- (b) Any amendments;
- (c) Pre-Proposal conference documents;
- (d) Questions and responses;
- (e) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
- (f) Notices of award selection or non-selection; and
- (g) The Procurement Officer's decision on any Proposal protest or Contract claim.

4.25.4.2 An Offeror or potential Offeror may use e-mail or facsimile to:

- (a) Ask questions regarding the solicitation;
- (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
- (c) Submit a "No Proposal Response" to the solicitation.

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

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

- (a) Submission of initial Proposals;
- (b) Filing of Proposal Protests;
- (c) Filing of Contract Claims;
- (d) Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
- (e) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

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

4.26 Minority Business Enterprise Goals

4.26.1 Establishment of Goal and Subgoals. An overall minimum MBE subcontractor participation goal of **30%** of the total contract dollar value, including all option years, if any, has been established for this procurement.

In addition, the following subgoals have been established for this procurement: **(Subgoals and subgroups will be identified on a project-by-project basis.**

- (a) (African-American subgoal percentage) % for African-American MBEs;
- (b) (Asian-American subgoal percentage)% for Asian-American MBEs;
- (c) (Hispanic-American subgoal percentage)% for Hispanic-American MBEs; and
- (d) (Woman-Owned subgoal percentage)% for Woman-Owned MBEs.

Notwithstanding any subgoals established above, 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.

4.26.2 Attachments D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:

Attachment D-1A	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
Attachment D-1B	Waiver Guidance
Attachment D-1C	Good Faith Efforts Documentation to Support Waiver Request
Attachment D-2	Outreach Efforts Compliance Statement

Attachment D-3A	MBE Subcontractor Project Participation Certification
Attachment D-3B	MBE Prime Project Participation Certification
Attachment D-4A	Prime Contractor Paid/Unpaid MBE Invoice Report
Attachment D-4B	MBE Prime Contractor Report
Attachment D-5	Subcontractor/Contractor Unpaid MBE Invoice Report

4.26.3 An Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:

- (a) 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
- (b) 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.
- (c) An Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

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

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

4.26.5 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.

- (a) Outreach Efforts Compliance Statement (**Attachment D-2**);
- (b) MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
- (c) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

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

4.26.6 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

4.26.7 The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE participation:

- (a) **Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report);
- (b) **Attachment D-4B** (MBE Prime Contractor Report, *if applicable*); and
- (c) **Attachment D-5** (MBE Subcontractor Unpaid MBE Invoice Report).

4.26.8 An Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

4.26.9 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M**, Section 2.1).

4.26.10 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M**, “Liquidated Damages” clause).

4.26.11 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

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

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE Prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

4.26.12 With respect to Contract administration, the Contractor shall:

- (1) Submit to the Department’s designated representative by the 10th of the month following the reporting period:
 - a. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
 - b. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.
- (2) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department’s designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.

- (3) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

4.27 Veteran-Owned Small Business Enterprise Goal

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

4.28 Living Wage Requirements

4.28.1 Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation 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.

4.28.2 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. See the "Living Wage" clause in the Contract (**Attachment M**).

4.28.3 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 an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to be not responsible under State law.

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

4.28.5 The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The 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.

- (1) 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.
- (2) 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.
- (3) 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, this Contract will be determined to be a **Tier 1** Contract.

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

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

4.29 Federal Funding Acknowledgement

This Contract does not contain federal funds.

4.30 Conflict of Interest Affidavit and Disclosure

A Conflict of Interest Affidavit is not required pursuant to COMAR 21.05.08.08(F) for this procurement. An Offeror is required to disclose to the Procurement Officer any actual or potential conflict of interest as it arises, before or after award, in accordance with COMAR 21.05.08.08.

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

4.31 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 within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

4.32 HIPAA - Business Associate Agreement

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

4.33 Nonvisual Access

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

4.34 Mercury and Products That Contain Mercury

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.

4.35 Location of the Performance of Services Disclosure

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

4.36 Department of Human Resources (DHR) Hiring Agreement

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

4.37 Small Business Reserve (SBR) Procurement

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

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SECTION 5 – PROPOSAL FORMAT

5.1 Two Part Submission

- Volume I – TECHNICAL PROPOSAL
- Volume II – FINANCIAL PROPOSAL

This proposal will require the submission of Volume I - Technical Proposal only. Volume II Financial Proposal is not required in this RFP.

5.2 Proposal

5.2.1 Volume I – Technical Proposal. It is preferred, but not required, that the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the package. The Technical Proposal shall contain an unbound original, so identified, and five (5) copies. The Department’s preference is for the proposal to be sealed in a single package including a label bearing:

- (1) RFP title and number,
- (2) Name and address of the Offeror, and
- (3) Closing date and time for receipt of Proposals

to the Procurement Officer (see RFP Key Information Summary Sheet) prior to the date and time for receipt of Proposals (see RFP Section 4.4 “Proposals Due (Closing) Date and Time”).

5.2.2 An electronic version on Universal Serial Bus/USB Flash/Thumb Drive of Volume 1 - Technical Proposal in Microsoft Word format must be enclosed with the original Volume I - Technical Proposal submission. Each USB Flash Drive must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. Each USB Flash Drive must be packaged with the original copy of the appropriate Proposal (Technical or Financial). In the event of any discrepancy between the hard copy and electronic versions of an Offeror’s Proposal, the State shall determine the controlling version in accordance with the State’s interests.

5.2.3 A second electronic version of Volume I in searchable Adobe .pdf format shall be submitted on USB Flash Drive for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see RFP Section 4.8 “Public Information Act Notice”).

5.2.4 Beginning with Tab B (see RFP Section 5.4.2.3), all pages of Proposal shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP Sections 5.4.2.1 and 5.4.2.2), should be numbered using romanettes (ex. i, ii, iii, iv, v, etc.).

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

5.3 Delivery

Offerors may either mail or hand-deliver Proposals.

5.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. It could take several days for an item sent by first class mail to make

its way by normal internal mail to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.

5.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.

5.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

5.4 Volume I – Technical Proposal

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

5.4.1 Format of Technical Proposal. Inside a sealed package described in Section 5.2 “Proposals,” the unbound original, five (5) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 5.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 2.2.1 Response . . . ; “Section 2.2.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 6.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

5.4.2 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:

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

5.4.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1). Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 4.8 “Public Information Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

5.4.2.3 Transmittal Letter (Submit under TAB B). A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- a. Name and address of the Offeror;
- b. Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- c. Solicitation Title and Solicitation Number that the Proposal is in response to;
- d. Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;

- e. Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- f. Offeror's eMM number;
- g. Offeror's MBE certification number (if applicable);
- h. Acceptance of all State RFP and Contract terms and conditions (see Section 4.17); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 5.4.2.4); and
- i. Acknowledgement of all addenda to this RFP.

5.4.2.4 Executive Summary (Submit under TAB C). The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary shall identify the Service Category (ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). 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.

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

If the Offeror has taken no exceptions to the requirements of this RFP, the Contract (Attachment M), or any other attachments, the Executive Summary shall so state.

5.4.2.5 Team Qualification and Experience (Submit under TAB D).

Offeror must document team continuity whereby the majority of team members have served throughout the term of at least 2 entire projects.

1) Organizational chart:

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

2) Key personnel:

- a. A qualified design team, either in-house or under contract to ESCO, is required to provide a complete feasibility study and design service for all EPC projects. In this section, submit qualifications, business references and resumes for all individual team members of the engineering design firms.
- b. Provide resumes for key project managers, energy engineers, design engineers (Mechanical, Electrical, Structural, etc.), Construction Managers, Operations Managers, and Maintenance personnel. Offeror must submit a written request to change any key team members. The State reserves the right to reject the requested replacement.
- c. The Mechanical Engineer, Electrical Engineer and Structural Engineer must all be licensed engineers, in good standing, in the State of Maryland at the time of proposal submittal.
- d. The Project Manager shall be a Certified Energy Manager (CEM). Certification must be active and in good standing at the time of proposal submission.

- e. Designated Project Managers must have experience on a minimum of 2 Energy Performance Contracts (EPC) projects valued at over \$2,000,000 each.
- 3) Describe how work assignments are made and how the team will be affected by additional EPC projects whether they be State or local government projects.
- 4) The Offeror shall present their ability to develop project tracking and reporting documents for submittals, requests for information and proposals/change orders. Therefore, offerors shall include resumes that indicate qualifications of in-house staff or consultants proposed for scheduling responsibilities and tools/systems/software to be used for implementation of the scheduling effort.
- 5) All information presented shall clearly demonstrate the ability of the Offeror to successfully execute energy performance projects, including analysis, engineering, construction, maintenance, and measuring and verification of energy savings.
- 6) ESCO must provide qualified maintenance personnel to deliver maintenance service throughout the length of the contract,

5.4.2.6 Offeror Prior Project Experience: (Submit under TAB E).

- 1) Sample Detailed Engineering Feasibility Study: (Submit under sub-heading E-5.4.2.6.1).

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

- 2) Green Building and Sustainable Design Experience: (Submit under sub-heading E-5.4.2.6.2).

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

- 3) Past Performance and Reference: (Submit under sub-heading E-5.4.2.6.3).

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

- a. The Offeror shall list five (5) recent projects with capital costs of a minimum of \$2,000,000 performed by the same team where the construction phase is completed. Projects must have an energy guarantee with a description of the guarantee type for each.
- b. As proof of meeting the requirements described in Section 1, the Offeror shall provide with its Proposal five (5) references from the past five years that cumulatively are able to attest to the Offeror's experience. The following must be included for each provided reference:

- i. A general description of each project being offered as complete or partial proof that the requirements of Section 1 have been satisfied, including the customer (reference) for whom each project was performed and when and where each was performed.
 - ii. The name and title of a contact person for the reference who can attest to the type of project the Offeror performed for the reference and the satisfaction of the Offeror's performance in satisfying the requirements of the project, from the perspectives of quality, quantity, timeliness and cost.
 - iii. A telephone number and email address at which the individual identified as the contact can be reached.
- c. Offerors are encouraged to submit sufficient graphic, narrative, and documentary material required to clearly demonstrate qualifications, financial responsibility, and performance capability of the Offeror's team.
- 4) List of all ECMs: **(Submit under sub-heading E-5.4.2.6.4).**

Offeror shall provide a comprehensive checklist of all possible ECMs.

5.4.2.7 Technical and Managerial Approach: **(Submit under TAB F)**

- 1) Prior Project Experience: **(Submit under sub-heading F-5.4.2.7.1).**

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

- 2) Construction Schedule: **(Submit under sub-heading F-5.4.2.7.2).**

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

- 3) Project Management: **(Submit under sub-heading F-5.4.2.7.3).**

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

- 4) Development of Project Scope: **(Submit under sub-heading F-5.4.2.7.4).**

To demonstrate expertise in identifying energy conservation measures, provide the methodology involved in the preparation of a typical detailed engineering feasibility study, and development of

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

5) Owner Training: **(Submit under sub-heading F-5.4.2.7.5).**

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

5.4.2.8 Financial Approach: (Submit under TAB G).

1) Procurement: **(Submit under sub-heading G-5.4.2.8.1).**

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

2) Financing: **(Submit under sub-heading G-5.4.2.8.2).**

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

3) Energy Savings Guarantee: **(Submit under sub-heading G-5.4.2.8.3).**

The Offer 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 guaranteed savings exceed actual savings. Offeror shall provide sample policy proposed for use in this project, and if self-insured, provide a complete description of how insurance is funded. Offeror shall obtain insurance or bond that will remain in effect for the term of the Contract to guarantee savings in the event the Offeror is unable or unwilling to pay any difference between actual cost savings and guaranteed savings. Policy/bond must be written such that the State is listed as an additionally insured entity which will provide the State with the ability to make a claim against the bond/policy.

4) Measurement & Verification: **(Submit under sub-heading G-5.4.2.8.4).**

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

5.4.2.9 Financial and Legal Capability (Submit under TAB H)

1) Financial Statement: **(Submit under sub-heading H-5.4.2.9.1)**

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

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

- a. Dun & Bradstreet Rating;
- b. Standard and Poor's Rating;
- c. Lines of credit;
- d. Evidence of a successful financial track record; and
- e. Evidence of adequate working capital.

2) Legal Action Summary: **(Submit under sub-heading H-5.4.2.9.2)**

The Offeror's summary shall include a list of all legal or administrative proceedings involving your firm currently pending or concluded adversely within the last five years which related to procurement or performance of any public or private contracts. The summary shall include:

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

3) Performance Bond or Insurance: **(Submit under sub-heading H-5.4.2.9.3)**

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

5.4.2.10 Certificate of Insurance (Submit under TAB I).

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.1. See Section 3.1 for the required insurance certificate submission for the recommended Offeror.

5.4.2.11 Additional Required Technical Submissions (Submit under TAB J).

The following documents shall be completed, signed, and included in the Technical Proposal, under TAB J that follows the material submitted in response to Section 5.4.2.

- a. Completed Proposal Affidavit (**Attachment C**).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**).

5.4.2.12 ***If required**, the following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 5.4.2. *See appropriate RFP Section to determine whether the particular document is required for this procurement:

- a. A Signed Statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. See Section 4.16;
- b. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A). See Section 4.26;
- c. Completed Federal Funds Attachment (Attachment G). See Section 4.29;
- d. Completed Conflict of Interest Affidavit and Disclosure (Attachment H). See Section 4.30;
- e. Completed Mercury Affidavit (Attachment K). See Section 4.34;
- f. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule. (Attachment E-1). See Section 4.27;
- g. Completed Location of the Performance of Services Disclosure (Attachment L). See Section 4.35.

5.5 Volume II – Financial Proposal

Not Applicable.

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SECTION 6 – EVALUATION AND SELECTION PROCESS

6.1 Evaluation Committee

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

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

Organizational chart (See RFP Section 5.4.2.5)

6.2.2 Offeror Prior Project Experience

Sample Detailed Engineering Feasibility Study (See RFP Section 5.4.2.6.1)

Green Building and Sustainable Design Experience (See RFP Section 5.4.2.6.2)

Past Performance and Reference (See RFP Section 5.4.2.6.3)

List of all ECMs (See RFP Section 5.4.2.6.4)

6.2.3 Technical and Managerial Approach

Prior Project Experience (See RFP Section 5.4.2.7.1)

Construction Schedule (See RFP Section 5.4.2.7.2)

Project Management: (See RFP Section 5.4.2.7.3)

Development of Project Scope (See RFP Section 5.4.2.7.4)

Owner Training: (See RFP Section 5.4.2.7.5)

6.2.4 Financial Approach

Procurement (See RFP Section 5.4.2.8.1)

Financing (See RFP Section 5.4.2.8.2)

Energy Savings Guarantee (See RFP Section 5.4.2.8.3)

Measurement & Verification (See RFP Section 5.4.2.8.4)

6.2.5 Financial and Legal Capability

Financial Statement (See RFP Section 5.4.2.9.1)

Legal Action Summary (See RFP Section 5.4.2.9.2)

6.3 Financial Proposal Evaluation Criteria

N/A

6.4 Reciprocal Preference

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

- (1) The Maryland resident business is a responsible Offeror;
- (2) The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- (3) The other state gives a preference to its resident businesses through law, policy, or practice; and
- (4) The Maryland resident preference does not conflict with a federal law or grant affecting the procurement Contract.

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

6.5 Selection Procedures

6.5.1 General. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.

In either case (i.e., with or without discussions), the State may determine an Offeror to be not responsible and/or an Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, that Offeror's Technical Proposal will be returned.

6.5.2 Selection Process Sequence

6.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and properly completed, if there is an 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. Finally, a determination is made that all Minimum Qualifications, if any (See RFP Section 1), have been satisfied.

6.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as 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.

6.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

6.5.2.4 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.

6.5.3 Award Determination

Upon completion of the Technical Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Evaluation Committee will select respondents based on the highest ranked scores. A minimum score of 80% is required for selection. With consideration given to the factors listed in Section 6 of this RFP, 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. The Procurement Officer will recommend award of the Contract to the responsible Offerors that submitted the Proposal determined to be the most advantageous to the State.

6.6 Documents Required upon Notice of Recommendation for Contract Award

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

- (1) Contract (**Attachment M**),
- (2) Contract Affidavit (**Attachment N**),
- (3) MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; *see **Section 4.26**,
- (4) MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; *see **Section 4.26**),
- (5) VSBE **Attachment E-2**, if applicable *see **Section 4.27**,
- (6) Non-Disclosure Agreement (**Attachment I**), if applicable; *see **Section 4.31**,
- (7) HIPAA Business Associate Agreement (**Attachment J**), if applicable; *see **Section 4.32**,
- (8) DHR Hiring Agreement, **Attachment O**, if applicable *see **Section 4.36**, and
- (9) Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 "Insurance Requirements," listing the State as an additional insured, if applicable; *see **Section 3.1**

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RFP ATTACHMENTS

ATTACHMENT A – Pre-Proposal Conference Response Form

It is requested that this form be completed and submitted as described in RFP Section 4.1 by those potential Offerors that plan on attending the Pre-Proposal Conference.

ATTACHMENT B – Financial Proposal Instructions and Form- N/A

ATTACHMENT C –Proposal Affidavit

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

ATTACHMENTS D – Minority Business Enterprise Forms

If required (see RFP Section 4.26), these Attachments include the MBE subcontracting goal statement and instructions, and MBE Attachments D-1 through D-5. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within ten (10) Business Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3A/B.

ATTACHMENTS E – Veteran-Owned Small Business Enterprise Forms

If required (see RFP Section 4.27), these Attachments include the VSBE Attachments E-1 through E-4. Attachment E-1 must be completed and submitted with the Technical Proposal. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

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

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

ATTACHMENT G – Federal Funds Attachment

If required (see RFP Section 4.29), these Attachments must be completed and submitted with the Technical Proposal as instructed in the Attachments.

ATTACHMENT H – Conflict of Interest Affidavit and Disclosure

If required (see RFP Section 4.30), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT I – Non-Disclosure Agreement

If required (see RFP Section 4.31), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT J – HIPAA Business Associate Agreement

If required (see RFP Section 4.32), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT K – Mercury Affidavit

If required (see RFP Section 4.34), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT L – Location of the Performance of Services Disclosure

If required (see RFP Section 4.35), this Attachment must be completed and submitted with the Technical Proposal.

ATTACHMENT M – Contract

This is the sample contract used by the Department. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer three (3) executed copies of the Contract within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Contractor.

ATTACHMENT N – Contract Affidavit

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

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

If required (see RFP Section 4.36), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT P – Performance Evaluation Form (Contractor’s Performance Evaluation)

ATTACHMENT Q – Sample Phase II Contract

Attachment A – Pre-Proposal Conference Response Form

**Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)**

A Pre-Proposal Conference will be held at the date, time, and location indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors).

Please return this form at least five (5) Business Days prior to the Pre-Proposal Conference date, advising whether or not you plan to attend. The completed form should be returned via e-mail or fax to the Procurement Officer. The Procurement Officer’s contact information is provided in the RFP Key Information Summary Sheet.

Offerors will submit questions in writing only. All questions must be submitted on the “Q & A” Tab in eMM. All questions and responses will be published as an amendment to the solicitation on eMM.

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

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

Signature

Title

Name of Firm (please print)

Not Applicable

Attachment C – Proposal Affidavit

**Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)**

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES

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

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

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

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

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

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Proposals for a public or private contract;

- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
 - (a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or
- (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Proposal price of the Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

- (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
- (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities: _____

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

**MBE ATTACHMENT D-1A:
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
& MBE PARTICIPATION SCHEDULE**

PART 1 - INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE

participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.
http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.

7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ **Regular Dealers:** Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.

- ✓ **Manufacturers:** A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ **Brokers:** With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.
- ✓ **Furnish and Install:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS Code(s) to furnish and install materials necessary for successful contract completion may be counted in full.

9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

Total African American MBE Participation:	_____ %
Total Asian American MBE Participation:	_____ %
Total Hispanic American MBE Participation:	_____ %
Total Women-Owned MBE Participation:	_____ %

Overall Goal

Total MBE Participation (include all categories):	_____ %
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**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &
MBE PARTICIPATION SCHEDULE**

This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

In connection with the bid/proposal submitted in response to Solicitation No. _____, I affirm the following:

- 1. MBE Participation (PLEASE CHECK ONLY ONE)** [Agency should insert the participation goal and subgoal amounts from the PRG and Subgoal Worksheet in the blanks below and delete any of the subgoals that do not apply to this solicitation and then delete this sentence of instruction.]

I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent and all of the following subgoals:

- _____ Percent for African American-owned MBE firms
- _____ Percent for Hispanic American-owned MBE firms
- _____ Percent for Asian American-owned MBE firms
- _____ Percent for Women-owned MBE firms

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule in order to be considered for award.

OR

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete PART 3, the MBE Participation Schedule for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.

Additional MBE Documentation

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment ___-1C)
- (b) Outreach Efforts Compliance Statement (Attachment ___-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments ___-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

Information Provided to MBE firms

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (i) CERTIFIED MBEs I INTEND TO USE, (ii) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (iii) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. MBE PRIMES: PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Broker <input type="checkbox"/> Furnish and Install <input type="checkbox"/> Services <input type="checkbox"/> Other</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p>Description of the Work to be performed with MBE prime's own forces: _____ _____</p>
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SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier <input type="checkbox"/> Manufacturer <input type="checkbox"/> Broker <input type="checkbox"/> Furnish and Install <input type="checkbox"/> Services <input type="checkbox"/> Other</p> <p>Description of the Work to be Performed: _____ _____</p>
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<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>

Continue on separate page if needed

I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

MBE ATTACHMENT D-1B WAIVER GUIDANCE

V. 6/6/14

GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the bidder/offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

I. Definitions

MBE Goal(s) – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

Good Faith Efforts – The “Good Faith Efforts” requirement means that when requesting a waiver, the bidder/offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a bidder/offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the bidder/offeror has made. The efforts employed by the bidder/offeror should be those that one could reasonably expect a bidder/offeror to take if the bidder/offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the bidder's/offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

Identified Firms – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the bidder/offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the bidder/offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

Identified Items of Work – “Identified Items of Work” means the bid items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the bidder/offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

MBE Firms – “MBE Firms” refers to a firm certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.

II. Types of Actions Agency will Consider

The bidder/offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the bidder's/offeror's Good Faith Efforts when the bidder/offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Identify Bid Items as Work for MBE Firms

1. Identified Items of Work in Procurements

(a) Certain procurements will include a list of bid items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the bidder/offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

2. Identified Items of Work by Bidders/Offerors

(a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/offeror of the responsibility to make Good Faith Efforts.

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

(a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the bidder/offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Bidders/offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Bidders/Offerors

(a) When the procurement does not include a list of Identified MBE Firms, bidders/offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.

(b) Any MBE Firms identified as available by the bidder/offeror should be certified to perform the Identified Items of Work.

C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The bidder/offeror should:

(a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the bidder/offeror provides written solicitations.

3. "Electronic Means" includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; or

(b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate With Interested MBE Firms

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

(a) the names, addresses, and telephone numbers of MBE Firms that were considered;

(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

(a) the dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;

(b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;

(c) the percentage that the MBE subcontractor's quote represents of the overall contract amount;

(d) the number of MBE firms that the bidder/offeror solicited for that portion of the work;

(e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and

(f) the number of quotes received by the bidder/offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The bidder/offeror may not use its price for self-performing work as a basis for rejecting a MBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received" by the bidder/offeror refers to the average of the quotes received from all subcontractors. Bidder/offeror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.

7. A bidder/offeror shall not reject a MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the bidder/offeror concludes is not acceptable, the bidder/offeror must provide a written detailed statement listing the reasons for this conclusion. The bidder/offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the bidder/offeror:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the bidder/offeror; and
2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

III. Other Considerations

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether a bidder/offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other bidders/offerors in meeting the contract. For example, when the apparent successful bidder/offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful bidder/offeror could have met the goal. If the apparent successful bidder/offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other bidders/offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful bidder/offeror having made Good Faith Efforts.

IV. Documenting Good Faith Efforts

At a minimum, a bidder/offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

A. Items of Work (Complete Good Faith Efforts Documentation Attachment 1-C, Part 1)

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

B. Outreach/Solicitation/Negotiation

1. The record of the bidder's/offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment 2).**

2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment 1-C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

(b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

C. Rejected MBE Firms (Complete Good Faith Efforts Attachment 1-C, Part 3)

1. For each MBE Firm that the bidder/offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

2. For each certified MBE Firm that the bidder/offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by a MBE Unavailability Certificate (see Exhibit A to this Part 1) signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the bidder's/offeror's Good Faith Efforts.

2. Submit any other documentation the bidder/offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

Exhibit A

MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
located at _____
_____ (Name of Minority firm)
_____ (Number) _____ (Street)
_____ (City) _____ (State) _____ (Zip)

was offered an opportunity to bid on Solicitation No. _____
in _____ County by _____
_____ (Name of Prime Contractor's Firm)

2. _____ (Minority Firm), is either unavailable for the
work/service or unable to prepare a bid for this project for the following reason(s):

Signature of Minority Firm's MBE Representative _____
Date _____ **Title** _____

MDOT Certification # _____ Telephone # _____

.....

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.
To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the
work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not
completed the above portion of this submittal.

Signature of Prime Contractor _____ Title _____ Date _____

MBE ATTACHMENT D-1C

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.

I affirm that I have reviewed Attachment ___-1B, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this Attachment ___-1C Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

**GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST**

**PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO
MBE FIRMS**

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

Identify those items of work that the bidder/offeror made available to MBE Firms. This includes, where appropriate, those items the bidder/offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the bidder's/offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of bid items identified during the goal setting process as possible items of work for performance by MBE Firms, the bidder/offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the bidder/offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement?	Does bidder/offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST**

PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment 1-B). If the bidder/offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
Firm Name: <hr/> MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
Firm Name: <hr/> MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION
TO SUPPORT WAIVER REQUEST**

PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 2 indicates that a MBE quote was rejected because the bidder/offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from bid)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____ -	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____ -	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Please check if Additional Sheets are attached.

MBE Attachment D - 2
OUTREACH EFFORTS COMPLIANCE STATEMENT

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

In conjunction with the bid/proposal submitted in response to Solicitation No. _____, I state the following:

1. Bidder/Offeror identified subcontracting opportunities in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding/proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

4. **Please Check One:**

- This project does not involve bonding requirements.
- Bidder/Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

5. **Please Check One:**

- Bidder/Offeror did attend the pre-bid/pre-proposal conference.
- No pre-bid/pre-proposal meeting/conference was held.
- Bidder/Offeror did not attend the pre-bid/pre-proposal conference.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

**MBE Attachment D-3A
MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION**

PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT __-1A) WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

Provided that _____ (Prime Contractor's Name) is awarded the State contract in conjunction with Solicitation No. _____, such Prime Contractor intends to enter into a subcontract with _____ (Subcontractor's Name) committing to participation by the MBE firm _____ (MBE Name) with MDOT Certification Number _____ which will receive at least \$ _____ which equals to ____% of the Total Contract Amount

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

for performing the following products/services for the Contract:

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

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

PRIME CONTRACTOR	SUBCONTRACTOR
Signature of Representative: _____	Signature of Representative: _____
Printed Name and Title: _____ _____	Printed Name and Title: _____ _____
Firm's Name: _____	Firm's Name: _____
Federal Identification Number: _____	Federal Identification Number: _____
Address: _____ _____	Address: _____ _____
Telephone: _____	Telephone: _____
Date: _____	Date: _____

**MBE Attachment D-3B
MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT __-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

Provided that _____ (Prime Contractor's Name) with Certification Number _____ is awarded the State contract in conjunction with Solicitation No. _____, such MBE Prime Contractor intends to perform with its own forces at least \$ _____ which equals to _____% of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

MBE PRIME CONTRACTOR

Signature of Representative: _____

Printed Name and Title: _____

Firm's Name: _____

Federal Identification Number: _____

Address: _____

Telephone: _____

Date: _____

MBE Attachment D-4A
{INSERT AGENCY NAME}
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid MBE Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence.	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	--

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
List all payments made to MBE subcontractor named above during this reporting period: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice#</u></th> <th style="width: 30%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$		_____	List dates and amounts of any outstanding invoices: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice #</u></th> <th style="width: 30%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid: \$		_____
	<u>Invoice#</u>	<u>Amount</u>																																					
1.																																							
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Total Dollars Paid: \$		_____																																					
	<u>Invoice #</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
4.																																							
Total Dollars Unpaid: \$		_____																																					

- If more than one MBE subcontractor is used for this contract, you must use separate 1-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment 1-4B

Signature: _____ Date: _____

(Required)

Print Name: _____ Title: _____

• **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**
 {INSERT AGENCY}
 {INSERT DEPARTMENT}
 {INSERT CONTACT NAME}
 {INSERT MAILING ADDRESS}
 {INSERT TELEPHONE}{INSERT FAX}{INSERT E-MAIL ADDRESS}

MBE Attachment D-4B
(Department)
Minority Business Enterprise Participation
MBE Prime Contractor Report

MBE Prime Contractor: Certification Number: Report #: _____ Reporting Period (Month/Year): _____ MBE Prime Contractor: Report is due to the MBE Liaison by the ___ of the month following the month the services were provided. Note: Please number reports in sequence.	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
---	--

Contact Person: _____		
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	E-mail: _____

Invoice Number	Value of the Work	NAICS Code	Description of the Work

Signature: _____ Date: _____
 (Required)
 Print Name: _____ Title: _____

- | |
|---|
| <ul style="list-style-type: none"> • Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred): {INSERT AGENCY} {INSERT DEPARTMENT} {INSERT CONTACT NAME} {INSERT MAILING ADDRESS} {INSERT TELEPHONE} {INSERT FAX} {INSERT E-MAIL ADDRESS} |
|---|

MBE ATTACHMENT D-5
Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____ Reporting Period (Month/Year): _____ Report is due by the ___ of the month following the month the services were performed.	Contract # _____ Contracting Unit: _____ MBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	--

MBE Subcontractor Name: _____																															
MDOT Certification #: _____																															
Contact Person: _____		E-mail: _____																													
Address: _____																															
City: _____	State: _____	ZIP: _____																													
Phone: _____	Fax: _____																														
Subcontractor Services Provided:																															
List all payments received from Prime Contractor during reporting period indicated above. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 55%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Paid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Paid: \$ _____			List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 55%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="3">Total Dollars Unpaid: \$ _____</td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
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	<u>Invoice Amt</u>	<u>Date</u>																													
1.																															
2.																															
3.																															
Total Dollars Unpaid: \$ _____																															
Prime Contractor: _____		Contact Person: _____																													

Signature: _____ Date: _____
 (Required)
 Print Name: _____ Title: _____

• **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**
 {INSERT AGENCY}
 {INSERT DEPARTMENT}
 {INSERT CONTACT NAME}
 {INSERT MAILING ADDRESS}
 {INSERT TELEPHONE} {INSERT FAX} {INSERT E-MAIL ADDRESS}

Attachment E – Veteran-Owned Small Business Enterprise

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

Living Wage Requirements for Service Contracts

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

or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.state.md.us/labor/prev/livingwage.shtml>.

Maryland Living Wage Requirements Affidavit of Agreement

Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)

(submit with Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

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

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

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

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

Attachment G – Federal Funds Attachment

This solicitation does not include a Federal Funds Attachment.

Attachment H – Conflict Of Interest Affidavit And Disclosure

**Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)**

Reference COMAR 21.05.08.08

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

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

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

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

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

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

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

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

Attachment I – Non-Disclosure Agreement

Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)

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

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Project No. DGS-08-EPC-IDC-8.0 Solicitation # MDDGS31037983 dated May 14, 2018; and

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

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

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, “Confidential Information” means (1) any and all information provided by or made available by the State to the Contractor in connection with the Contract and (2) any and all Personally Identifiable Information (PII) (including but not limited to personal information as defined in Md. Ann. Code, General Provisions Section 4-101(h)) and Protected Health Information (PHI) that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. The Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT I-1. The Contractor shall update ATTACHMENT I-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all

or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. The Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. The Contractor shall, at its own expense, return to the Department all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract. The Contractor shall complete and submit ATTACHMENT J-2 when returning the Confidential Information to the Department. At such time, the Contractor shall also permanently delete any Confidential Information stored electronically by the Contractor.
7. A breach of this Agreement by the Contractor or the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor: _____

Department of General Services

By: _____ (SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT - ATTACHMENT I-1

LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NON-DISCLOSURE AGREEMENT – ATTACHMENT I-2

CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and _____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

Attachment J – HIPAA Business Associate Agreement

This solicitation does not require a HIPAA Business Associate Agreement.

Attachment K – Mercury Affidavit

**Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)**

MERCURY AFFIDAVIT

AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:

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

MERCURY CONTENT INFORMATION:

The product(s) offered do not contain mercury.

OR

The product(s) offered do contain mercury.

In an attachment to this Mercury Affidavit:

- (1) Describe the product or product component that contains mercury.
- (2) Provide the amount of mercury that is contained in the product or product component. Indicate the unit of measure being used.

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

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

_____ By: _____
Date Signature
Print Name: _____
Authorized Representative and Affiant

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

Attachment L – Location Of The Performance Of Services Disclosure

**Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)**

(submit with Proposal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Proposal submitted in response to Solicitation No. _____, the following disclosures are hereby made:

1. At the time of Proposal submission, the Offeror and/or its proposed subcontractors:

___ have plans

___ have **no** plans

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

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

a. Location(s) services will be performed:

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

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

Date: _____

Offeror Name: _____

By: _____

Name: _____

Title: _____

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

Attachment M – Contract

TO BE COMPLETED BY THE PROCUREMENT OFFICER UPON SELECTION OF THE OFFEROR AWARDED THE CONTRACT

(CONTRACT TITLE)

THIS CONTRACT (the “Contract”) is made this (“Xth”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the (DEPARTMENT).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which is duly 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 “Contract” means this agreement between (Contractor’s name) and the State of Maryland, acting through the (DEPARTMENT).
- 1.3 “Contract Monitor” means the following Department employee identified as the Contract Monitor: (Contract Monitor’s name and contact information)
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the (Department).
- 1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.7 “Procurement Officer” means the following Department employee identified as the Procurement Officer: (Procurement Officer’s name and contact information)
- 1.8 “RFP” means the Request for Proposals for (solicitation title) Solicitation # (solicitation number), and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract for (enter title/description of what the Contract is for) awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

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

Exhibit C – The Proposal (Technical and Financial)

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. 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 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately **(number of years of base term of Contract)** years **(change to months if necessary)** beginning **(anticipated Contract start date)** and ending on **(anticipated end date of base term of Contract)**.
- 3.2 The State, at its sole option, has the unilateral right to extend the term of the Contract for **(number of Option Years)** additional successive one-year terms at the prices quoted in the Financial Proposal for Option Years. **(Delete this section if there are no Option Years, and change the numbering of the next section to 3.2).**
- 3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. **(enter the following sentence for contracts with a Not-to-Exceed/NTE amount) Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract, including the base term and any option exercised by the State, shall not exceed \$ (enter NTE amount).**

(The following paragraph may be added to indefinite quantity, labor hour and time and materials contracts with Not-to-Exceed amounts at the discretion of the Contract Monitor; otherwise delete it.)

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the above specified 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 with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or

applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.
- 4.5 Contractor's eMaryland Marketplace vendor ID number is (Contractor's eMM number).

5. Rights to Records

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

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or

generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except that Contractor may provide said information to any of its officers, employees and subcontractors who Contractor requires to have said information for fulfillment of Contractor's obligations hereunder. Each officer, employee and/or subcontractor to whom any of the Department's confidential information is to be disclosed shall be advised by Contractor of and bound by confidentiality and intellectual property terms substantively equivalent to those of this Contract.

7. Patents, Copyrights, and Intellectual Property

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. 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 the implementation of 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) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

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

10. Indemnification

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or lawsuit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, lawsuit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

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

- 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 or Notice to Proceed issued under this Contract, or any software, or any software license required hereunder.
- 13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, 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, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's 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, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of

termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement 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. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

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 and/or subcontractor'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 Contract services being performed for the State.
- 25.2 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).
- 25.4 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.
- 25.5 This Section shall survive expiration or termination of the Contract.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

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

27. Cost and Price Certification

- 27.1 By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its 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 portion of the services provided 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; provided, however, that a Contractor may assign monies receivable under a contract after due 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. Liability

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

- 29.1 For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- 29.2 Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 29.3 For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form the Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or 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 other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The 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. The 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 the Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, the Contractor agrees to provide within sixty (60) days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
 - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
 - b. Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
 - c. Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. 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 the:

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

32. Living Wage

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

33. Use of Estimated Quantities

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

34. Contract Monitor and Procurement Officer

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

35. 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: (name of Procurement Officer)
Procurement Officer
(address and contact information for Procurement Officer)

If to the Contractor: _____

(OPTIONAL CONTRACT CLAUSES: The following optional clauses may be required under certain conditions. Use these clauses only when appropriate. Delete any clauses not used and renumber the remaining Contract clauses as necessary.)

(If there is an MBE goal for the Contract, enter and complete the following clause pursuant to GOMA’s Guidelines for Liquidated Damages Provisions for Contracts Containing Minority Business Enterprise Participation Goals.)

36. Liquidated Damages

36.1 The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent 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 or impossible to ascertain with precision and liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset 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 each violation.

- 36.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$156.00 per day until the monthly report is submitted as required.
- 36.1.2 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): \$78.00 per MBE subcontractor.
- 36.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 36.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 36.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$585.00 per day until the undisputed amount due to the subcontractor is paid.
- 36.2 Time is an essential element of the Contract and it is important that the work be vigorously prosecuted until completion.
 - 36.2.1 For each day that any work shall remain incomplete beyond the Milestones specified in the Contract and this RFP, as described in the CPM, the Contractor shall be liable for liquidated damages in the amount of \$500.00 per day. An adjustment of the specified completion time(s) may be granted for approved change orders, or at the sole discretion of the State.
 - 36.2.2 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.
- 36.3 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 otherwise may be available at law or in equity.

(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.)

37. Parent Company Guarantee

(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.

(The following clause is mandatory for 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.)

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

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

(HIPAA Clauses. One of the following three clauses should be used whenever the contract deals with medical information/records, third party clients or medical billing/payments. Delete any/all clauses if not applicable.)

(Option 1 of 3 – Use this clause when the Department unit is not a covered entity. The blank at the beginning would reference any statutory requirement unique to the Department 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.”)

39. Confidentiality of Health and Financial Information

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 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 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 the Department for information about its privacy practices in general or with respect to a particular individual, modifying such information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health and financial information.

(OR – Option 2 of 3 – Use this confidentiality clause when the Department unit is a covered entity and the vendor is not a business associate.)

39. Compliance with HIPAA and State Confidentiality Law

39.1 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.

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

39.3 “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, provision of healthcare to an individual, or 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 the Department unit is a covered entity and the vendor is a business associate.)

39. Compliance with Federal HIPAA and State Confidentiality Law

39.1 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.

39.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined in HIPAA, the Contractor shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.501 and in the form as required by the Department.

- 39.3 “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.

(The following clause should be added to contracts for which there is a strong possibility of employment by current and former Family Investment Program (“FIP”) recipients, their children, foster youth, and child support obligors (“Candidates”). The actual DHR Agreement must be included in the solicitation as Attachment O (see Section 1.43) Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.)

40. Hiring Agreement

- 40.1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Resources (DHR) 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.
- 40.2 The Hiring Agreement provides that the Contractor and DHR 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.

(The following clause should be added to contracts when there is the probability of customers with limited ability in speaking English. Delete this clause if not applicable, and revise the numbering of the clauses in this Contract accordingly.)

41. 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 DHMH Policy 02.06.07.

(Include the following clause after any or all “optional” clauses above have been entered, and revise Contract clause numbering as necessary.)

42. Miscellaneous

- 42.1 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.
- 42.2 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.

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

CONTRACTOR

STATE OF MARYLAND
(DEPARTMENT)

By:

By: (name and title of Department Head)
Or designee:

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 #)

**Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)**

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number: _____

Address: _____

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

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, 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.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
 - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
 - (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

**Solicitation Number MDDGS31037983
Indefinite Delivery Contract (IDC 8.0)**

Agency Contract/Solicitation Number: _____

**MARYLAND DEPARTMENT OF HUMAN SERVICES
HIRING AGREEMENT**

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

WITNESSETH:

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

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

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

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

- Medicaid coverage for the employee and the employee’s dependents for up to one year after placement in the job;
- Maryland Children’s Health Program (MCHP) medical coverage for the employee’s dependents after one year of employment for as long as eligibility is met;
- Food Supplement Program for the employee and the employee’s dependents for as long as eligibility requirements are met;
- Child Care subsidies for the employee’s dependents for up to one year after employment as long as eligibility requirements are met;
- Transportation subsidies for the employee for a period of time after employment;
- Other Retention services including counseling on an as needed basis; and
- Assistance with claiming tax credits for hiring the Department’s current and former Family Investment Program (“FIP”) recipients, their children, foster care youth, and child support obligors (“Candidates”).

WHEREAS, the Contractor and Department agree to work cooperatively to develop responses to the workforce development requirements faced by the Contractor and to promote the hiring of the Candidates by the Contractor.

NOW THEREFORE, upon valuable consideration received, the Contractor and the Department specifically agree as follows:

A. The CONTRACTOR shall:

1. Notify the Department of all job openings that exist or result from the Procurement Contract.
2. Declare the Department the “first source” in identifying and hiring Candidates for those openings.
3. Work with the Department to develop training programs that will enable Candidates to qualify for and secure employment with the Contractor.
4. Give first preference and first consideration, to the extent permitted by law and any existing labor agreements, to Candidates the Department refers for job openings that exist or result from the Procurement Contract.
5. Agree to give Candidates referred to the Contractor by the Department priority in the filling of a job opening so long as the Candidate meets the qualifications of the position and the Department refers qualified Candidates within five (5) Business Days.
6. Submit biannual reports (for the duration of the Contract) listing the number of all job openings and the total number of individuals interviewed and hired under the Procurement Contract. The report shall also include information regarding the disposition of referrals made, to include an explanation of why any such Candidate was not hired or considered qualified.
7. Designate the following individual to be the point of contact:

Point of Contact Name:

Point of Contact Address:

Point of Contact
E-Mail

Point of Contact
Telephone #

Point of
Contact Fax #

The point of contact will:

- a. Provide additional information regarding “first source” jobs and clarify their requirements.
- b. Receive Department referrals.
- c. Provide feedback to a Department account representative upon request regarding the dispositions of those referrals as well as the progress/employment status of those Candidates hired by the Contractor.

8. Submit the Contractor's Federal Employment Identification Number ("FEIN") in an effort to increase efficiency in the employment monitoring process for annual legislative reporting.

B. The Department will designate an account representative who will:

1. Process all the Contractor's job notices in accordance with this "Agreement."
2. Refer screened and qualified Candidates to the Contractor's designated contact person.
3. Make referrals in a timely manner, that is, within five (5) Business Days after receiving the Contractor's job opening notices.
4. Assist in the development of any mutually agreed upon training, internship or apprenticeship programs that will better prepare Candidates for employment with the Contractor.
5. Provide follow-up and post hire transitional/supportive services, (e.g. Medicaid, MCHP, Food Supplement Program, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate.
6. Ensure that the Contractor is advised of available subsidies and provide any assistance to the Contractor to obtain those subsidies.
7. Report the Contractor to the procurement Entity if the Contractor does not fulfill its responsibilities in accordance with this Agreement.
8. Review and evaluate the effectiveness of this undertaking with the Contractor and make modifications as necessary and appropriate.

C. DISCLAIMERS

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

D. NON-DISCRIMINATION

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

E. MARYLAND LAW PREVAILS

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

F. EFFECTIVE DATE

This Agreement shall take effect on the date of the aforementioned Procurement Contract, which is for the period [REDACTED] through [REDACTED], and it shall remain in effect for the duration of the Procurement Contract, including any option periods or extensions. In addition, it is required that any executed extensions and additional funds added to an existing Hiring Agreement Contract be emailed to the

Office of Hiring Agreements, Hiring.Agreements@Maryland.gov listing the new end date, updated contract amount and Agency Control/Solicitation Number.

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

FOR THE CONTRACTOR:

FOR THE DEPARTMENT:

COMPANY NAME

FEIN: _____

SIGNATURE

SIGNATURE

TITLE

Hiring Agreements Program Manager
TITLE

DATE

DATE

Attachment P – Performance Evaluation

CONTRACTOR PERFORMANCE EVALUATION

					FINAL REPORT		
					INTERIM REPORT		
					% COMPLETE	PHASE	
FACILITY:	<u>0</u>					PROJECT NO:	0
PROJECT:	<u>0</u>					DATE:	01/00/00
DESCRIPTION:							
CONTRACTOR:	<u>0</u>						
CONTRACT COST DATA				CONTRACT TIME DATA			
Original Contract Amount:		\$	-	Contract Start Date:			01/00/00
Number of Change Orders:		0		Original Contract Completion Date:			01/00/00
Total Construction Change Orders:		\$	-	Approved Time Extensions (Days):			0
Final Contract Amount:		\$	-	Revised Contract Completion Date:			01/00/00
Liquidated Damages Assessed:		\$	-	Substantial Completion Date:			01/00/00
MBE Goal:		0%		Punch List Completion Date:			01/00/00
MBE Commitment:		0%		Final Payment Date:			01/00/00
MBE Performance:		0%					
Overall Rating:							
___ 4 = Outstanding ___ 3 = Above Average <u>X</u> 2 = Satisfactory ___ 1 = Below Average ___ 0 = Unsatisfactory							
Remarks: (Attach additional sheets or documentation if necessary)							

PERFORMANCE EVALUATION - CONSTRUCTION CONTRACT (Cont.)

	JOB DESCRIPTION	RATING	REMARKS
1	Compliance with Labor Standards	2	
2	Compliance with Safety Standards	2	
3	MBE Commitment	2	
4	Contract Management	2	
5	Schedule	2	
6	Superintendence/Supervision	2	
7	Coordination of Trades	2	
8	Submittal Reviews by Contractor	2	
9	Submittal Timeliness	2	
10	Erosion Control Adherence	2	
11	Scheduling of Work by Trades	2	
12	Mechanical Systems	2	
13	Electrical Systems	2	
14	Adherence to Plans/Specs	2	
15	Maintenance/Operation Manual	2	
16	O&M Equipment Demonstrations	2	
17	Cooperation with Inspector	2	
18	As-Built Drawings	2	
19	Cooperation with Owner/User	2	
20	Change Orders by Owner/User	2	
21	Job Site Appearance/Clean-Up	2	
22	Status at Punch List Inspection	2	
23	Completion of Punch List	2	
24	Project Completion	2	
25	RFI's	2	

RATING CODE: 4 = OUTSTANDING 3 = ABOVE AVERAGE 2 = SATISFACTORY 1 = BELOW AVERAGE 0 = UNSATISFACTORY

(NOTE: ALL OUTSTANDING & UNSATISFACTORY RATINGS ARE TO BE EXPLAINED)

EVALUATION OF SUB-CONTRACTORS		
SUB-CONTRACTOR (Name & Type)	RATING	REMARKS

EVALUATED BY:

REVIEWED BY:

Name and Title

Name and Title

Signature

Date

Signature

Date

Attachment Q – Sample Phase II Contract

ENERGY PERFORMANCE CONTRACT
DEPARTMENT OF GENERAL SERVICES
Project No. _____ (DGS-07-EPC-IDC-7.0)
FOR THE DEPARTMENT _____

THIS AGREEMENT, made this ____ day of __, 2017 (Two Thousand Seventeen) (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. DGS-EPC-IDC-7.0, dated September 3rd, 2014, 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. DGS-07-EPC-IDC- 7.0

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 (JCI 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

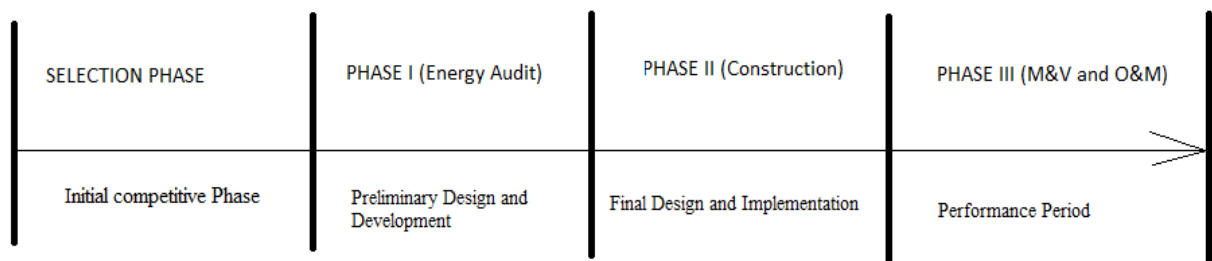
Attachment R – Abbreviations and Definitions

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

1. **Approved Equal** - those supplies or services, or compatible items of construction whose quality, design, or performance characteristics are functionally equal or superior to an item specified.
2. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
3. **Certified Energy Manager** – A certification from the Association of Energy Engineers (AEE).
4. **Change Order** - a written order signed by the responsible Procurement Officer, directing a Contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Contractor.
5. **Code - the Annotated Code of Maryland.**
6. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
7. **Consulting engineer** - the State’s designated representative for design and engineering oversight.
8. **Contract** - the written agreement executed between the State and the successful Offeror, as a result of this RFP, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price.
9. **Contractor** - The selected Offeror that is awarded a Contract by the State.
10. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
11. **Contract Documents** - this RFP, the Proposal and all amendments /addenda thereto, the Offeror’s Phase I proposal and Phase II proposal, plans and specifications and construction drawings developed by the Contractor, other documents that may be referenced in the RFP or written contract, and the written contract, contract forms and bonds, notice to proceed, and any supplemental agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof.
12. **Contract Monitor (CM)** – 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.
13. **Contract Price** - the amount payable to the Contractor under the Contract terms.
14. **Contract Time** - the number of calendar days shown in the contract documents indicating the time allowed for the completion of the work contemplated in the contract.

15. **Cost Avoidance** - the difference between current and baseline cost, (baseline cost being what current cost would have been had no energy efficiency measures been implemented). Baseline cost also reflects variation in weather severity, occupancy, equipment loads, operating patterns, and energy rates.
16. **Critical Path Method (CPM)** - a scheduling/management tool showing a network of work elements or activities for a construction project.
17. **Day** - calendar day unless otherwise designated.
18. **Department** - the Department of General Services, State of Maryland.
19. **DGS** - the Department of General Services, State of Maryland.
20. **ECM** - Energy Conservation Measures.
21. **eMM** - eMaryland Marketplace see RFP (Section 4.2)
22. **Employee** - all employees of the State of Maryland, whether classified, unclassified, or employed under a personal services contract of employment. It does not include independent contractors or successful Offerors.
23. **Energy** - electricity, natural gas, propane, fuel, chilled water, steam and water, purchased or generated on-site.
24. **EPC** – Energy Performance Contract.
25. **ESCO** - Energy Service Company.
26. **Financial Proposal** – the Offeror’s Financial Proposal pursuant to this RFP.
27. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation.
28. **Key Personnel** – All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract.
29. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
30. **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.
31. **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.
32. **MEA**- Maryland Energy Administration.
33. **Notice to Proceed** - A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation.
34. **Offeror** – An entity that submits a Proposal in response to this RFP.

35. **Operations Costs** - costs of personnel labor, maintenance materials and contract services, directly associated with operating and maintaining building lighting, HVAC and other energy consuming systems.
36. **OPL** - the Office of Procurement and Logistics of the Maryland Department of General Services.
37. **Owner** - the State of Maryland or that Agency of the State administrating the contract.
38. **Payback Period** - the amount of time, in years, that the State will need to pay for the cost of the project, including all planning, engineering, design, construction, start-up, training, on-going maintenance, and interest for the length of the loan period.
39. **Payment Bond** - the security in the form approved by the Department and executed by the Contractor and its surety, subject to Title 17 of the SFP.
40. **PDF** - portable data files
41. **Performance Bond** - the security in the form approved by the Department and executed by the Contractor and the surety, guaranteeing complete performance of the Contract.
42. **Phase I Contract** - the written agreement executed between the State and the successful Offeror, to conduct the work included in Phase 1, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price.
43. **Phase I Proposal** – The proposal completed during Phase I for the work to be accomplished during Phase I, includes as appropriate either or both of an Offeror’s Technical or Financial Proposal.
44. **Phase II Contract** - the written agreement executed between the State and the successful Offeror, to conduct the work included in Phase II, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price. Phase II’s contract includes Phase II and Phase III’s scope of work.
45. **Phase II Proposal** - The proposal completed during Phase I for the work to be accomplished during Phase II and III, includes as appropriate either or both of an Offeror’s Technical or Financial Proposal.
46. **Project Phases** - State EPC projects are divided into the following Phases:



47. **Plans and Specifications** - the official construction drawings and specifications developed by the Contractor and approved by the State.

48. **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, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
49. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal in response to this IDC.
50. **Repair** - to restore after injury, deterioration, or wear, to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth, in compliance with contract or warranty, and fully serviceable; and upon completion of such repair, unless otherwise stated to be in such conditions as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish to be applied without extra cost to the State. When the word “repair” is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient and ready for normal use for which it was intended originally.
51. **RFP** - This Request for Proposals issued by the (Department), with the Solicitation Number and date of issuance indicated in the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors), including any addenda.
52. **Secretary** - the Secretary of the Department of General Services, State of Maryland.
53. **SFP** – State Finance and Procurement Article of the Annotated Code of Maryland.
54. **Selection Phase**- Or pre award phase is an initial competitive Phase to select a Phase I proposal from the competing ESCOs on IDC list.
55. **State** - the State of Maryland, which includes its agencies, departments, units, and its officials and employees when acting within the scope of their authority and in the course of their official duties.
56. **State’s Approval** - it is approved in writing by a DGS or Using Agency.
57. **Subcontractor** - only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the “Work.” It excludes one who merely finishes material not so worked. It also includes those supplying architectural, engineering, or other design services to the Contractor.
58. **Substantial Completion** - is the date on which the project can be occupied and used for its intended purpose.
59. **Successful Offeror** - the entity to whom a contract is awarded as a result of this RFP.
60. **Technical Proposal** – the Offeror’s Technical Proposal pursuant to this RFP.
61. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment F – Price Form, and used in the financial evaluation of Proposals.
62. **Surety** - the corporate body bound as required by law for the full and complete performance of the contract by the Contractor or for the payment by the Contractor to subcontractors and suppliers.
63. **Using Agency** – The Agency pursuing, awarding or using a Phase I or Phase I proposal or contract.

64. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
65. **Work** - the furnishing of all labor, materials, equipment, services, utilities, architectural/engineering and other design services, financing, cost savings guarantee, maintenance, training, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.
66. **Written Notice** - notice in writing if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or delivered by registered mail, or other means permitted by law, including email, to the last business address. For purposes of written notice required to be delivered or served on the State, its agency (ies), department(s), unit(s), employee(s), or officer(s), delivery by electronic means, including email and facsimile, shall not be considered “written notice.”

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

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