



**DEPARTMENT OF
BUDGET AND MANAGEMENT**

REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. 050B5400001R

Issue Date: February 6, 2015

**AUDIT SERVICES FOR
MARYLAND STATE AGENCIES**

NOTICE:

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

Minority Business Enterprises are encouraged to respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

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

Title: Audit Services for Maryland State Agencies

Solicitation No: 050B540001R

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 Bid/Proposal is insufficient.
 - Start-up time is insufficient.
 - Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
 - Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
 - MBE or VSBE requirements. (Explain in REMARKS section.)
 - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
 - Payment schedule too slow.
 - Other: _____

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

STATE OF MARYLAND
Department of Budget and Management
RFP KEY INFORMATION SUMMARY SHEET

Invitation for Bids: Audit Services for Maryland State Agencies

Solicitation Number: 050B5400001R

RFP Issue Date: February 6, 2015

RFP Issuing Office: Department of Budget and Management

Procurement Officer: James Adelman
Department of Budget and Management
Division of Procurement Policy & Administration
45 Calvert Street, Room 141
Annapolis, MD 21401
Phone: 410-260-4053 **Fax:** 410-974-3274
e-mail: james.adelman@maryland.gov

Contract Manager: Jamie Tomaszewski
Department of Budget and Management
Division of Procurement Policy & Administration

Proposals are to be sent to: Department of Budget and Management
Division of Procurement Policy & Administration
45 Calvert Street, Room 141 Annapolis, MD 21401
Attention: James Adelman, Procurement Officer

Pre-Proposal Conference: Friday, February 20, 2015 at 11:00 AM Local Time
Department of Budget and Management
45 Calvert Street, Room 164 Annapolis, MD 21401

Closing Date and Time: Friday, March 20, 2015 at 2:00 PM Local Time

MBE Subcontracting Goal: 30%

VSBE Subcontracting Goal: 5%

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SECTION 1 – GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Department of Budget and Management (DBM or Department) is issuing this Request for Proposals (RFP) to solicit proposals from licensed Certified Public Accounting Firms and Sole Proprietors to perform Audit Services for State of Maryland agencies. Audit services may be for an entire agency, a specific program or other component of an agency, or a contract being performed for an agency or component program.
- 1.1.2 The Department intends to obtain Audit Services, as specified in this RFP, by awarding an unlimited number of Master Contracts to qualified Offerors that will compete on an as needed basis throughout the term of the Master Contract(s) on subsequently issued Task Orders to perform Audit Services for Maryland State agencies. Each required audit will be summarized in a Task Order Request for Proposals (TORFP).
- 1.1.3 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 RFP. The Master Contractor is responsible to the Department for Contract performance including subcontractor participation under the Contract.
- 1.1.4 The anticipated duration of services to be provided under this Master Contract is **five (5) years**. The Contract is anticipated to commence on or about **May 1, 2015**. See RFP Section 1.4 for more information.
- 1.1.5 Maryland County, municipal and other non-State governments or government agencies and not-for-profit organizations within the State of Maryland, may purchase Audit Services covered by the Master Contract from a Master Contractor at the same prices chargeable to the State. All Contract prices, terms, and conditions must be provided to any Maryland local government or not for profit organization requesting Audit Services under the Master Contract(s). All such purchases by non-State of Maryland governments, government agencies or not for profit organizations:
- (1) Shall constitute Contracts between the Master Contractor(s) and that government, agency or organization;
 - (2) Shall not constitute purchases by the State or State agencies under this Contract;
 - (3) Shall not be binding or enforceable against the State; and
 - (4) May be subject to other terms and conditions agreed to by the Master Contractor and the purchaser. The Master Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State of Maryland agency.

1.2 Abbreviations and Definitions

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

1. **ADPICS** – Advanced Purchasing and Inventory Control System.
2. **Audit Services (AS)** – The systematic and independent examination of data, statements, records, operations and/or performances (financial or otherwise) of an agency, program, fund, project or activity

for a stated purpose; may include but is not limited to financial audits, agreed upon procedures, compliance, operational audits, and reconciliations.

3. **Agency/Agencies** – All State of Maryland government entities, including the University System of Maryland.
4. **Awardee** – One of the selected Offerors for the services required in this RFP.
5. **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).
6. **Certified Public Accountant (CPA)** – The statutory title of a qualified accountant in the United States who has passed the Uniform Certified Public Accountant Examination and has met additional State education and experience requirements for membership in the respective professional accounting bodies and certification as a CPA.
7. **Certified Public Accounting Firm** – A firm consisting of one or more Certified Public Accountants that serves clients such as businesses (retailers, manufacturers, service companies, etc.), individuals, nonprofits and governments.
8. **COMAR** – Code of Maryland Regulations available online at www.dsd.state.md.us.
9. **Contract(s) or Master Contract(s)** – The Contract(s) awarded to the successful Offeror(s) pursuant to this RFP. The Contract(s) will be in the form of Attachment A.
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. See RFP Section 1.4.
11. **Contract Manager (CM)** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring the daily activities of the Master Contract and providing guidance to Master Contractors and user State Agencies to ensure compliance with the terms and conditions of the Contracts; monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. DBM may change the CM at any time by written notice to the Contractors.
12. **Contractor or Master Contractor** – Each Offeror awarded a Master Contract as a result of this RFP.
13. **Contractor’s Representative (CR)** – Person designated as the Master Contractor’s single point-of-contact with the authority and knowledge to act on behalf of the Master Contractor for TORFP notifications, Task Orders and Master Contract matters. This is considered to be a Key Personnel position.
14. **DBM or Department** – The Maryland Department of Budget and Management.
15. **eMM** – eMaryland Marketplace (see RFP Section 1.8).

- 16. Fixed Hourly Labor Category Rates** – These are the Fully Loaded hourly rates as established in the Master Contract to be utilized by the Master Contractor upon proposing and executing services under the Master Contract and Task Order Agreements (TOAs). The rates quoted in a Master Contractor’s Financial Task Order Proposal (TOP) in response to a Task Order Request for Proposals (TORFP) may not exceed the Fully Loaded Fixed Hourly Labor Category Rates approved in the Master Contract for the applicable Labor Category and Contract Year. Master Contractors may propose lower rates in response to TORFPs.
- 17. Fully Loaded** – The inclusion in Labor Category billing rates of all profit, direct and indirect costs associated with performing a Task Order Agreement. The indirect costs shall include all costs that would normally be considered general and administrative and/or Routine Travel costs, or which in any way are allocated by the Master Contractor against direct labor hours as a means of calculating profit or recouping costs which cannot be directly attributable to a TO Agreement. Non-Routine Travel costs will be identified in a TORFP, when appropriate.
- 18. Go-Live Date** – The date, as specified in the Notice to Proceed, when the Master Contractor must begin providing all services required by this solicitation. See RFP Section 1.4.
- 19. Good Standing** – The status assigned to a Master Contractor that performs according to the terms and conditions of its Master Contract and satisfies the specific work requirements of any TOA to which it is a party. See RFP Section 3.5 for more information.
- 20. Indefinite Quantity Contract** - A contract for an indefinite amount of goods or labor to be furnished at specified times, or as ordered, that establishes unit prices of a fixed-price type.
- 21. Key Personnel** – The personnel identified and proposed in the Offeror’s Technical Proposal for the position of Contractor’s Representative, which is incorporated into the Master Contract by reference upon award to the Offeror. Such identified Key Personnel perform continuously for the duration of the Master Contract and cannot be substituted without the prior written approval of the Contract Manager. Any personnel proffered in response to a Task Order are Key Personnel and may include the Contractor’s Representative and staff identified in a Master Contractor’s TOP.
- 22. Labor Categories** – See RFP Section 3.2.5 and the **Master Contract’s Summary of Approved Labor Categories and Minimum Requirements Table**, in Section 3.8.
- 23. 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.
- 24. Master Contract(s) or Contract(s)** – The Contract(s) awarded to the successful Offeror(s) pursuant to this RFP. The Contract(s) will be in the form of Attachment A.
- 25. Master Contractor or Contractor** – Each Offeror awarded a Master Contract as a result of this RFP.
- 26. Master Contractor’s Representative** – Same as Contractor’s Representative (CR).
- 27. 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.

28. **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.
29. **Not-To-Exceed (NTE)** – The dollar amount that the TOA Contractor must stop performing any services for which it would seek payment beyond. See RFP Section 3.3.2 for more information.
30. **Notice To Proceed (NTP)** - A formal written notification from the Contract Manager or designee that is initially provided in conjunction with an executed Task Order Agreement which states that the selected Master Contractor should immediately, or as of the date contained in the Notice, begin performance of the TOA within the scope specified in the Notice To Proceed.
31. **Offeror** – An entity that submits a Proposal in response to this RFP.
32. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment A), 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.
33. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal for this RFP.
34. **Qualified Offeror** - An Offeror which is determined to be responsible and whose Technical Proposal is determined to be reasonably susceptible of being selected for award as a Master Contractor.
35. **Request for Proposals (RFP)** – This Request for Proposals issued by DBM, Solicitation Number 050B5400001R dated February 6, 2015, including any addenda.
36. **Small Business Reserve (SBR)** – A program in accordance with Title 14, Subtitle 5 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended by Chapter 75, Laws of Maryland 2004, that reserves a certain percentage of the procurement dollars spent by certain designated agencies for small businesses registered with the Department of General Services (DGS).
37. **State** – The State of Maryland.
38. **SFP** - State Finance and Procurement Article, Annotated Code of Maryland.
39. **State of Maryland Business Hours and Days** – 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.
40. **Task Order Agreement (TOA)** – An executed contract between DBM and the Master Contractor(s) selected to perform an audit on the behalf of a particular State agency in response to a Task Order Request for Proposals. All general terms and conditions in the Master Contract apply to TOAs. A TOA may not conflict with or supersede the Master Contract’s term (period of performance), or terms and conditions. See Attachment P as an example.

- 41. **TOA Contractor** – A Master Contractor awarded a Task Order Agreement under a TORFP.
- 42. **Task Order Manager (TOM)** - The specific State employee identified in a TORFP or its TOA, who will perform the management functions for the State for that respective TOA.
- 43. **Task Order Proposal (TOP)** - The specific technical and financial response by a Master Contractor to a TORFP.
- 44. **Task Order Request for Proposal (TORFP)** - Describes the scope of work and the performance requirements of the audit services as required by an Agency. A TORFP is subject to the labor categories defined in this RFP and its terms and conditions may not conflict with or supersede any provision of the Master Contract.
- 45. **Travel** – An expense incurred by the Master Contractor for travelling in the performance of providing audit services, the reimbursement of which depends on whether the travel is Routine or Non-Routine:
 - 1. **Routine Travel** – For travel within a 50 mile radius of the requesting agency’s base location, as identified in the TORFP, or the Master Contractor’s facility, whichever is closer to the applicable audit site, there is **no payment for labor hours for travel time or reimbursement for any travel expenses for work performed** within these radiuses or at the Master Contractor’s facility.
 - 2. **Non-Routine Travel** – Travel which is beyond the 50 mile radius of agency’s base location, as identified in the TORFP, or the Master Contractor’s facility, whichever is closer to the audit site. Allowable Non-routine travel will be identified within a TORFP or TOA, if appropriate, and will be reimbursed according to the State’s current travel regulations and reimbursement rates, which can be found at www.dbm.maryland.gov – search: Fleet Management.
- 46. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

1.3 Contract Type

- 1.3.1 The Master Contract resulting from this RFP shall be an Indefinite Quantity Contract as defined in COMAR 21.06.03.05 and 06.
- 1.3.2 The Task Order Agreements issued under the Master Contract shall be Indefinite Quantity Contracts with Fixed Unit Prices in accordance with COMAR 21.06.03.06, as described in each TORFP.

Fixed Unit Prices as proposed and accepted under the Task Order Agreements will be in effect for the applicable Contract Year term of the Master Contract. Fixed Unit Prices are referred to in this RFP as *Fully Loaded Fixed Hourly Labor Category Rates*.

1.4 Contract Duration

- 1.4.1 The Master Contract that results from this solicitation shall commence as of 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 (“Contract Commencement”).
- 1.4.2 The period of time from the date of Contract Commencement to the anticipated start date of the Master Contract, on or about **May 1, 2015**, will be the Contract “Start-up Period.” During this time, the Master Contractors will work collaboratively with DBM to set up a secure network site through which Master Contractors will submit Task Order Proposals in response to TORFPs. No compensation will be paid to the Master Contractors for any activities performed during the Start-up Period.
- 1.4.3 As of the anticipated Master Contract start date (the Go-Live Date), all Master Contractors shall be available to perform audit services and compete, on an as-needed basis, to provide such services in response to subsequently issued TORFPs by Maryland State agencies for the compensation described in their respective Financial Proposals.
- 1.4.4 The duration of the Master Contract(s) will be for the period of time from Contract Commencement to on or about **May 1, 2015**, plus approximately five (5) years for the provision of all services pursuant to any Task Orders as prescribed by the Master Contract and the requirements of this solicitation. Modifications to extend a Master Contract term are permitted only if extended before the term expires when the purpose is to complete work under a Task Order issued before the contract expires. See BPW Advisory 1995-1 Contract Modifications.
- 1.4.5 The Master Contractors’ obligations to pay invoices to subcontractors that provide services during the Master Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Master Contract and continue in effect until all such obligations are satisfied.

1.5 Procurement Officer

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

James Adelman
Procurement Officer
Department of Budget and Management
Division of Procurement Policy & Administration
45 Calvert Street, Room 141
Annapolis, MD 21401
Phone: 410-260-4053
Fax: 410-974-3274
E-mail: james.adelman@maryland.gov

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

1.6 Contract Manager

The Contract Manager is:

Jamie Tomaszewski
Contract Manager
Maryland Department of Budget and Management
Division of Procurement Policy & Administration
45 Calvert Street, Room 134
Annapolis, Maryland 21401
Phone Number: 410-260-7386
Fax Number: 410-974-3274
E-mail: Jamie.tomaszewski@maryland.gov

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

1.7 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will be held on Friday, February 20, 2015, beginning at 11:00 AM Local Time, at 45 Calvert Street, Room 164, Annapolis, MD 21401. 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 subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace. See RFP Section 1.8.

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to (410) 974-3274, the Pre-Proposal Conference Response Form to the attention of the Procurement Officer no later than 4:00 p.m. Local Time on Tuesday, February 17, 2015. The Pre-Proposal Conference Response Form is included as **Attachment E** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer no later than Wednesday, February 18, 2015. DBM will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

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

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM website (www.dbm.maryland.gov) and possibly other means for transmitting the RFP and associated materials, the solicitation and summary of the Pre-Proposal Conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be provided via eMM.

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

1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the following e-mail address: james.adelman@maryland.gov. 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 (**see above email address**) 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 Bid.

1.10 Procurement Method

The Master Contract(s) will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

1.11 Proposals Due (Closing) Date

Proposals, in the number and form set forth in Section 4.2 “Proposals” must be received by the Procurement Officer at the address listed on the Key Information Summary Sheet, no later than 2:00 P.M. Local Time on Thursday, March 12, 2015 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 21.05.02.10, Proposals received after the due date and time listed in this section will not be considered.

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

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

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

1.12 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

1.13 Economy of Preparation

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

1.14 Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 4 of the General Provisions Article, Md. Code Ann. (Also, see RFP Section 4.4.3.2 "Claim of Confidentiality"). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

1.15 Award Basis

Master Contracts shall be awarded to all qualified Offerors submitting Proposals that have been determined to be the most advantageous to the State, considering evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing audit services. See RFP Section 5 for further award information.

1.16 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 Master Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

1.17 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 if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.18 Revisions to the RFP

1.18.1 If it becomes necessary to revise this RFP before the due date for Proposals, DBM shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on DBM's procurement web page and through eMM.

1.18.2 Notwithstanding the foregoing, it is the responsibility of Prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.

1.18.3 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal. Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

1.19 Cancellations

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

1.20 Incurred Expenses

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

1.21 Protest/Disputes

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

1.22 Offeror Responsibilities

The selected Offeror(s) shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals.").

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including references, minimum qualifications, and financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria

pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror; the parent is directly involved in the performance of the Contract; and the value of the parent's participation as determined by the State.

1.23 Substitution of Personnel

A. Master Contract: Continuous Performance of Contractor's Representative

Unless substitution is approved per paragraphs C-E of this section, the Contractor's Representative shall be the same individual named in the Master Contractor's Technical Proposal, which will be incorporated into the Master Contract by reference. The Contractor's Representative shall perform continuously for the duration of the Master Contract, or such lesser duration as specified in the Technical Proposal. The Contractor's Representative may not be removed by the Master 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 Manager.

B. Task Order Agreement: Continuous Performance of Key Personnel

If the Contract is task order based (e.g. a Task Order Agreement), the provisions of this section apply to Key Personnel identified in each Task Order Proposal and Task Order Agreement. At the Task Order level, the Task Order Manager shall be notified of personnel substitutions rather than the Contract Manager.

C. 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 that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include: 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 /TORFP or the Contractor's Technical Proposal/Task Order 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 Master Contract/Task Order Agreement.

D. General Substitution Provisions

The following provisions apply to all of the circumstances of substitution of the Contractor's Representative/Key Personnel described in paragraph E of this section.

1. The Master Contractor shall demonstrate to the Contract Manager's/Task Order Manager's (TOM) satisfaction that the proposed substitute Contractor's Representative/Key Personnel has qualifications at least equal to those of the person for whom the replacement is requested.
2. The Master Contractor shall provide the Contract Manager/TOM with a substitution request that shall include:
 - a. A detailed explanation of the reason(s) for the substitution request;
 - b. The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - c. The official resume of the current personnel for comparison purposes; and
 - d. Any evidence of any required credentials.
3. The Contract Manager/TOM may request additional information concerning the proposed substitution. In addition, the Contract Manager/TOM and/or other appropriate State personnel involved with the Master Contract/Task Order Agreement may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Manager/TOM will notify the Master 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 Manager/TOM will not unreasonably withhold approval of a requested Contractor's Representative/Key Personnel replacement.

E. Replacement Circumstances

1. Voluntary Replacement

To voluntarily replace Contractor's Representative/ Key Personnel, the Master Contractor shall submit a substitution request as described in paragraph D of this section to the Contract Manager/TOM at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph E.2 of this clause, a substitution may not occur unless and until the Contract Manager/TOM approves the substitution in writing.

2. Replacement Due to Vacancy

The Master Contractor shall replace the Contractor's Representative/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 E.1 of this section.).

Under any of the circumstances set forth in this paragraph E.2, the Master Contractor shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when the Master Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3. Replacement Due to an Indeterminate Absence

If the Contractor's Representative/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 Master Contractor shall identify a suitable replacement and provide the same information or items to the Contract Manager/TOM as required under paragraph D 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 Manager/TOM, at the option and sole discretion of the Contract Manager/TOM, 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.

4. Directed Personnel Replacement

- a. The Contract Manager/TOM may direct the Master Contractor to replace a Contractor's Representative/Key Personnel who is perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Manager/TOM determines that the Contractor's Representative's/Key Personnel performance has not improved to the level necessary to continue under the Master Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Manager/TOM deems it necessary and in the State's best interests to remove the Contractor's Representative/Key Personnel with less than fifteen (15) days' notice, the Contract Manager/TOM can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Master Contractor shall, in accordance with paragraph C of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

- b. If deemed appropriate in the discretion of the Contract Manager/TOM, the Contract Manager/TOM shall give written notice of any personnel performance issues to the Master Contractor, describing the problem and delineating the remediation requirement(s). The Master Contractor shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan upon receiving written acceptance by the Contract

Manager/TOM. If the Contract Manager/TOM rejects the Remediation Plan, the Master Contractor shall revise and resubmit the plan to the Contract Manager/TOM within five (5) days, or in the timeframe set forth by the Contract Manager/TOM in writing.

- c. Should performance issues persist despite the approved Remediation Plan, the Contract Manager/TOM 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 the Contractor's Representative/Key Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

1.24 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Master Contract, attached as **Attachment A**. Any exceptions to this RFP or the Master Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 4.4.2.4).** No exceptions shall be noted in the Offeror's financial submission.

1.25 Bid/Proposal Affidavit

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

1.26 Contract Affidavit

All Offerors awarded a Master Contract as a result of this solicitation shall be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Master Contract award. This Contract Affidavit will also be required to be completed by each Master Contractor prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term.

1.27 Compliance with Laws/Arrearages

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

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

1.28 Verification of Registration and Tax Payment

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

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

1.29 False Statements

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

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

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

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

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

1.30 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$100,000. The selected Offeror(s) 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/gadx-10.pdf

1.31 Prompt Payment Policy

This procurement and the Master 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 must comply with the prompt payment requirements outlined in the Master Contract, Section 31 “Prompt Payment” (see **Attachment A**). Additional information is available on GOMA’s website at: http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf

1.32 Electronic Procurements Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, DBM may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP Section 1.30 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
 - 1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
 - a. The solicitation (e.g., the IFB/RFP);
 - b. Any amendments;
 - c. Pre-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 Bid/Proposal protest or Contract claim.
 - 2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
 - a. Ask questions regarding the solicitation;
 - b. Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer; and
 - c. Submit a "No Bid/Proposal Response" to the solicitation.

3. The Procurement Officer, the Contract Manager, 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 Manager.
- E. The following transactions related to this procurement and any Master Contract awarded pursuant to it is *not authorized* to be conducted by electronic means:
1. Submission of initial Proposals;
 2. Filing of Bid/Proposal Protests;
 3. Filing of Contract Claims;
 4. Submission of documents determined by DBM to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
 5. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from a Master Contractor or Offeror be provided in writing or hard copy.
- F. Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Manager.

1.33 Minority Business Enterprise Goals

1.33.1 Establishment of Goal and Subgoals

1.33.1.1 Master Contract

An overall aggregate MBE subcontractor participation goal of thirty percent (30%) has been established for this procurement. While the overall objective is to collectively achieve 30% MBE participation for all TOAs issued under the RFP, the means to achieve this aggregated 30% participation will be through the establishment, where appropriate, of a discrete MBE subcontractor participation goal for each TORFP issued (including any TORFP designated as a Small Business Reserve). Accordingly, MBE compliance will be monitored on a TOA basis rather than at the Master Contract level.

1.33.1.2 Task Order Agreement

When a Task Order procurement has a TOA value expected to exceed \$200,000 in value, and an expected overall MBE subcontractor participation goal of twenty-three percent (23%) or higher of the total contract dollar amount, MBE subcontractor *subgoals* will be included in the TORFP if appropriate based upon the particular type of work involved in the TORFP and the number of certified MBEs per recommended minority subgroup classification available to perform the work.

Notwithstanding any subgoals established above, the TOA 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.

If the TOA Contractor for a TORFP is a certified MBE Prime Contractor, then the procuring agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE performs with its own workforce towards fulfilling up to fifty percent (50%) of the MBE participation

goal and up to one-hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract, provided certain requirements are met, as discussed in Section 1.33.11.

1.33.2 Each Offeror shall complete, sign and submit without edits, **Attachment D-1 Master** (Offeror's Acknowledgement of TORFP MBE Requirements) at the time it submits its Technical Proposal to this RFP, acknowledging the overall MBE goal established for this RFP and that the MBE goal for each subsequent TORFP will be set at the TORFP level.

1.33.3 TORFP MBE Attachments

As noted above, a discrete MBE subcontractor participation goal will be established for each TORFP issued including any TORFP designated as a Small Business Reserve. The following Minority Business Enterprise participation instructions and forms only apply to TORFPs and are provided to assist Master Contractors responding to TORFPs:

- TORFP Attachment D-1A** MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**must be submitted with Task Order Proposal [TOP]**)
- TORFP Attachment D-1B** Waiver Guidance (**should be submitted with TOP**)
- TORFP Attachment D-1C** Good Faith Efforts Documentation to Support Waiver Request (**should be submitted with TOP**)
- TORFP Attachment D-2** Outreach Efforts Compliance Statement (**should be submitted with TOP**)
- TORFP Attachment D-3A** MBE Subcontractor Project Participation Certification (**should be submitted with TOP**)
- TORFP Attachment D-3B** MBE Prime Project Participation Certification (**should be submitted with TOP**)
- TORFP Attachment D-4A** Prime Contractor Paid/Unpaid MBE Invoice Report
- TORFP Attachment D-4B** MBE Prime Contractor Report
- TORFP Attachment D-5** Subcontractor/Contractor Unpaid MBE Invoice Report

1.33.4 A Master Contractor shall include with its TOP a completed MBE Utilization and Fair Solicitation Affidavit- MBE Participation Schedule (**TORFP Attachment D-1A**) whereby:

- a. The Master Contractor acknowledges the TORFP's 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 Master Contractor responds to the expected degree of MBE participation, as stated in the TORFP, by identifying the specific commitment of certified MBEs at the time of Task Order Proposal submission. The Master Contractor 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. A Master Contractor requesting a waiver should review **TORFP Attachment D-1B** (Waiver Guidance) and **TORFP Attachment D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

If a Master Contractor fails to submit a completed TORFP Attachment D-1A with its TOP as required, its TOP will be deemed not reasonably susceptible of being selected for award and will be rejected by the State.

Master Contractors are responsible for verifying that each of the MBE(s) selected to meet the subcontracting goal and subsequently identified in **TORFP Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

- 1.33.5 If not included with its TOP, within five (5) Business Days from notification that it is the recommended Task Order awardee (TOA Contractor) or from the date of the actual award, whichever is earlier, the Master Contractor must provide the following documentation to the Contract Manager:
- a. Outreach Efforts Compliance Statement (**TORFP Attachment D-2**).
 - b. MBE Subcontractor/Prime Project Participation Certification (**TORFP Attachment D-3A/3B**).
 - c. 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.
 - d. Any other documentation required by the Contract Manager to ascertain the Master Contractor's responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

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

- 1.33.6 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.state.md.us/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.**

- 1.33.7 The Master Contractor, once awarded a TOA, will be responsible for submitting or requiring its subcontractor(s) to submit to the Task Order Manager (TOM) the following forms to provide the State with ongoing monitoring of MBE Participation:
- a. **TORFP Attachment D-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report).
 - b. **TORFP Attachment D-4B** (MBE Prime Contractor Report, *if applicable*).
 - c. **TORFP Attachment D-5** (MBE Subcontractor/Contractor Unpaid MBE Invoice Report).

- 1.33.8 A Master Contractor 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 (**TORFP Attachment D-1C**) and all documentation within five (5) 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.

1.33.9 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**TORFP Attachment D-1A**), completed and submitted by the Master Contractor 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 TOP for order of precedence purposes (see Contract – **Attachment A**, Section 2.1).

1.33.10 The Master Contractor is advised that liquidated damages will apply in the event that it fails to comply in good faith with the requirements of the MBE program and pertinent Task Order Agreement provisions. (See Contract - **Attachment A**, Section 32).

1.33.11 COMAR 21.11.03.12-1(D) provides that when a certified MBE participates on a contract (i.e. task order agreement) 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 performs with its own work force towards fulfilling up to fifty-percent (50%) of the overall MBE participation goal.

In order to receive credit for self-performance, an MBE Prime is required to list its firm in Section 4A of the MBE Participation Schedule (**TORFP Attachment D-1A**) and include information regarding the work it will self-perform and the percentage of the contract value attributed to that work. (COMAR 21.11.03.12-1 D (2) (a)). 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 (**TORFP 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 21.11.03.12-1B, once the TOA 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 TOA.

1.33.12 With respect to Contract administration, the TOA Contractor shall:

a. Submit to the TOM by the 10th of the month following the reporting period:

1. A Prime Contractor Paid/Unpaid MBE Invoice Report (**TORFP Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
2. (If Applicable) An MBE Prime Contractor Report (**TORFP Attachment D-4B**) identifying an MBE Prime's self-performing work to be counted towards the MBE participation goals.

b. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the TOM by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**TORFP 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.

- c. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the 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 TOM on request.
- d. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- e. Upon completion of the Contract and before final payment and/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

1.34 Living Wage Requirements

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.

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 its failure 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. Additional information regarding the State's Living Wage requirement is contained in **Attachment G**.

The Living Wage Law applies to each Task Order Agreement (TOA) over \$100,000 issued under a TORFP. Each Task Order stands alone. Master Contractors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Task Order Proposals. If a Master Contractor fails to submit and complete the Living Wage Affidavit of Agreement with its TOP, the State may determine the Master Contractor to be not responsible under State law.

Master 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.

The TOA resulting from a TORFP will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Master Contractor provides 50% or more of the services. The Master Contractor must identify in its TO Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the TOA services will be provided.

- If the Master Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the TOA will be a Tier 1 Contract.
- If the Master Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the TOA will be a Tier 2 Contract.
- If the Master 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.

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

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

1.35 Federal Funding Acknowledgement

This Master Contract does not contain Federal funds. Future Task Order Agreements (TOAs) may include Federal funds. If so, the following provisions may apply at the task order level:

1.35.1 There are programmatic conditions that apply to TOAs due to Federal funding. (See **Attachment H**).

1.35.2 The total amount of Federal funds allocated for the Agency is \$ (to be entered by requesting agency in the TORFP) in Maryland State fiscal year (to be entered by requesting agency in the TORFP). This amount represents (to be entered by requesting agency in the TORFP) % of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.

1.35.3 This Contract contains federal funds. The source of these federal funds is: (to be entered by requesting agency in the TORFP). The CFDA number is: (to be entered by requesting agency in the TORFP). The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment H**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment H** and Bidders/Offerors are to complete and submit these Attachments with their Task Order Proposal as instructed in the Attachments. Acceptance of this agreement indicates the Bidder/Offeror's intent to comply with all conditions, which are part of this Contract.

1.36 Conflict of Interest Affidavit and Disclosure

Master Contractors responding to a TORFP shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with the Task Order Proposal. Master Contractors are advised that if a Task Order Agreement is awarded as a result of the TORFP, the successful Contractor's personnel who perform or control work under this TOA and each of the participating subcontractor personnel who perform or control work under this TOA shall be required to complete agreements substantially similar to **Attachment I** Conflict

of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.37 Non-Disclosure Agreement

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

1.38 HIPAA - Business Associate Agreement

A HIPAA Business Associate Agreement is not required for this Master Contract but may be required for a Task Order Agreement. A Sample HIPAA-Business Associate Agreement is provided for informational purposes. See **Attachment K**.

1.39 Nonvisual Access

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

1.40 Mercury and Products That Contain Mercury

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

1.41 Veteran-Owned Small Business Enterprise Goals

1.41.1 An overall aggregate five percent (5%) Master Contract goal for VSBE subcontractor participation has been established for this procurement. While the overall objective is to collectively achieve five percent (5%) VSBE participation for all TOAs issued under the RFP, the means to achieve this aggregated 5% participation will be through the establishment, where appropriate, of a discrete VSBE subcontractor participation goal for each TORFP issued (including any TORFP designated as a Small Business Reserve). Accordingly, VSBE compliance will be monitored on a TOA basis rather than at the Master Contract level.

1.41.2 Each Offeror shall complete, sign and submit without edits **Attachment M-1 - MASTER**, Offeror's Acknowledgement of TORFP VSBE Requirements at the time it submits its Technical Proposal to this RFP.

If an Offeror fails to submit Attachment M-1-Master with the Proposal as required, the Procurement Officer may determine that the Proposal is not reasonably susceptible of being selected for award.

1.41.3 A Master Contractor responding to a TORFP must submit a completed Veteran-Owned Small Business Enterprise Utilization Affidavit and Subcontractor Participation Schedule (**TORFP Attachment M-1**) with its Task Order Proposal (TOP) whereby:

- a. The Master Contractor acknowledges it:

1. Intends to meet the VSBE participation goal; or
 2. Requests a full or partial waiver of the VSBE participation goal. If the Bidder/Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal.
- b. The Master Contractor responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of contract value associated with each VSBE subcontractor identified on the VSBE Participation Schedule.

If a Master Contractor fails to submit TORFP Attachment M-1 with the Task Order Proposal as required, its TOP may be rejected for award by the State as not being reasonably susceptible of being selected for award.

- 1.41.4 If not included with its TOP, within five (5) Business Days from notification that it is apparent task order awardee, the Master Contractor must provide the following documentation to the Contract Manager:
- a. VSBE Project Participation Statement (**TORFP Attachment M-2**);
 - b. If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
 - c. Any other documentation required by the Contract Manager to ascertain Master Contractor responsibility in connection with the VSBE subcontractor participation goal.

If the recommended awardee fails to return each completed document within the required time, the Contract Manager may determine that the recommended awardee is not responsible and therefore not eligible for Task Order Award agreement.

1.41.5 CONTRACT ADMINISTRATION REQUIREMENTS

The Master Contractor, once awarded the Task Order Agreement shall:

- a. Submit monthly to the TOM a report listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice, and the reason payment has not been made. (**TORFP Attachment M-3**).
- b. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly to the TOM a report that identifies the prime contract and lists all payments received from TOA Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices. (**TORFP Attachment M-4**).
- c. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of

work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Master Contractor and furnished to the TOM on request.

- d. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Master Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the TOA.
- e. At the option of the procurement agency, upon completion of the TOA 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 VSBE subcontractors.

1.41.6 Questions or concerns regarding the Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal of a TORFP must be raised before the due date for submission of TOPs.

1.41.7 Veteran-Owned Small Business Enterprises, or VSBEs, must be verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.vetbiz.gov>.

1.42 Location of the Performance of Services Disclosure

This solicitation does not require a Location of the Performance of Services Disclosure. However, for any TOA that is anticipated to have an estimated value of \$2,000,000 or more, a Location of the Performance of Services Disclosure is required. (See **Attachment N**).

1.43 Department of Human Resources (DHR) Hiring Agreement

This solicitation does not require a DHR Hiring Agreement. Future TOAs may include a DHR Hiring Agreement. All Master Contractors are advised that if a TOA is awarded and the TOA includes the DHR Hiring Agreement, the successful Master Contractor will be required to complete the 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 TOA award.

1.44 Small Business Reserve (SBR) Procurement

All procurements by Maryland State Agencies listed as Designated Procurement Units under COMAR 21.11.01.01(B) (2) are eligible for designation as small business reserve procurements. See COMAR 21.11.01.06 (a) (1). A Designated Procurement Unit Agency may designate any qualifying TORFP issued pursuant to this RFP as a Small Business Reserve (SBR) TORFP. The resulting TOA may only be awarded to a Master Contractor that is a certified small business (See COMAR 21.11.01.01 (B) (2)), that meets the statutory qualifications of a small business as defined in §14-501(c) State Finance and Procurement (SFP) Article, Annotated Code of Maryland, and is registered with the Department of General Services (DGS) SBR Program at the time of Task Order award.

The Designated Procurement Unit Agency shall assess the potential for an MBE subcontractor participation goal, if applicable, for each SBR TORFP.

Throughout the term of the Master Contract, Master Contractors registered under SBR guidelines shall promptly notify the Contract Manager of any change in their SBR status. Should a Master Contractor become SBR certified after award of a Master Contract, the Master Contractor shall notify and provide the Contract Manager with its DGS-assigned SBR registration number.

Information regarding the Small Business Reserve Program and Small Business standards can be obtained from the Maryland Department of General Services website at www.smallbusinessreserve.maryland.gov.

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SECTION 2 – MINIMUM QUALIFICATIONS

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

- 2.1.1 An Offeror that is a sole proprietorship with its principal place of business in Maryland must hold a current license to practice Certified Public Accountancy in accordance with Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article, Section 2-301.

An Offeror that is a business entity, e.g., partnership, corporation, LLC/LLP, with its principal place of business in Maryland must hold a current permit to practice Certified Public Accountancy in accordance with Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article, Section 2-401.

As proof of meeting this requirement, each Offeror shall provide a copy of its current license or permit to practice Certified Public Accountancy issued by the Maryland Board of Public Accountancy. If the Offeror is a licensed out-of-state accountant whose principal place of business is outside the State, it shall provide such information as required under Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article, Section 2-321.

- 2.1.2 Within the three (3) years preceding the date of its Proposal submission to this RFP, the Offeror must have been subject to a Quality Control Peer Review in accordance with Generally Accepted Government Auditing Standards and have received a written report documenting the review.

As proof of meeting this requirement, the Offeror shall provide a dated copy of the report or acceptance letter indicating a Peer Review Rating of “Pass.” (A “Pass” rating does not include a rating of “Pass with Deficiencies.”)

- 2.1.3 Within the three (3) years preceding the date of its Proposal submission to this RFP, the Offeror must have performed at least **five (5) audits** of public or private entities with at least twenty-five (25) employees.

As proof of meeting this requirement, the Offeror shall provide the following information for each audit:

1. Name of the client organization audited;
2. Name, title, email address and telephone number of point of contact for the organization who can verify that the audits were performed; and the
3. Dollar Value, type, timeframe, and duration of the contract(s) for audit services for the client organization.

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SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

Maryland State Agencies currently procure Audit Services under an Audit Services Master Contract that is scheduled to expire in July, 2015. DBM is issuing this solicitation for proposals from Certified Public Accountants to perform Audit Services for Maryland State agencies under a new Audit Services Master Contract. The new Master Contract is for five years and is anticipated to be from approximately May 1, 2015 through April 30, 2020.

State agencies requiring Audit Services will obtain those services through the issuance of a Task Order Request for Proposals (TORFP). **State agency TORFPs will be issued solely through DBM.** All Offerors awarded a Master Contract as a result of this RFP (Master Contractors) will be invited to compete for the work assignment or task detailed in the TORFP unless the TORFP is designated for a Small Business Reserve (see RFP Section 1.44) or the Master Contractor is not in Good Standing (see RFP Section 3.5). Under a Small Business Reserve TORFP, only Master Contractors that qualify as small businesses will be invited to submit Proposals. (See COMAR §21.05.07.06(A) (4) and §21.11.01.04).

A given Task Order may be a one-time audit, engagement, or a periodic recurring audit for an identified number of months or years, including possibly for the full duration of the Master Contract.

A non-State of Maryland government agency or non-profit organization within Maryland may likewise procure Audit Services from Master Contractors through the issuance of its own TORFP. (See RFP Section 1.1.7)

Master Contractors, either exclusively or in combination with subcontractors, must provide all services or meet all the requirements as noted herein.

3.2 Task Order Process

3.2.1 To initiate the Task Order Process, a State Agency or other entity requesting audit services must first notify the Contract Manager of its intent to procure these services via a TORFP.

The requesting agency develops a Scope of Work (SOW) in collaboration with the Contract Manager and also performs an MBE TORFP Project Review (PR) Assessment to determine the MBE subcontractor participation goal for the project.

3.2.2 TORFPs will be initiated by a State agency, issued solely by DBM, and will define the scope and requirements that meet the objectives of the requesting Agency. The Contract Manager releases the TORFP to the Master Contractors and the TORFP enters the Open Period. The Open Period is the time between the release date of the TORFP and the due date/time for Task Order Proposal submissions. During the Open Period, the Contract Manager is the sole contact for the requesting agency and the Master Contractors.

- 3.2.3 Information contained in the TORFPs shall include, but not necessarily be limited to, the following:
- A. Key Information Summary Sheet;
 - B. Information required in any Executive Summary/Cover Letter;
 - C. Scope of Work requirements, Performance objectives, deliverables and terms;
 - D. Experience and capabilities of Master Contractor and its subcontractors, and the proposed personnel;
 - E. Security and Invoicing requirements;
 - F. Project and contract management requirements;
 - G. Conflict of Interest, Confidentiality (See sample in Attachment Q), and/or Non-disclosure Affidavit requirements;
 - H. Living Wage requirements;
 - I. Minority Business Enterprise goal, Veteran Small Business Enterprise goal, Small Business Reserve, as applicable;
 - J. Economic Benefits to Maryland;
 - K. Applicable Labor Categories and Key Personnel;
 - L. Completed Labor Category Summary Sheet (see sample Attachment R) with resumes for each person proposed; and
 - M. The criteria for making a TOA award determination and the relative importance of each criterion and price.
- 3.2.4 All Master Contractors (or SBR Master Contractors if the TORFP is designated a Small Business Reserve competition) in Good Standing (see Section 3.5) will be notified of the release of the TORFP, all amendments, pre-TOP conference notes, and other relevant materials until TOPS are due and received from the participating Master Contractors. Each Master Contractor receiving the TORFP must respond by providing a Task Order Proposal in response to the requirements of the TORFP, or a written notification to the Contract Manager that it does not intend to submit a TOP.
- 3.2.5 The Master Contractor's Task Order Financial Proposal will be based on a single Evaluated Price. A Master Contractor will complete the TOP Financial Proposal Form based upon the Master Contract's labor classifications to support the Work Plan. The Fully Loaded Fixed Hourly Labor Category Rates contained in the TOP Financial Proposal may be less than but not exceed the Master Contractor's approved rates under the Master Contract for the particular Contract Year(s).
- 3.2.6 The Master Contractor is paid for services performed based on the Fully Loaded Fixed Hourly Labor Category Rate proposed in the TOP plus Non-Routine Travel costs as may be identified and approved in a TOA, up to a specified cost ceiling. The Master Contractor's Financial TOP and the final Not-To-Exceed dollar amount approved for each TOA are determined by multiplying the estimated number of Labor Hours by the approved Fully-Loaded Fixed Hourly Labor Category Rates, plus Non-Routine Travel costs, if applicable.
- 3.2.7 Based on an evaluation of the TOPs received, the Agency will select a Master Contractor to perform the Scope of Work under the TORFP. The Agency and selected Master Contractor will enter into a specific TOA which will bind the Master Contractor to the TORFP and the contents of the TOP. If any portion of a TORFP, TOP, or TOA conflicts with the Master Contract, the language in the Master Contract takes precedence.

- 3.2.8 Audit services in response to a TOA shall be initiated only upon issuance of a fully executed TOA, and an initial Notice to Proceed (NTP) issued in tandem or separately by the Contract Manager. Subsequent project Notices to Proceed may be utilized by the applicable TOM for management of project services and deliverables. An example would be a TOM dividing the Scope of Work into manageable phases in line with fiscal funding.
- 3.2.9 To ensure Contract compliance and good communication, all technical direction for a TOA will be through the TOM designated in the applicable TORFP. The Master Contractor will direct all deliverables under a TOA to the TOM designated in the applicable TORFP.
- 3.2.10 The Master Contractor shall provide, as requested, to the Contract Manager at no cost to the State, any information needed by the State as required for special inquiries, remedial action plans, etc. Examples of these include audits to a State Agency and inquiries during the Maryland General Assembly Sessions.
- 3.2.11 There is no limit to the number of TOAs that may be awarded to any given Master Contractor as long as the Master Contractor remains in Good Standing as defined in RFP Section 1.2.19 and described in RFP Section 3.5.

3.3 Task Order Agreement Not to Exceed Amounts

Each Task Order Agreement will establish a NTE dollar amount. The TOA Contractors must monitor invoiced amounts under each TOA. When a TOA is projected to reach 75% of the NTE dollar amount while performing a TOA, the TOA Contractor shall give notice to the TOM and the Contract Manager that the TOA is projected to reach the 75% level. Each notice will also include an analysis of the TOA Contractor's ability to complete the project within the NTE dollar amount. If the analysis concludes that the project cannot be completed within the NTE dollar amount, the rationale for this conclusion must be provided, along with a projection of the amount that would be needed to complete the project. However, providing such a projection shall not obligate the Department or Agency to change the NTE dollar amount. If a TOA Contractor reaches the TOA's NTE dollar amount, the TOA Contractor must stop performing any services for which it would seek payment beyond the NTE dollar amount unless the Contract Manager authorizes in writing an increase to allow the continuation of the services.

3.4 Meetings, Reports and Invoicing

3.4.1 Meetings

3.4.1.1 Kick-Off Meeting

The Contract Manager will arrange and notify Master Contractors of a Kick-Off meeting at the outset of the Master Contract term. The purpose of the meeting is to establish good communication with the Master Contractors and relay the initial procedures and formats that will be utilized for the TORFP/TOA process. Master Contractors are required to attend and participate in the Kick-Off Meeting. No compensation will be paid to Master Contractors for attendance at the Kick-Off Meeting.

3.4.1.2 Periodic Meetings with the Contract Manager

Each Master Contractor's Representative shall meet with and participate in discussions with the Contract Manager no more than quarterly to review contract activity and assist with any issues. These meetings are intended to keep both the Contract Manager and the Master Contractors up-to-date on Master Contract issues and activities. These meetings are in addition to any meetings as required and specified in any TOA, or as may be necessary concerning performance issues (See RFP Section 3.5.) Master Contractors will not be compensated for these meetings.

3.4.2 Reports

3.4.2.1 Special Status Reports to the Contract Manager

The Master Contractor shall provide Special Status Reports, as requested, to the Contract Manager at no cost to the State. Examples of these include but are not limited to audits to a State Agency and inquiries during the Maryland General Assembly Sessions.

3.4.2.2 Monthly Status Reports to the Task Order Manager

For any Task Order that exceeds one month in duration, the TOA Contractor shall provide to the TOM a monthly status report regarding its applicable Task Order Agreement. The report must contain the information noted in subparts A through I below and be submitted by the TOA Contractor no later than the 10th of each month for the preceding month's activities, Reports shall be provided in MS Word or MS Excel unless the TOM approves in writing another software format. The TOA Contractor shall deliver reports to the applicable TOM as directed. A sample status report may include the following information:

- A. Agency Name;
- B. TOA Project Number;
- C. TOA NTP Date;
- D. Target Completion Date;
- E. TOA Not To Exceed (NTE) Dollar Amount;
- F. TOA Payments Received to Date;
- G. Status of Project, including percentage complete and projected hours and dollars until completion. The percent and timing is governed by the TORFP requirements, and those stated in Section 3.3.1 pertaining to each TOA's NTE Dollar Amount;
- H. MBE and VSBE Monthly Reports from both the TOA Contractor and its MBE and VSBE Subcontractor(s); and
- I. Any other relevant information the TOM or Contract Manager requests due to the nature of a given TOA's scope of work.

3.4.3 Invoicing

3.4.3.1 No later than the 10th of the calendar month for the proceeding month's Task Order Agreement activity, the TOA Contractor shall submit Invoices with documentation to the applicable TOM, unless there is prior written approval by the TOM for another submission date for the specific month.

3.4.3.2 Invoices shall include, but may not necessarily be limited to, the following information: name and address of the TOA's applicable State Agency; TOA Contractor's name; remittance address; federal taxpayer identification (or if owned by an individual, his/her social security number); Invoice Period; Invoice Date; Invoice Number; Travel (see Section 3.4.3.5) and Total Amount Due and the ADPICS/Purchase Order Number(s) for each TOA being billed.

3.4.3.3 The Total Amount Due for the current month for each TOA will be derived from the information detailed on the invoice. Invoices submitted without the required backup information will not be approved or processed for payment until the TOA Contractor provides the required information. The information required for each of the Master Contractor's employees and subcontractors includes:

- The Labor Category(ies) being billed;
- The individual's name being billed;
- The individual's total hours for the month; and
- The applicable Hourly Rate.

3.4.3.4 For each invoice (per section 3.4.3.3 above), the TOA Contractor shall provide documentation that all the direct hours invoiced for its employees and subcontractors have actually been expended as documented, totally and productively, in the performance of the TOA. The employee/subcontractor time sheets or electronic time keeping records shall be certified by the TOA Contractor to be the actual time worked by the employees and its subcontractors. The TOA Contractor shall provide the invoice and its applicable documentation to the TOM.

3.4.3.5 The TORFP shall determine the applicability of Routine Travel versus Non-Routine Travel, as defined in Section 1.2. Any Non-Routine Travel that has had prior written approval from the Task Order Manager and has actually been expended may be submitted to the TOM for approval. Appropriate documentation for the Non-Routine Travel must be enclosed with the invoice. Appropriate documentation would include the written confirmation from the applicable TOM showing prior approval for the Non-Routine Travel, and copies of all travel invoices and receipts. Any additional documentation required by the Contract Manager, the TOM, or the State's travel policies must be provided upon request in order for the Non-Routine Travel to be approved and paid.

The Non-Routine Travel, if approved in the TOA, must be billed by the TOA Contractor on a separate line item from the Labor Hours being invoiced. The TOA Contractor shall provide a separate invoice for any State Agency that requests separate invoices and receipts for invoiced travel due to its accounting policies.

3.5 Good Standing and Licenses Required

3.5.1 Good Standing

Each Master Contractor shall perform according to the terms and conditions of its Master Contract and satisfy the specific work requirements of any TOA it has been awarded. Master Contractors meeting these standards will be deemed to be in Good Standing relative to the Master Contract. Only Master Contractors that are in Good Standing may participate in the TORFP process.

3.5.2 Suspension of a Master Contractor

3.5.2.1 Failure to Conform

If the Contract Manager determines that a Master Contractor has failed to comply with the terms and conditions of the Master Contract or any Task Order Agreement, the Contract Manager may notify the Master Contractor in writing by hard or electronic copy that the Master Contractor is suspended from participating in the TORFP processes until such time as the specified issue(s) have been resolved to the Contract Manager's satisfaction. Upon such resolution, the Contract Manager will notify the Master Contractor in writing by hard or electronic copy that it may again participate in the TORFP processes.

3.5.2.2 Examples of circumstances which may result in a finding that the Master Contractor is not in Good Standing include but are not limited to:

1. Failure to maintain good standing with the Maryland State Department of Assessments and Taxation (SDAT) and/or the State Comptroller's Office;
2. Failure to comply with socio-economic requirements such as Living Wage; Prompt Payment of Subcontractors; MBE commitments; and Commercial Non-Discrimination, as applicable;
3. Failure to respond to TORFPs (see RFP Section 3.2.4);
4. Declining to propose to TORFPs;
5. Poor performance for one or more TOAs;
6. Not maintaining its License or Permit To Practice in Certified Public Accountancy (see RFP Section 3.5.3);
7. Not maintaining a Quality Control Peer Review rating of "Pass;"
8. Contractor's Representative non-compliance (e.g. failure to attend meetings, respond to requests for information, address performance issues by the Procurement Officer or Contract Manager or Agency personnel); or
9. Failure to keep the Contract Manager apprised of any change in the Master Contractor's contact information and/or licensing/permit status.

3.5.2.3 Remediation Plan

If the Contract Manager determines that a Master Contractor is not in Good Standing and not able to participate in a TORFP, or is in danger of being so determined, the Contract Manager may, at his or her discretion, request a written remediation plan from the Master Contractor. The remediation plan will address how the Master Contractor intends to address the issue(s) that led to a finding of not in Good Standing. The Master Contractor shall provide a written remediation plan to the Contract Manager within five (5) Business Days of the Contract Manager's request.

3.5.3 Licenses and Permits and Peer Rating

A Master Contractor shall maintain its current license or current permit to practice Certified Public Accountancy in accordance with Title 2 of the Annotated Code of Maryland, Business Occupations and Professions Article (the "Code") at all times during the term of the Master Contract.

Within two weeks of each anniversary date of the Master Contract, the Master Contractor shall provide to the Contract Manager:

- Proof of its current license or current permit to practice Certified Public Accountancy in accordance with the Code; and
- Proof of a Quality Control Peer Review rating of “Pass” performed within the preceding 3 years).

A Master Contractor that fails to maintain the required license or permit and/or its Peer Review “Pass” rating is in default of its Master Contract and ineligible to participate in the TORFP processes.

3.6 Master Contractor’s Representative

Each Master Contractor shall assign a representative to act as its official liaison on the Master Contract. The Master Contractor’s Representative’s duties will include but not be limited to:

1. Act as the conduit to accept all TORFPs for the Master Contractor;
2. Provide the Master Contractor’s Technical and Financial Proposal responses (the TOPs);
3. Administer the Task Order processes (i.e. attend Oral Discussions along with key members of the team for each of its TOPs; and address any issues as they arise during the term of a TOA.);
4. Meet with the Contract Manager, Task Order Managers, and other agency staff as necessary and requested during the course of the Master Contract, and coordinate all issues brought to his/her attention;
5. Have the power and authority to commit and bind the Master Contractor and its resources during the course of the Master Contract;
6. Have an understanding of audits and their processes according to the standards set forth in this RFP in order to address, and provide solutions to any issues that arise;
7. Communicate with its subcontractors and the requesting agencies;
8. Perform work under one or more of the labor categories; and
9. Manage the Master Contractor’s efforts on TOP responses/processes, its audit teams’ capabilities, contract management, project management, reporting requirements, any presentations, and issues.

Per RFP Section 1.23, the Master Contractor shall not change the Contractor’s Representative without first obtaining the Contract Manager’s prior written approval of the change.

3.7 TORFP Staffing

3.7.1 The Master Contractor shall propose staff in its TOP that is anticipated to be available for the time period specified in the applicable TORFP. The staff that is proposed by the Master Contractor shall be the same staff utilized if awarded the TOA. After the date that a TOA is awarded, any subsequent changes to personnel requested by the TOA Contractor must be done per the procedures outlined in Section 1.23, Substitution of Personnel.

If any changes are required to its staff prior to TOA award, the Master Contractor shall submit a revised TOP to the Contract Manager.

3.7.2 The Subject Matter Expert Labor Category and a rate up to and including, but not exceeding its Fully Loaded Fixed Hourly Labor Category Rate is to be used for a TORFP that defines specific areas of required expertise beyond those provided in the established Labor Categories. The Master Contractor shall certify in its TOP that the proposed Subject Matter Expert candidate meets the required qualifications identified in the TORFP.

3.7.3 At the option of the TOM, each of the TOA Contractor's personnel may be approved for performance in multiple skill categories for which they are qualified; however, each person may only be assigned and billed for expended time under one labor classification for each TOP.

3.7.4 Substitution of Education for Experience. A Master's Degree or higher may be substituted for the general and specialized experience for those labor categories requiring a Bachelor's Degree at the discretion of and with the written prior approval by the Agency's designated TOM. See RFP Section 3.8 and its Table for specific substitution allowances.

3.7.5 Substitution of Experience for Education. Substitution of experience for education may be permitted at the discretion of and with the written prior approval of the Agency's TOM. See RFP Section 3.8 and its Table for specific substitution allowances.

3.8 Labor Categories and Qualifications

The Labor Categories and requisite qualifications approved for the Master Contract are set forth in the Master Contract Summary of Approved Labor Categories and Minimum Requirements table, contained in this section. Master Contractors shall utilize only these specified labor categories when proposing to a TORFP and providing subsequent services under a TOA. **All required licenses and certifications must be in place at the time the Master Contractor submits its Task Order Proposal.**

**The Master Contract's Summary of Approved Labor Categories and Minimum Requirements
Labor Category Table**

Labor Category	PARTNER	MANAGER	COST ACCOUNTANT
Education	Bachelor's Degree from an accredited college or university in Accounting or other related discipline.	Bachelor's degree from an accredited college or university in Accounting or other related discipline. A Masters of Business Administration or a Masters of Public Administration is preferred but not required.	Bachelor's Degree from an accredited college or university in Economics, Business, Accounting, Finance, or related discipline. A Masters of Business Administration or a Masters of Public Administration is preferred but not required.
License/ Permit Requirement	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Occupations and Professions Article of the Maryland Annotated Code is required.	A Certified Public Accountant (CPA) licensed in accordance with Title 2 of the Business Occupations and Professions Article of the Maryland Annotated Code is required.	A Certified Public Accountant licensed in accordance with Title 2 of the Business Occupations and Professions Article of the Maryland Annotated Code is preferred but not required.
Experience: Specialized and General	Eight (8) years relevant experience in auditing. Four (4) of those years must be in audit supervision or oversight.	Six (6) years relevant experience in auditing. Three (3) years of the required six (6) years must demonstrate a leadership role in not less than three (3) projects that were delivered on time and on budget and that delivered promised business value. A Master's Degree may be substituted for 2 years' worth of required experience or 1 project.	Eight (8) years relevant experience as a cost analyst or involved in analysis in business-related subject areas such as accounting, finance or economics. Not less than five (5) of the eight (8) years of experience shall be in financial cost accounting including analyzing entity accounting, budgeting and auditing systems. A Master's Degree may be substituted for 2 years' worth of required experience or 1 project.
Duties	Overall responsibility for performance of the assigned audit to include: Schedule audit assignments; entrance and exit conferences; staff training and evaluation; research of audit and accounting literature; work paper review; report review; liaison with audit staff and the firm; and client relationships. Possesses proven superior technical competence and managerial abilities. Provides firm leadership and is ultimately responsible for the entire engagement, ensuring that the proper firm resources are provided. Monitors the engagement to help ensure that the approaches employed are best suited for the project objectives and that overall implementation and delivery of contracted services are of the highest possible quality. May review all underlying work papers, internal control surveys and evaluations, audit programs, permanent files, and engagement memoranda and will review and sign final auditors' reports. May periodically be engaged in management meetings to report the status of projects and address any additional needs of the client.	Responsible for overall supervision of staff, communication, and coordination of meetings with appropriate management members, and designing the project and audit approach. Will communicate and will update the audit partner as to the status of the audit and any technical issues that may surface during the course of the engagement. May review all underlying work papers, internal control surveys and evaluations, audit programs, permanent files, and engagement memoranda and prepare summary and specific issues memoranda for review by the Partner.	Conducts investment analyses or other complex operational analyses. Provides expertise and support in conducting a full range of investment analyses activities, including market surveys, cost analyses, benefits analyses, risk analyses, economic analyses, requirements definitions, schedule development, and tradeoff studies. Conducts analytical studies involving complex technical analyses, schedule constraints, and system benefits and system cost factors. Identifies cost accounting or financial problems and recommends solutions. Presents plans, analyses, and other advice within functional areas.

**The Master Contract's Summary of Approved Labor Categories and Minimum Requirements
Labor Category Table**

Labor Category	FINANCIAL ANALYST	AUDIT SUPERVISOR	SENIOR AUDITOR
Education	Bachelor's Degree from an accredited college or university in Economics, Business, Accounting, Finance, or related discipline. A Masters of Business Administration or a Masters of Public Administration is preferred but not required.	Bachelor's degree from an accredited college or university in Accounting or a related field.	Bachelor's Degree from an accredited college or university in Accounting, Finance, Business or related field.
License/ Permit Requirement	A Certified Public Accountant licensed in accordance with Title 2 of the Business Occupations and Professions Article of the Maryland Annotated Code is preferred but not required.	A Certified Public Accountant (CPA) license in accordance with Title 2 of the Business Occupations and Professions Article of the Maryland Annotated Code is required.	A Certified Public Accountant licensed in accordance with Title 2 of the Business Occupations and Professions Article of the Maryland Annotated Code is preferred but not required.
Experience: Specialized and General	Eight (8) years progressive experience as an analyst or involved in analyst type functions in a business related subject area such as accounting, finance or economics. Not less than five (5) of the eight (8) years of experience must be financial management experience with an emphasis on analyzing entity accounting, budgeting, and auditing systems. A Master's Degree may be substituted for 2 years' worth of required experience.	Four (4) years' experience in auditing. At least two (2) years of the required four (4) years with measureable technical proficiency and the ability to oversee engagements.	Three (3) years of auditing experience after a degree was earned. At least one (1) of those three (3) years must be in an audit supervisory capacity.
Duties	Provides financial management planning and execution support. Has proven knowledge of theories, principles and practices of financial management, including time value analyses, cash flow analyses and cost/benefit and return on investment analyses. Conducts investment analyses or other complex operational analyses. Provides expertise and support in conducting a full range of investment analyses activities, including market surveys, cost analyses, benefits analyses, risk analyses, economic analyses, requirements definitions, schedule development, and tradeoff studies. Classifies and summarizes financial data for the preparation and submission of reports on a recurring basis.	Responsibility for completion of all audit steps, audit programs, and preparation of financial statements. Understands governmental accounting principles and will be responsible for the day-to-day supervision of staff, interviewing management to gain an understanding of the client's business, and performance of detail test work related to more critical areas of the engagement that may require industry-specific knowledge and experience. Responsible for reporting the progress of the engagement to the Manager and communicating any potential technical issues that are encountered during the course of the engagement, as well as any additional service opportunities that are identified and can be offered to the client to improve its business processes and functions.	Has proven a thorough understanding of generally accepted auditing standards and common audit practices and techniques. Performing the day-to-day, detailed test work required to achieve and support the audit objective, including performing statistical sampling, interviewing management to gain an understanding of the client's business, testing internal controls for effectiveness, and performing analytical and substantive procedures as deemed necessary. Report findings related to non-performance and weaknesses in internal control to the Audit Supervisor or Manager.

**The Master Contract's Summary of Approved Labor Categories and Minimum Requirements
Labor Category Table**

Labor Category	STAFF AUDITOR	SUBJECT MATTER EXPERT (SME)	BUSINESS PROCESS CONSULTANT
Education	Bachelor's Degree from an accredited college or university in Accounting, Finance, Business or other related field.	Bachelor's degree from an accredited college or university in the specific discipline required by the State. A master's or doctoral degree is preferred but not required. The master's degree will be the equivalent of a Master of Business Administration or a Master of Public Administration.	Bachelor's Degree from an accredited college or university in Business, Human Resources Management or a related field.
License/ Permit Requirement	N/A	All licenses or certification requirements for the applicable area(s) of expertise, as provided in the TORFP	N/A
Experience: Specialized and General	Not less than a total of six (6) consecutive months of auditing experience after a degree was earned.	Eight (8) years of relevant industry experience in the discipline required by the State. A master's degree may be substituted for 2 years' worth of required experience. A doctoral degree may be substituted for 4 years' worth of required experience.	Not less than eight (8) years' experience in business process re-engineering. At least five (5) of the eight years must be in re-engineering large scale business processes. A master's degree may be substituted for 2 years' worth of required experience in either experience category.
Duties	Provides general auditing services.	Expertise related to a specific discipline required by the State Agency. Examples of what may be utilized are: Health care, education, public safety, social services, human resources, transportation, environment, telecommunications, Emergency System Number Boards, toll collection, accounting records reconciliation, lottery, collections, retirement, 3 rd party billings, claims eligibility, registrant's mileage records, contract assessments, SAS-70 Type 1 and Type 2, etc. A Subject Matter Expert (SME) is an individual who is an expert in a particular area. This category will require expertise in the designated area being audited. Expertise may be that the individual either has worked at a high level in the noted field or has experience auditing in the complex area and can help in the development of audit program; test procedures; and the analysis required to be conducted. A SME defines requirements, performs analyses, and develops plans and requirements such as for Business Process Re-engineering.	Develops business requirements and business processes re-engineering methodologies. Solves application and process related problems by creating detail process and system design specifications; and works with other areas across the business units to support a total solution approach. Communicates business requirements for reports and applications development. Facilitates collaboration within and across business units. Resolves problems and improves business units' technical environments.

3.9 Insurance Requirements

- 3.9.1 The Master Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Master Contractor action or inaction in the performance of a TOA by the Master Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.9.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$500,000 on an occurrence and aggregate basis as applicable for liability claims under each TORFP issued under this RFP.
- 3.9.3 Within five (5) Business Days of recommendation for Contract award, the Master Contractor shall provide the Contract Manager with current certificates of insurance, and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Manager. Such copy of the Master Contractor's current certificate of insurance shall contain at minimum the following:
- a. Workers' Compensation – The Master Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
 - b. Commercial General Liability as required in Section 3.9.1.
 - c. Errors and Omissions/Professional Liability as required in Section 3.9.2.
- 3.9.4 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manager, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. If it is the insurance company's written policy to provide less than sixty (60) days advance notice of any non-renewal, cancellation, or expiration, the insurance policy shall be endorsed to include a clause that requires that the insurance carrier provide the Procurement Officer, by certified mail, not less than forty-five (45) days advance notice of any non-renewal, cancellation or expiration, and the Master Contractor shall provide the Procurement Officer with a copy of the written policy in accordance with section 4.4. In addition to the endorsement requirements referenced in the two preceding sentences, the Master Contractor shall provide the Procurement Officer with immediate written notice, by certified mail, of any non-renewal, cancellation, or expiration for any reason at any time.
- In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.9.5 The Master Contractor shall require that any subcontractors providing services under this Master Contract obtain and maintain similar levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Master Contractor.

3.9.6 TORFPs may contain requirements for higher levels of coverage and/or additional types and limits of insurance beyond what is required for a Master Contractor under this section. When a specific TORFP has additional insurance requirements the Master Contractor shall maintain the types and minimum limits of insurance specified above, in addition to those specified in the applicable TORFP.

3.10 Security

3.10.1 Employee Identification

- (a) Each person who is an employee or agent of the Master Contractor or its subcontractor shall display his or her company ID badge at all times while on State Agency premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, the Master 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.
- (c) The Master Contractor and all its personnel including its subcontractors must submit to security requirements employed by the applicable State Agency. Failure to do so may cause the Master Contractor and applicable personnel to be suspended from further activities under a TOA or the Master Contract upon written notification by the Contract Manager. In addition, contractual remedies will apply, as applicable.
- (d) Master Contractors shall familiarize their personnel on the applicable Agency's security requirements before any meeting date or onsite activity in order to assure compliance.

3.10.2 Information Technology

- (a) Master Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Master Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.
- (b) The Master Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Master Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Manager to obtain approval by the State to connect Master Contractor-owned equipment to a State LAN/WAN.

3.10.3 Criminal Background Check

The Master Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Master Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Contract Manager with completed checks on all new employees prior to assignment under a TORFP. The Master Contractor may not assign an employee with a criminal record unless prior written approval is obtained from the Contract Manager.

3.11 Quality Assurance

The products that result from the audit services may be utilized by reference or reviewed by other State personnel and committees besides the requesting agency. Accordingly, the Master Contractor must maintain high ethical and quality assurance levels in its submissions, and during the performance of services under the Master Contract and TOAs including but not limited to personnel, the services performed, and resulting reports.

Deliverables under a TOA shall be provided to the State under this Contract generally free of typographical errors and other product quality issues. Non-compliant deliverables may be returned to the Contractor for compliance, which may delay acceptance of the deliverable and subsequent payment.

3.12 MBE Reports

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

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

3.13 VSBE Reports

If a TORFP includes a VSBE Goal (see Section 1.42), the Master Contractor and its MBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

- (a) **Attachment M-3**, the VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Manager and the VSBE Liaison Officer.
- (b) **Attachment M-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Manager and the VSBE Liaison Officer.

3.14 SOC 2 Type II Audit Report

A SOC 2 Type II Audit Report is not required for this solicitation or future TORFPs.

3.15 Problem Escalation Procedure

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

The Master Contractor shall provide contact information to the Contract Manager as well as to other State personnel as directed should the Contract Manager not be available.

3.15.2 The Master 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:

- The process for establishing the existence of a problem;
- The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;
- Circumstances in which the escalation will occur in less than the normal timeframe;
- The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
- Identification of, and contact information for, progressively higher levels of personnel in the Master Contractor's organization who would become involved in resolving a problem;
- Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
- A process for updating and notifying the Contract Manager of any changes to the PEP.

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

SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

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

4.2 Proposals

4.2.1 Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and four (4) copies. Unless the resulting package will be too unwieldy, the State’s preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

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

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

4.2.2 An electronic version (CD or DVD) of the Technical Proposal in Microsoft Word format must be enclosed with the original Technical Proposal. An electronic version (CD or DVD) of the Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Financial Proposal. CD/DVDs must be labeled on the outside with the RFP title and number, name of the Offeror, and volume number. CD/DVDs must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

4.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD or DVD for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 1.14 “Public Information Act Notice”).

4.2.4 Beginning with Tab B (see RFP Section 4.4.2.3), all pages of both Proposal volumes 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 4.4.2.1 and 4.4.2.2), should be numbered using small Roman numerals (ex. i, ii, iii, iv, v, etc.).

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

4.3 Delivery

Offerors may either mail or hand-deliver Proposals.

- 4.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the designated mailroom for the 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 so the Department can verify the date and time of receipt. 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.
- 4.3.2 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.
- 4.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

4.4 Volume I – Technical Proposal

Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing information is to be included only in the Financial Proposal (Volume II).

4.4.1 Format of Technical Proposal

Inside a sealed package described in Section 4.2 “Proposals,” the unbound original, four (4) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.2.1 “Title and Table of Contents,” Section 4.4.2.2 “Claim of Confidentiality,” Section 4.4.2.3 “Transmittal Letter,” Section 4.4.2.4 “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 3.2.1 Response . . . ; “Section 3.2.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

- 4.4.2 **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:

4.4.2.1 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.

4.4.2.2 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 1.14 "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.

4.4.2.3 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:

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title and Solicitation Number that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- Offeror's eMM number;
- Offeror's MBE certification number (if applicable);
- Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and
- Acknowledgement of all addenda to this RFP.

4.4.2.4 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 (see RFP Section 1.22 for more information).

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions

may result in having the Proposal deemed 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 A), or any other attachments, the Executive Summary shall so state.

4.4.2.5 Compliance with Master Contractor Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 “Offeror Minimum Qualifications.”

4.4.2.6 Offeror Technical Response to RFP Requirements (Submit under TAB E)

- a. The Offeror shall address each Scope of Work requirement (Section 3.2) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work (Section 3.2) requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
- b. The Offeror shall provide a general description of its capabilities, an outline of its overall management concepts and a project management plan, including project control mechanisms.
- c. The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State’s requirements as outlined in this RFP.
- d. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department’s Contract Manager should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in RFP Section 3.15.

4.4.2.7 Experience and Qualifications of Proposed Contractor’s Representative (Submit under TAB F)

The Offeror shall identify the Contractor’s Representative proposed to be utilized under the Master Contract.

The Offeror shall describe in detail the Contractor’s Representative’s experience and qualifications.

4.4.2.8 Offeror Qualifications and Capabilities (Submit under TAB G)

The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- a. The number of years the Offeror has provided the similar services;
- b. The number of clients/customers and geographic locations that the Offeror currently serves;
- c. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- d. The Offeror's process for resolving billing errors; and
- e. An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

4.4.2.9 References (Submit under TAB H)

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Offeror Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

- a. Name of client organization;
- b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- c. Value, type, duration, and description of services provided.

The Department reserves the right to request additional references or utilize references not provided by an Offeror.

4.4.2.10 List of Current or Prior State Contracts (Submit under TAB I)

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

- a. The State contracting entity;
- b. A brief description of the services/goods provided;
- c. The dollar value of the contract;
- d. The term of the contract;
- e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and

- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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

4.4.2.11 **Financial Capability (Submit under TAB J)**

An Offeror must include in its Proposal documentation that the Offeror has a successful financial tract record and adequate working capital by providing at least three of the five types of documentation listed below that will demonstrate capability and capacity:

- a. Copies of the last two (2) consecutive year-end audited financial statements or best available equivalent report and an analysis of those financial statements/reports;
- b. Abbreviated Profit and Loss (P&L) statements and abbreviated Balance Sheets for the last two (2) consecutive years (independently audited preferred);
- c. At least one (1) bank or other financial institution credit (Lines of credit and financial reference);
- d. Dunn and Bradstreet Rating or Standard and Poor's Rating;
- e. Complete, signed federal and State tax returns for the most recent two (2) consecutive years and all schedules.

4.4.2.12 **Certificate of Insurance (Submit under TAB K)**

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.9. See Section 5.6 for the required insurance certificate submission for the recommended Offeror.

4.4.2.13 **Subcontractors (Submit under TAB L)**

The Offeror shall provide a complete list of all subcontractors that will work on the Master Contract if the Offeror receives an award, including those utilized in meeting the MBE and/or VSBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project.

4.4.2.14 **Legal Action Summary (Submit under TAB M)**

This 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, provide the name of the judge and location of the court.

4.4.2.15 **Economic Benefit Factors (Submit under TAB N)**

Offerors are not required to provide a Proposal narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this Master Contract. However, future TORFPS may require a narrative of economic benefit factors. See RFP Section 3.2.3K. Task Order Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A (3) and RFP Section 3.2.3k.

4.4.3 **Additional Required Technical Submissions (Submit under TAB O)**

4.4.3.1 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 4.4.2.

- a. Completed Bid/Proposal Affidavit (**Attachment B**).
- b. Offeror's Acknowledgement of TORFP MBE Requirements (**Attachment D-1 Master**).
- c. Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**).

4.4.3.2 ***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 4.4.2. *See appropriate RFP Section to determine whether the Attachment is required for this procurement or may be required under a future TORFP:

- a. Completed Federal Funds Attachment (**Attachment H**) *see Section 1.35.
- b. Completed Conflict of Interest Affidavit and Disclosure (**Attachment I**) *see Section 1.36.
- c. Completed Mercury Affidavit (**Attachment L**) *see Section 1.40.
- d. Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule. (**Attachment M-1**) *see Section 1.41.
- e. Completed Location of the Performance of Services Disclosure (**Attachment N**) *see Section 1.42.

4.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 4.2 “Proposals,” the Offeror shall submit an original unbound copy, four (4) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment F**. Financial Proposals will be evaluate separately. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Offerors shall provide prices for Contract years one through five for all nine (9) labor categories. These are the maximum prices the State will pay under any TORFP or TOA for all proposed labor categories throughout the Contract term.

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

5.1 Evaluation Committee

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

5.2 Technical Proposal Evaluation Criteria

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

5.2.1 Offeror’s Technical Response to RFP Requirements (See RFP Section 4.4.2.6)

The State prefers an Offeror’s response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done. Proposals which include limited responses to work requirements such as “concur” or “will comply” will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

5.2.2 Experience and Qualifications of Proposed Contractor’s Representative and Staff (See RFP Section 4.4.2.7)

5.2.3 Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP Section 4.4.2.8 – 4.4.2.14); and

5.2.4 Economic Benefit to State of Maryland (See RFP Section 4.4.2.15)

5.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see Section 5.5.2.4) will be evaluated based on the labor category rates within the stated guidelines set forth in this RFP and as submitted on **Attachment F** - Financial Proposal Form. Financial Proposals will be evaluated separately. Offerors shall provide prices for Contract years one through five for all nine (9) labor categories. These are the maximum prices the State will pay under any TORFP or TOA for all proposed labor categories throughout the Contract term.

5.4 Reciprocal Preference (applicable at Task Order level)

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:

- The Maryland resident business is a responsible Offeror;
- 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;
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- 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.

5.5 Selection Procedures

5.5.1 General

Contracts 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 Financial Proposal will subsequently be returned if the Financial Proposal is unopened at the time of the determination.

5.5.2 Selection Process Sequence

5.5.2.1 If there is an MBE goal, a determination will be made as to whether the Offeror's Acknowledgment of TORFP MBE Participation Requirements (**Attachment D-1- Master**) is included and is properly completed. In addition, a determination will be made as to whether the Offeror's Acknowledgement of TORFP VSBE Participation Requirements (**Attachment M-1- Master**) is included and is properly completed. Finally, a determination will be made that all Offeror Minimum Qualifications, (See RFP Section 2), have been satisfied.

5.5.2.2 Technical Proposals are evaluated for technical merit. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the

State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

- 5.5.2.3 Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review.
- 5.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated separately from the Technical evaluation. After a review of the Financial Proposals of qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- 5.5.2.4 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.

5.5.3 Award Determination

Upon completion of the Technical and Financial Proposal evaluations, the Procurement Officer will recommend award of a Master Contract(s) to all technically qualified and responsible Offeror(s).

5.6 Documents Required upon Notice of Recommendation for Contract Award

As stated in RFP Section 1.15, Master Contracts shall be awarded to all qualified Offerors submitting Proposals that have been determined to be the most advantageous to the State, considering evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing audit services.

Upon receipt of a Notification of Recommendation for a Master 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:

- a. Contract (**Attachment A**);
- b. Contract Affidavit (**Attachment C**);
- c. Non-Disclosure Agreement (**Attachment J**), if applicable; (See RFP Section 1.38); and,
- d. Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.4 "Insurance Requirements," listing the State as an additional insured, if applicable; (See RFP Section 3.4).

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ATTACHMENTS

ATTACHMENT A – Contract

This is a sample of the Master Contract. 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 Master Contract will be sent to the recommended awardee(s) for signature. The recommended awardee(s) 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 each Master Contractor.

ATTACHMENT B – Bid/Proposal Affidavit

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

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Minority Business Enterprise Participation Forms

Attachment D-1-Master (Offeror's Acknowledgement of TORFP MBE Participation Requirements) must be completed, signed and submitted with the Offeror's Technical Proposal to this RFP. Failure to do so shall result in the State's rejection of the Offeror's proposal (Technical and Financial) to this RFP. TORFP Attachments D-1A, D-1B, D-1C, D-2, D-3A, D-3B, D-4A, D-4B and D-5 are to be submitted by Master Contractors responding to future TORFPs.

ATTACHMENT E – Pre-Proposal Conference Response Form

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

ATTACHMENT F – Financial Proposal Instructions and Form

The Financial Proposal Form must be completed and submitted in the Financial Proposal package.

ATTACHMENT G – Maryland Living Wage Requirements Affidavit of Agreement

Attachment G-1 Living Wage Requirements Affidavit of Agreement is to be submitted under the TORFP process, not with the Offeror's Technical Proposal to this RFP.

ATTACHMENT H – Federal Funds Attachment

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

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

Each Offeror that becomes a Master Contractor must submit this form in its responses to future TORFPs under its Master Contract. (See RFP Section 1.36).

ATTACHMENT J – Non-Disclosure Agreement

This Affidavit is not due with the Offeror's proposals submissions to this RFP. However, it shall be completed, signed and returned by each Offeror recommended for award to the Procurement Officer within five (5)

Business Days of receiving notification of recommendation for award. To expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal. (See RFP Section 1.37)

ATTACHMENT K – HIPAA Business Associate Agreement

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

ATTACHMENT L – Mercury Affidavit

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

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

Attachment M-1-Master (Offeror’s Acknowledgement of TORFP MBE Participation Requirements) must be completed, signed and submitted with the Offeror’s Technical Proposal to this RFP. Failure to do so shall result in the State’s rejection of the Offeror’s proposal (Technical and Financial) to this RFP. TORFP Attachments M-1, M-2, M-3, and M-4 are to be submitted by Master Contractors responding to future TORFPs.

ATTACHMENT N – Location of the Performance of Services Disclosure

If required (see RFP Section 1.42), this Attachment must be completed and submitted with the Technical Proposal.

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

If required (see RFP Section 1.43), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT P – Sample Task Order Agreement (TOA)

This is a sample TOA for informational purposes only.

ATTACHMENT Q – Sample TOA Certificate of Confidentiality Agreement

Each Offeror that becomes a Master Contractor must submit this form as requested in its responses to the future TORFPs under its Master Contract.

ATTACHMENT R – Sample Labor Category Summary Sheet

ATTACHMENT A – SAMPLE CONTRACT

AUDIT SERVICES MASTER CONTRACT

THIS MASTER CONTRACT (the “Contract”) is made as of this _____ day of _____, 2015 by and between _____ and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT, DIVISION OF PROCUREMENT POLICY AND ADMINISTRATION.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract” means this Master Contract for Audit Services, Solicitation No. 050B5400001R.
- 1.3 “Contract Manager” means the Department employee identified in RFP Section 1.6 as the Contract Manager. The Department may change the Contract Manager at any time by written notice.
- 1.4 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.
- 1.5 “Department” means the Maryland Department of Budget and Management.
- 1.6 “Financial Proposal” means the Master Contractor’s Financial Proposal dated _____.
- 1.7 “Procurement Officer” means the Department employee identified in Section 1.5 of the RFP as the Procurement Officer. The Department may change the Procurement Officer at any time by written notice
- 1.8 “RFP” means the Request for Proposals for Audit Services, Solicitation No. 050B5400001R, and any addenda thereto issued in writing by the State.
- 1.9 “State” means the State of Maryland.
- 1.10 “Task Order Agreement” (TOA or TO Agreement) means a signed contract between the Department and the Contractor selected via a TORFP to perform a TO Agreement.
- 1.11 “TOA Contractor” means a Contractor awarded a Task Order Agreement under a TORFP.
- 1.12 “Task Order Proposal” (TOP or TO Proposal) means the technical and financial response by a Master Contractor to a TORFP.
- 1.13 “Task Order Request for Proposal” (TORFP) means a solicitation document containing a description by the State of the individual project for which proposals will be solicited.

1.14 “Technical Proposal” means the Contractor’s Technical Proposal, dated _____.

2. Scope of Contract

2.1 The Contractor shall provide auditing services in accordance with the terms and conditions of this Contract and the Exhibits A-F, which are incorporated as part of this Contract. If there are any inconsistencies between this Contract and the Exhibits, the terms of this 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 – Task Order Agreement (when executed)

Exhibit C – TORFP (when released)

Exhibit D - State Contract Affidavit, executed by the Contractor and dated _____

Exhibit E – Contractor’s response to the TORFP (when submitted)

Exhibit F – The Contractor’s Proposal (Technical and Financial) to the RFP

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 five (5) years beginning on or about May 1, 2015 and ending on or about April 30, 2020, unless terminated earlier as provided in this Contract. All prices for rates and terms as offered in the Contractor’s Financial Proposal, RFP Attachment F, are binding on the Contractor for term of the Contract.

3.2 Audit, confidentiality, document retention, and indemnification obligations under this Master 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 on the Financial Proposal Form (Attachment F). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract, shall not exceed \$_____.

Contractor shall notify the Contract Manager, 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 _____. 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 Manager. 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 eMarylandMarketplace vendor ID number is _____.

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 Manager, 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

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.

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 Manager. 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 suit 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, suit, 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 Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 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, marital status, sexual orientation, gender identity, national origin, ancestry, or disability of a qualified individual with a disability; (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 rights 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 Cause

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

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.

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: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 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. Compliance with Laws

The Contractor hereby represents and warrants that:

- 25.1 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;
- 25.2 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;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 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.

26. Cost and Price Certification

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 Bid/Proposal.

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 Bid/Proposal, was inaccurate, incomplete, or not current.

27. 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.

28. Liability

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

- a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form, 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.

29. Parent Company Guarantee (If Applicable)

_____ (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. 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. Parent Company further agrees that if the State brings any claim,

action, suit or proceeding against Contractor, Parent Company may be named as a party, in its capacity as Absolute Guarantor.

30. Commercial Nondiscrimination

30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

30.2 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 Contractor under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, 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 to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

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.
 - b. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - (a) The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) 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.
 - c. 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.
 - d. 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, 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.
- e. 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. Liquidated Damages

32.1 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 that 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.

- 32.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$ (to be determined by requesting agency and entered in the TORFP/TOA) per day until the monthly report is submitted as required.
- 32.1.2 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): \$ (to be determined by requesting agency and entered in the TORFP/TOA) per MBE subcontractor.
- 32.1.3 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 TOA MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the TOA.
- 32.1.4 Failure to meet the Contractor’s total MBE participation goal and subgoal commitments for the TOA: the difference between the dollar value of the total MBE participation commitment on the TOA MBE participation schedule and the MBE participation actually achieved.

32.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the TOA: \$ (to be determined by requesting agency and entered in the TORFP/TOA) per day until the undisputed amount due to the subcontractor is paid.

32.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the TOA and/or the Contract and to exercise any and all other rights or remedies which may be available under the TOA and the Contract or which otherwise may be available at law or in equity.

33. 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.

34. Contract Manager and Procurement Officer

The work to be accomplished under this Contract shall be performed under the direction of the Contract Manager. 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:	Jamie Tomaszewski Contract Manager 45 Calvert Street, Room 134 Annapolis, MD 21401	James Adelman Procurement Officer 45 Calvert Street, Room 141 Annapolis, MD 21401
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If to the Contractor: _____

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

If applicable, 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.

37. Hiring Agreement

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 Bidder/Offeror and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Bidder/Offeror that it is being recommended for contract award. The Hiring Agreement will become effective concurrently with the award of the contract.

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.

38. Miscellaneous

38.1 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.

38.2 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: _____ (SEAL)

By: (name and title of Department Head)

Date

Or designee:

Date

Approved for form and legal sufficiency
This ____ day of _____, 2015.

Assistant Attorney General

APPROVED BY BPW: _____
(Date)

(BPW Item #)

ATTACHMENT B – PROPOSAL AFFIDAVIT

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the 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, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.

"Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the 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 Bids/Proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the 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 Bids/Proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or

administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the 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 Bid/Proposal that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/Proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. 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. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH OFFEROR'S TECHNICAL PROPOSAL

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number:

_____ Address: _____

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

Name and Department ID Number:

_____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E (2) (b), above;

(h) Notify its employees in the statement required by §E (2) (b), above, that as a condition of continued employment on the contract, the employee shall:

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

The following MBE forms, Attachments D-1A through D-5, are provided for information purposes only relative to this Audit Services Contract RFP, and are not to be completed or submitted with the Offeror's response to this RFP. These MBE forms are required to be completed and submitted after Master Contract award with the Master Contractor's Task Order Proposal responses pursuant to any future TORFPs issued under this RFP.

TORFP- ATTACHMENT D-1A
MBE Utilization and Fair Solicitation Affidavit
& MBE Participation Schedule - INSTRUCTIONS

1. Master 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 Task Order Request for Proposals. Master 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 TORFP for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Master 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.
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.
4. Please refer to the MDOT MBE Directory at www.mdot.state.md.us 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, please visit www.naics.com. 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. **WARNING:** 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 MBE participation goal (overall), 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 other MBEs for each of any remaining subgoals or request a waiver. As set forth in **TORFP Attachment D1-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 GOMA's website (www.goma.maryland.gov) for the MBE Prime Regulations Q&A for illustrative examples.
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 workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
 7. 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. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
 8. 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.
 9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule **MUST** at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Master Contractor is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Master Contractor must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**TORFP Attachment D-1A**) or the Bid will be deemed not responsive, or the Proposal determined to be not susceptible of being selected for award.

You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

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): _____ %

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

This MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule must be completed in its entirety and included with a Master Contractor’s Task Order Proposal. If the Master Contractor fails to accurately complete and submit this Affidavit and Schedule with its Task Order Proposal as required, the Contract Manager shall determine that the Proposal is not reasonably susceptible of being selected for Task Order Award.

In connection with the Task Order Proposal submitted in response to Solicitation No. 050B5400001R, I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE)

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 the MBE Participation Schedule (Item 4 below) 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 the MBE Participation Schedule (Item 4 below) 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. (See **TORFP Attachment D-1B**, Waiver Guidance, for more information.)

2. 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 Business 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 (**TORFP Attachment D-1C**)

(b) Outreach Efforts Compliance Statement (**TORFP Attachment D-2**);

- (c) MBE Subcontractor/MBE Prime Project Participation Statement (**TORFP Attachments D-3A/B**);
- (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.

3. 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.

4. MBE Participation Schedule

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total Contract amount 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</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): _____%</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 workforce:</p> <p>_____</p> <p>_____</p> <p>_____</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</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</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 <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</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 <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</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 <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</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 <input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</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 TASK ORDER PROPOSAL

MBE TORFP ATTACHMENT D-1B
WAIVER GUIDANCE

**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 Task Order Agreement, the Master Contractor 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 an Offeror requesting a waiver has made adequate good faith efforts is determined by taking into consideration the quality, quantity, and intensity of the different kinds of efforts that the Master Contractor has made. The efforts employed by the Master Contractor should be those that one could reasonably expect an Offeror to take if the 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 Master Contractor’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 Master Contractor as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the TORFP 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 Master Contractor 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 task order proposal items identified by the procuring agency during the goal setting process and listed in the TORFP as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Master Contractor identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the TORFP procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Master Contractor 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 Master Contractor -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 Master Contractor -Offeror's Good Faith Efforts when the Master Contractor -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 Task Order Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements

(a) Certain procurements will include a list of Task Order Proposal 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 Master Contractor-Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Master Contractor-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 TORFP procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Master Contractor-Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

(b) Where appropriate, Master Contractor-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 Master Contractor-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 Master Contractor-Offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Master Contractors-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 Master Contractor-Offerors

(a) When the procurement does not include a list of Identified MBE Firms, Master Contractor-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 Master Contractor-Offerors 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 Master Contractor- Offerors should:

(a) provide the written solicitation at least 10 days prior to Task Order Proposal 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 Master Contractor-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 Master Contractor-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 Master Contractor-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 Master Contractor-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

Master Contractor-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 Master Contractor-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 Master Contractor-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 Master Contractor-Offeror;

(b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Master Contractor-Offeror;

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

(d) the number of MBE firms that the Master Contractor-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 Master Contractor-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 Master Contractor-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 Master Contractors-Offeror refers to the average of the quotes received from all subcontractors. Master Contractor-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 Master Contractor-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 Master Contractor-Offeror concludes is not acceptable, the Master Contractor-Offeror must provide a written detailed statement listing the reasons for this conclusion. The Master Contractor-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 Master Contractor-Offeree:

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 Master Contractors-Offeree; 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 Master Contractor/Offeree 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 Master Contractors/Offerees in meeting the contract. For example, when the apparent successful Master Contractor/Offeree fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Master Contractor /Offeree could have met the goal. If the apparent successful Master Contractor /Offeree fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Master Contractors/Offerees, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Master Contractor/Offeree having made Good Faith Efforts.

IV. Documenting Good Faith Efforts

At a minimum, a Master Contractor/Offeree 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 TORFP Attachment D-1C, 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 Master Contractor/Offeree's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C (2) (a). **(Complete Outreach Efforts Compliance Statement – TORFP Attachment D-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 TORFP Attachment D-1C- 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 TORFP Attachment D-1C, Part 3)

1. For each MBE Firm that the Master Contractor/Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Master Contractor'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 Master Contractor/Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Master Contractor'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 **TORFP ATTACHMENT D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Master Contractor/Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Contract Manager to ascertain the Master Contractor's/Offeror's Good Faith Efforts.

2. Submit any other documentation the Master Contractor/Offeror believes will help the Contract Manager to ascertain its Good Faith Efforts.

MBE TORFP ATTACHMENT D-1B
MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
(Name of Minority firm)
located at _____
(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 **Title** **Date**

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 TORFP 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 D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-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/Proposal 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

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 **Attachment D-1B – Exhibit A**). 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/Proposal)	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 TORFP ATTACHMENT D-2
OUTREACH EFFORTS COMPLIANCE STATEMENT

Complete and submit this form within 10 Business 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 TORFP 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 D-1A) WITHIN 10 BUSINESS 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 for performing the following products/services for the Contract:

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

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.

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

MBE TORFP 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 D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 BUSINESS 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

<p>MBE PRIME CONTRACTOR Signature of Representative: _____ Printed Name and Title: _____ Firm's Name: _____ Federal Identification Number: _____ Address: _____ Telephone: _____ Date: _____</p>
--

MBE TORFP ATTACHMENT D-4A
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: \$		_____
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Total Dollars Unpaid: \$		_____																																					

- If more than one MBE subcontractor is used for this contract, you must use separate D-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 D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Manager: _____
Contracting Unit and Address: _____

Signature: _____ **Date:** _____
 (Required)

MBE TORFP ATTACHMENT D-4B
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

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____

Signature: _____ **Date:** _____
 (Required)

MBE TORFP 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: 60%;"></th> <th style="text-align: center;"><u>Invoice Amt</u></th> <th style="text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$ _____</td> <td></td> </tr> </tbody> </table>			<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Paid: \$ _____			List dates and amounts of any unpaid invoices over 30 days old. <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;"></th> <th style="text-align: center;"><u>Invoice Amt</u></th> <th style="text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$ _____</td> <td></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
	<u>Invoice Amt</u>	<u>Date</u>																														
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	<u>Invoice Amt</u>	<u>Date</u>																														
1.																																
2.																																
3.																																
Total Dollars Unpaid: \$ _____																																
Prime Contractor:		Contact Person:																														

Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____

Signature: _____ **Date:** _____
 (Required)

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Solicitation Number 050B5400001R

AUDIT SERVICES CONTRACT

A Pre-Proposal Conference will be held **on Thursday, February 19, 2015 at 11:00 AM**, at the Department of Budget and Management, 45 Calvert Street, Room 164 A&B, Annapolis, MD 21401. Please return this form by Tuesday, February 17, 2015, advising whether or not you plan to attend.

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

James Adelman
Department of Budget and Management
Division of Procurement Policy & Administration
45 Calvert Street, Room 141
Annapolis, MD 21401
E-mail: james.adelman@maryland.gov
Fax #: 410-974-3274

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 1.7 “Pre-Proposal Conference”):

Signature

Title

Name of Firm (please print)

ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS

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

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

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully-loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.

- J) Offeror shall propose a Fully Loaded Fixed Hourly Labor Category Rate for each Labor Category for each of the five Contract years. All pricing for each Line Item shall be the maximum actual price the State shall pay for each expended labor hour utilized during the course of an applicable future Task Order Agreement. (Note: Actual unit prices proposed under any subsequent Task Order Request for Proposals (TORFP) may be lower but no higher than the hourly rate proposed for each applicable labor category and applicable Contract Year that is proposed.)
- K) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- L) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.
- M) Explanation for columns and calculations used in the Financial Proposal form:
- A. Columns C through Column G: For each Line Item and its Labor Category, the Offeror shall propose a Fully Loaded Fixed Hourly Labor Category Rate that is for each of the five timeframes noted. Each timeframe is for a complete 'Contract Year.'
 - B. All pricing for each Line Item shall be the maximum actual price the State shall pay for each expended labor hour utilized during the course of an applicable future Task Order Agreement. (Note: Actual unit prices proposed under any subsequent Task Order Request for Proposals (TORFP) may be lower but no higher than the hourly rate proposed for each applicable labor category and applicable Contract Year that is proposed.)

ATTACHMENT F – FINANCIAL PROPOSAL FORM

ATTACHMENT F-AUDIT SERVICES CONTRACT RFP (0xxBxxxxxxxx)

**PROPOSED FULLY-LOADED FIXED HOURLY
LABOR CATEGORY RATES BY CONTRACT YEAR**

A. Line Item No.	B. Labor Category	C. CONTRACT YEAR-1	D. CONTRACT YEAR-2	E. CONTRACT YEAR-3	F. CONTRACT YEAR-4	G. CONTRACT YEAR-5
1	Partner					
2	Manager					
3	Cost Accountant					
4	Financial Analyst					
5	Audit Supervisor					
6	Senior Auditor					
7	Staff Auditor					
8	Subject Matter Expert					
9	Business Process Consultant					

OFFEROR: Record the Fully Loaded Fixed Hourly Labor Category Rates chargeable during each contract year for the labor categories delineated and defined in Section 3.08 of the RFP.

_____ I understand that the individual Fully-Loaded Fixed Hourly Labor Category Rates for each Line Item's Labor Category that I have provided for each Contract Year shown are the maximum rates that I may utilize during the course of the contract when I propose in response to Task Order Requests for Proposals. Contract Year 1 begins on the date of contract award and continues for one year. Then upon notification by the Contract Manager, Contract Year 2 begins one year after contract award and continues for one year. This continues for each year of the five-year Contract.

_____ I understand that this constitutes my Financial Proposal to the State on behalf of my firm that will be binding for the full term of the executed contract.

Offeror's Company Name

Signature of Offeror and Date

Offeror's Printed Name and Title

Offeror's Telephone Number

Offeror's Email Address: _____

Offeror's FEIN: _____

Offeror's Address: _____

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

{TO BE SUBMITTED UNDER THE TORFP PROCESS AND NOT WITH THE OFFEROR'S TECHNICAL PROPOSAL TO THIS RFP}

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

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

Maryland Living Wage Requirements Affidavit of Agreement
(submit with Task Order Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

- The employee(s) proposed to work on the contract will spend less than one-half of the employee’s time during any work week on the contract;
- The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or

The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

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

Name of Authorized Representative: _____

Signature of Authorized Representative

Date

Title

Witness Name (Typed or Printed)

Witness Signature

Date

SUBMIT THIS AFFIDAVIT WITH TASK ORDER PROPOSAL

ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

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

A Summary of Certain Federal Fund Requirements and Restrictions

1. Form and rule enclosed: 18 U.S.C. 1913 and Section 1352 of P.L. 101-121 require that all *prospective* and present sub-grantees (this includes all levels of funding) who receive more than \$100,000 in federal funds must submit the form “Certification Against Lobbying.” It assures, generally, that recipients will not lobby federal entities with federal funds, and that, as is required, they will disclose other lobbying on form SF- LLL.
2. Form and instructions enclosed: “Form LLL, Disclosure of Lobbying Activities” must be submitted by those receiving more than \$100,000 in federal funds, to disclose any lobbying of federal entities (a) with profits from federal contracts or (b) funded with nonfederal funds.
3. Form and summary of Act enclosed: Sub-recipients of federal funds on any level must complete a “Certification Regarding Environmental Tobacco Smoke,” required by Public Law 103-227, the Pro-Children Act of 1994. Such law prohibits smoking in any portion of any indoor facility owned or leased or contracted for regular provision of health, day care, early childhood development, education, or library services for children under the age of 18. Such language must be included in the conditions of award (they are included in the certification, which may be part of such conditions.) This does not apply to those solely receiving Medicaid or Medicare, or facilities where WIC coupons are redeemed.
4. In addition, federal law requires that:
 - A) OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations requires that grantees (both recipients and sub-recipients) which expend a total of \$300,000 or more (*\$500,000 for fiscal years ending after December 31, 2003*) in federal assistance shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 and the Office of Management and Budget (OMB) Circular A-133. All sub-grantee audit reports, performed in compliance with the aforementioned Circular shall be forwarded within 30 days of report issuance to the Department Contract Manager.
 - B) All sub-recipients of federal funds comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the conditions of which are summarized in item (C).
 - C) Recipients of \$10,000 or more (on any level) must include in their contract language the requirements of Sections 503 (language specified) and 504 referenced in item (B).

Section 503 of the Rehabilitation Act of 1973, as amended, requires recipients to take affirmative action to employ and advance in employment qualified disabled people. An affirmative action program must be prepared and maintained by all contractors with 50 or more employees and one or more federal contracts of \$50,000 or more.

This clause must appear in subcontracts of \$10,000 or more:

- a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b) The contractor agrees to comply with the rules, regulations, and relevant orders of the secretary of labor issued pursuant to the act.
- c) In the event of the contractor's non-compliance with the requirements of this clause, actions for non-compliance may be taken in accordance with the rules, regulations and relevant orders of the secretary of labor issued pursuant to the act.
- d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the director, provided by or through the contracting office. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- e) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- f) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the [federal] secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for non-compliance.

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 791 et seq.) prohibits discrimination on the basis of handicap in all federally assisted programs and activities. It requires the analysis and making of any changes needed in three general areas of operation- programs, activities, and facilities and employment. It states, among other things, that:

Grantees that provide health ... services should undertake tasks such as ensuring emergency treatment for the hearing impaired and making certain that persons with impaired sensory or

speaking skills are not denied effective notice with regard to benefits, services, and waivers of rights or consents to treatments.

- D) All sub-recipients comply with Title VI of the Civil Rights Act of 1964 that they must not discriminate in participation by race, color, or national origin.
- E) All sub-recipients of federal funds from SAMHSA (Substance Abuse and Mental Health Services Administration) or NIH (National Institute of Health) are prohibited from paying any direct salary at a rate more than Executive Level 1 per year. (This includes, but is not limited to, sub-recipients of the Substance Abuse Prevention and Treatment and the Community Mental Health Block Grants and NIH research grants.)
- F) There may be no discrimination on the basis of age, according to the requirements of the Age Discrimination Act of 1975.
- G) For any education program, as required by Title IX of the Education Amendments of 1972, there may be no discrimination on the basis of sex.
- H) For research projects, a form for Protection of Human Subjects (Assurance/ Certification/ Declaration) should be completed by each level funded, assuring that either: (1) there are no human subjects involved, or that (2) an Institutional Review Board (IRB) has given its formal approval before human subjects are involved in research. [This is normally done during the application process rather than after the award is made, as with other assurances and certifications.]
- I) In addition, there are conditions, requirements, and restrictions which apply only to specific sources of federal funding. These should be included in your grant/contract documents when applicable.

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

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

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

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

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

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

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

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

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

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

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

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

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

Signature of Authorized Certifying Individual

ATTACHMENT I- CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

For any future TORFP that requires a Conflict of Interest Affidavit and Disclosure (see RFP Section 1.36), each Master Contractor submitting a response shall submit the following:

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 an Offeror, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The Master Contractor/Offeror warrants on behalf of itself and all Persons as defined above performing under this TORFP, that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):
- E. The Master Contractor/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Master Contractor/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 Master Contractor/ 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 Master 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 A TOP'S TECHNICAL RESPONSE TO A TORFP

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

For any future TORFPs that require a Non-Disclosure Agreement (see RFP Section 1.37), each Master Contractor submitting a response shall submit the following Attachments J, J-1, and J-2 as follows:

(submit with Task Order Proposal)

NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made as of this ___ day of _____, 20___, by and between the State of Maryland ("the State"), acting by and through its Department of Budget and Management (the “Department”) and _____ (“the TOA Contractor”) and is incorporated into the Task Order Agreement (Audit Services Contract’s TOA _____) between the parties as Exhibit A to that Task Order Agreement.

RECITALS

WHEREAS, the Master Contractor has been awarded a Task Order award and entered into a Task Order Agreement (the “Contract”) for Audit Services; and

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

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

1. Confidential Information means any and all information provided by or made available by the State to the TOA Contractor in connection with the TOA, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. TOA Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or who will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.

4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s). 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.
6. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
7. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
8. 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 and the Contractor shall provide originals of such executed Agreements to the State.
9. 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;

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: _____

Maryland Department of Budget & Management:

By : _____ (SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and _____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT

For any future TORFP that requires a HIPAA Business Associate Agreement (see Section 1.38), each Master Contractor submitting a response shall submit the following:

(submit with Task Order Proposal)

HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between the _____ (Department) and _____ (Contractor) (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties.”

WHEREAS, Covered Entity has a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent privacy regulations (45 C.F.R. Parts 160 and 164) and security regulations (45 C.F.R. Parts 160, 162, and 164), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§ 4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

DEFINITIONS.

- A. Catch-all definition. The following terms used in this Agreement, whether capitalized or not, shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

B. Specific definitions:

1. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean _____. (Contractor).
2. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this agreement, shall mean _____. (Department).
3. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Parts 160 and Part 164.
4. Protected Health Information (“PHI”). Protected Health Information or “PHI” shall generally have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103.

PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE.

- A. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Underlying Agreement or as required by law.
- B. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity’s policies and procedures regarding minimum necessary use of PHI.
- C. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity.
- D. Business Associate may, if directed to do so in writing by Covered Entity, create a limited data set, as defined at 45 CFR 164.514(e)(2) , for use in public health, research, or health care operations. Any such limited data sets shall omit any of the identifying information listed in 45 CFR § 164.514(e) (2). Business Associate will enter into a valid, HIPAA-compliant Data Use Agreement, as described in 45 CFR § 164.514(e) (4), with the limited data set recipient. Business Associate will report any material breach or violation of the data use agreement to Covered Entity immediately after it becomes aware of any such material breach or violation.
- E. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration, or legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- F. The Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual pursuant to §§13405(d) (1) and (2) of the HITECH Act. This prohibition does not

apply to the State's payment of Business Associate for its performance pursuant to the Underlying Agreement.

- G. The Business Associate shall comply with the limitations on marketing and fundraising communications provided in §13406 of the HITECH Act in connection with any PHI of Individuals.

DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.

- A. Business Associate agrees that it will not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;
- B. Business Associate agrees to use appropriate administrative, technical and physical safeguards to protect the privacy of PHI.
- C. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- D. 1. Business Associate agrees to Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required by 45 C.F.R. § 164.410, and any Security Incident of which it becomes aware without reasonable delay, and in no case later than fifteen calendar days after the use or disclosure;
2. If the use or disclosure amounts to a breach of unsecured PHI, the Business Associate shall ensure its report:
- A. Is made to Covered Entity without unreasonable delay and in no case later than fifteen (15) calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 C.F.R. Part E within fifteen (15) calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
- B. Includes the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
- C. Is in substantially the same form as **ATTACHMENT K-1** attached hereto; and
- D. Includes a draft letter for the Covered Entity to utilize to notify the affected Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:

- i) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - ii) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
 - iii) Any steps the affected Individuals should take to protect themselves from potential harm resulting from the Breach;
 - iv) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
 - v) Contact procedures for the affected Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, website, or postal address.

- E. To the extent permitted by the Underlying Agreement, Business Associate may use agents and subcontractors. In accordance with 45 C.F.R. §§ 164.502(e) (1) (ii) and 164.308(b) (2) shall ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information, Business Associate must enter into Business Associate Agreements with subcontractors as required by HIPAA;

- F. Business Associate agrees it will make available PHI in a designated record set to the Covered Entity, or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, including, if requested, a copy in electronic format;

- G. Business Associate agrees it will make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.526;

- H. Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity or, as directed by the Covered Entity, to an individual, as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.528;

- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);

- J. Business Associate agrees to make its internal practices, books, and records, including PHI, available to the Covered Entity and/or the Secretary for purposes of determining compliance with the HIPAA Rules.

- K. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

IV. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the effective date of the Contract entered into following the solicitation for (solicitation title), Solicitation # _____, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, in accordance with the termination provisions in this Section IV, or on the date the Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner. If it is impossible to return or destroy all of the PHI provided by Covered Entity to Business Associate, or the PHI created or received by Business Associate on behalf of Covered Entity, Business Associate's obligations under this contract shall be ongoing with respect to that information, unless and until a separate written agreement regarding that information is entered into with Covered Entity.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement; or
 - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and Covered entity determines or reasonably believes that cure is not possible.
- C. Effect of Termination.
 - 1. Upon termination of this Agreement, for any reason, Business Associate shall return or, if agreed to by Covered Entity, destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate.
 - 2. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.
- D. Survival. The obligations of Business Associate under this Section shall survive the termination of this agreement.

V. CONSIDERATION

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to, not in lieu of, any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement or the Underlying Agreement or which may be available to Covered Entity at law or in equity.

VII. MODIFICATION; AMENDMENT

This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA rules and any other applicable law.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. COMPLIANCE WITH STATE LAW

The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for PHI, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy and Security Rules.

- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Department (or appropriate covered health care entity) HIPAA contact person:

Name: _____

Address: _____

Email: _____

Phone: _____

- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

Attention: _____

Phone: _____

- E. Survival. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this Agreement and continue in full force and effect.
- F. Severability. If any term contained in this Agreement 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 Agreement, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- G. Terms. All of the terms of this Agreement are contractual and not merely recitals and none may be amended or modified except by a writing executed by all parties hereto.
- H. Priority. This Agreement supersedes and renders null and void any and all prior written or oral undertakings or agreements between the parties regarding the subject matter hereof.

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY:

BUSINESS ASSOCIATE:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**FORM OF NOTIFICATION TO COVERED ENTITY OF
BREACH OF UNSECURED PHI**

This notification is made pursuant to Section III.2.D (3) of the Business Associate Agreement between _____ (Department) and _____ (Business Associate).

Business Associate hereby notifies Department that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____ Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes/No If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: _____

Names of individuals affected by the breach: (attach list)

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code):

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches:

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

ATTACHMENT L – MERCURY AFFIDAVIT

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

ATTACHMENTS M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE FORMS

ATTACHMENT M-1 - MASTER

OFFEROR’S ACKNOWLEDGEMENT OF TORFP VSBE PARTICIPATION REQUIREMENTS

(submit with Bid/Proposal)

I acknowledge that the overall VSBE goal established for this RFP No. 050B5400001R, Audit Services Contract, is **five percent (5%)** and that the VSBE goal for each TORFP will be set at the subsequent Task Order Request for Proposals (TORFP) level.

In conjunction with the technical response that I submit in response to this RFP No. 050B5400001R, Audit Services Contract, I affirm that if I am awarded a Master Contract under this RFP, and I respond to any TORFP that contains a VSBE Participation commitment, I commit to make a good faith effort to achieve the VSBE goal established in the TORFP.

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

Offeror’s Company Name

Signature of Offeror and Date

Offeror’s Printed Name and Title

Offeror’s Telephone Number

Offeror’s Email Address: _____

Offeror’s FEIN: _____

Offeror’s Address _____

TORFP ATTACHMENT M-1
VSBE Utilization Affidavit and Subcontractor Participation Schedule

(submit with Task Order Proposal)

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

In conjunction with the Task Order Proposal submitted in response to Task Order RFP # _____, I affirm the following:

1. I acknowledge and intend to meet the overall verified VSBE participation goal of 0.5%. Therefore, I will not be seeking a waiver.

OR

- I conclude that I am unable to achieve the VSBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.13.07. If this request is for a partial waiver, I have identified the portion of the VSBE goal that I intend to meet.
2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 days of receiving notice of the apparent award or from the date of conditional award (per COMAR 21.11.13.06), whichever is earlier.
 - (a) Subcontractor Project Participation Statement (**TORFP Attachment M-2**); and
 - (b) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Master Contractor/Offeror responsibility in connection with the VSBE participation goal.

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

3. In the solicitation of subcontract quotations or offers, VSBE subcontractors were provided not less than the same information and amount of time to respond as were non-VSBE subcontractors.
4. Set forth below are the (i) verified VSBEs I intend to use and (ii) the percentage of the total contract amount allocated to each VSBE for this project. I hereby affirm that the VSBE firms are only providing those products and services for which they are verified.

TORFP ATTACHMENT M-1
VSBE Subcontractor Participation Schedule

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: - _____	

List Information for Each Verified VSBE Subcontractor on This Project

Name of Veteran-Owned Firm: Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm: Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm: Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:
Name of Veteran-Owned Firm: Percentage of Total Contract:	DUNS Number:
	Description of work to be performed:

Continue on a separate page, if needed.

SUMMARY

TOTAL VSBE Participation: _____%

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____
Title: _____
Date: _____

TORFP ATTACHMENT M-2
VSBE Subcontractor Participation Statement

*Please complete and submit one form for each verified VSBE listed on Attachment M-1
within 10 Business days of notification of apparent award*

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

Prime Contractor (Firm Name, Address, Phone):	Project Description:
Project Number: _____	Total Contract Amount: \$
Name of Veteran-Owned Firm:	DUNS Number:
Address:	FEIN:
Work to Be Performed:	
Percentage of Total Contract:	Total Subcontract Amount: \$

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Veteran-Owned Small Business Enterprise law, State Finance and Procurement Article, Title 14, Subtitle 6, Annotated Code of Maryland.

PRIME CONTRACTOR SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____
Name, Title

Date _____

By: _____
Name, Title

Date _____

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

TORFP ATTACHMENT M-3
Veterans Small Business Enterprise (VSBE) Participation
Prime Contractor Paid/Unpaid VSBE Invoice Report

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

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
List all payments made to VSBE 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: \$		_____
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3.																																							
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Total Dollars Unpaid: \$		_____																																					

**If more than one VSBE subcontractor is used for this contract, you must use separate M-3 forms for each subcontractor.
 **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____

Signature: _____ **Date:** _____
 (Required)

This form must be completed monthly
by all VSBE subcontractors.

TOFRP ATTACHMENT M-4
Veterans Small Business Enterprise Participation
Subcontractor Paid/Unpaid VSBE Invoice Report

Report#: _____ Reporting Period (Month/Year): _____ Report is due by the 10th of the month following the month the services were performed.	Contract # _____ Contracting Unit: _____ VSBE Subcontract Amount: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
---	---

VSBE Subcontractor Name: _____																																
Department of Veterans Affairs 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: 60%;"></th> <th style="width: 20%; text-align: center;"><u>Date</u></th> <th style="width: 20%; text-align: center;"><u>Invoice Amt</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>Total Dollars Paid: \$ _____</td> <td></td> <td></td> </tr> </tbody> </table>			<u>Date</u>	<u>Invoice Amt</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: 60%;"></th> <th style="width: 20%; text-align: center;"><u>Date</u></th> <th style="width: 20%; text-align: center;"><u>Invoice Amt</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>Total Dollars Unpaid: \$ _____</td> <td></td> <td></td> </tr> </tbody> </table>		<u>Date</u>	<u>Invoice Amt</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
	<u>Date</u>	<u>Invoice Amt</u>																														
1.																																
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	<u>Date</u>	<u>Invoice Amt</u>																														
1.																																
2.																																
3.																																
Total Dollars Unpaid: \$ _____																																
Prime Contractor: _____		Contact Person: _____																														

****Return one copy of this form to the following address (electronic copy with signature & date is preferred):**

Contract Manager: _____ Contracting Unit and Address: _____ _____ _____ _____

Signature: _____ **Date:** _____
(Required)

ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

For any future TORFP that is anticipated to have an estimated value of \$2,000,000.00 or more (see RFP Section 1.42), each Master Contractor submitting a response shall submit the following:

(submit with Task Order Proposal)

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

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

- ___ have plans
- ___ have **no** plans

to perform any services required under the resulting Task Order Agreement outside of the United States.

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

a. Location(s) services will be performed:

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

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

Date: _____

Master Contractor 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 O – DHR HIRING AGREEMENT

If required (see RFP Section 1.43), this Agreement is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award.

Agency Control Number

**MARYLAND DEPARTMENT OF HUMAN RESOURCES
HIRING AGREEMENT**

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

WITNESSETH:

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

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

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

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

- Medicaid coverage for the employee and the employee’s dependents for up to one year after placement in the job;
- Maryland Children’s Health Program (MCHP) medical coverage for the employee’s dependents after one year of employment for as long as eligibility is met;
- Food Stamps for the employee and the employee’s dependents for as long as eligibility requirements are met;
- Child Care subsidies for the employee’s dependents for up to one year after employment as long as eligibility requirements are met;
- Transportation subsidies for the employee for a period of time after employment;

- Other Retention services including counseling on an as needed basis; and
- Assistance with claiming tax credits for hiring Candidates.

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

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.
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 three (3) 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 feedback regarding the disposition of referrals made, to include an explanation of why any such Candidate was not hired or considered qualified.
7. Designate this individual to be the specific contact person:

Name

Address

Telephone #

Fax #

e-Mail

Who will:

- provide additional information regarding ‘first source’ jobs and clarify their requirements;
- receive Department referrals, and
- 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.

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 three (3) Business Days after receiving the Contractor’s job opening notices.
4. Assist in the development of any mutually agreed upon training and/or internship 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 Stamps, child care, transportation, retention counseling, and access to tax credits) as necessary and appropriate.
6. Insure that the Contractor is advised of available subsidies and provide any assistance to the Contractor to obtain those subsidies.
7. Report the Contractor to the procurement Entity if the Contractor does not fulfill its responsibilities in accordance with this Agreement.
8. Review and evaluate the effectiveness of this undertaking with the Contractor and make modifications as necessary and appropriate.

C. DISCLAIMERS

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

D. NON-DISCRIMINATION

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

E. MARYLAND LAW PREVAILS

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

F. EFFECTIVE DATE

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

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

FOR THE CONTRACTOR:

FOR THE DEPARTMENT

SIGNATURE

SIGNATURE

TITLE

Hiring Agreement Coordinator
TITLE

DATE

DATE

ATTACHMENT P –SAMPLE TASK ORDER AGREEMENT (TOA)

**MASTER CONTRACT No.
TASK ORDER AGREEMENT
AUDIT TORFP No. ASC-2015-01-001-(DBM)
Purchase Order No. F1099999999**

This Task Order Agreement (“TOA”) is made this 15th day of September 2015 by and between John Brown Company and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), OFFICE OF THE SECRETARY.

IN CONSIDERATION of the premises and the covenants herein contained, the parties agree as follows:

1. Definitions. In this Contract, the following words have the meanings indicated:

- a. “Agency” – A State agency identified in a TORFP.
- b. “AUDIT TORFP” means the Department of Budget and Management, Task Order Request for **ASC-2015-01-001-(DBM), dated June 2, 2015.**
- c. “Contract Manager” means the State individual designated by the State on the Master Contract or a successor designated by the Department;
- d. “DBM Procurement Officer” means the State individual designated by the State on the Master Contract or a successor designated by the Department;
- e. “State” means the State of Maryland;
- f. “TOA” means this Task Order Agreement;
- g. “TOA Contractor” means the master contractor selected to perform the task order agreement work identified in the AUDIT TORFP No. **ASC-2015-01-001-(DBM)**;
- h. “TOM” means the agency Task Order Manager or a successor designated by the agency;
- i. “TOP-Technical Proposal” - TOA Contractor’s Technical response dated August 1, 2010 to the AUDIT TORFP;
- j. “TOP-Financial Proposal” -TOA Contractor’s Financial response dated August 1, 2010 to the AUDIT TORFP;
- k. “TOP-BAFO” -TOA Contractor’s combined Technical and Financial final response to the AUDIT TORFP, dated August 22, 2015 as a Best and Final Offer; and,
- l. “TOA Contractor’s Certificate of Confidentiality” -TORFP’s Attachment 6 completed form for the TOA Contractor’s Certificate of Confidentiality, dated September 15, 2010, that becomes the Exhibit A to the TOA.

2. Scope of Work

- 2.1 The TOA Contractor shall, in full satisfaction of the specific requirements of this TOA, provide the services set forth in Section 2 of the AUDIT TORFP No. **ASC-2015-01-001-(DBM)**;

2.2 These services shall be provided in accordance with the Master Contract, this TOA, and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict among the Master Contract, this TOA, and these Exhibits, the terms of the Master Contract shall govern. If there is any conflict among this TOA and these Exhibits, the following order of precedence shall determine the prevailing provision:

- A) This TOA, dated September 15, 2015;
- B) Exhibit A, The TOA Contractor Certificate of Confidentiality, dated September 15, 2015;
- C) Exhibit B – AUDIT TORFP: ASC-20150-01-001-(DBM), dated June 2, 2015;
- D) Exhibit C-TOA Contractor’s TOP-BAFO, dated August 22, 2015;
- E) Exhibit D-Master Contractor’s TOP-Technical, dated August 1, 2015; and,
- F) Exhibit E-Master Contractor’s TOP-Financial, dated August 1, 2015.

2.3 The DBM Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the TOA. No other order, statement or conduct of the DBM Procurement Officer or any other person shall be treated as a change or entitle the TOA Contractor to an equitable adjustment under this section. Except as otherwise provided in this TOA, if any change under this section causes an increase or decrease in the TOA 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 TOA price shall be made and the TOA modified in writing accordingly. The TOA 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 TOA Contractor shall be allowed if asserted after final payment under this TOA. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause of the Master Contract. Nothing in this section shall excuse the TOA Contractor from proceeding with the TOA as changed.

3. Time for Performance.

Unless terminated earlier as provided in the Master Contract, the TOA Contractor shall provide the services described in its TOP and in accordance with the AUDIT TORFP. The term of this TOA is for a period that commences on the date of the initial Notice to Proceed and terminates February 15, 2016. The TOA Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Manager.

4. Consideration and Payment

4.1 The consideration to be paid the TOA Contractor shall be a Not-To-Exceed of **\$92,000.00**. **As the Master Contract is a Time and Materials contract (For labor, only time actually worked per the TORFP’s proposed and approved labor classifications and labor rates may be invoiced.) the fixed Fully-Loaded Labor Category Hourly Rates shall be no greater than what was proposed in the TOA Contractor’s Master Contract or applicable TOP for the applicable TORFP.** Any work performed by the TOA Contractor in excess of the Not-To-Exceed ceiling amount of TOA without the prior written approval of the Contract Manager is at the TOA Contractor’s risk of non-payment. All invoices must be presented with appropriate Time Card backup as noted in the TORFP’s Section 2.

4.2 Each invoice for services rendered must include the TOA Contractor’s Federal Tax Identification Number which is **00-0000000**. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from

time-to-time amended, are prohibited. Invoices must be submitted to the Agency TOM unless otherwise specified herein.

4.3 In addition to any other available remedies, if, in the opinion of the DBM Procurement Officer, the TOA Contractor fails to perform in a satisfactory and timely manner, the DBM Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the TOA Contractor to be reduced or withheld until such time as the TOA Contractor meets performance standards as established by the DBM Procurement Officer.

5. Liquidated Damages

5.1 This contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur 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 that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Master 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 Master 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.

- 5.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$_____ per day until the monthly report is submitted as required.
- 5.1.2 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): \$_____ per MBE subcontractor.
- 5.1.3 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.
- 5.1.4 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.

5.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$_____ per day until the undisputed amount due to the subcontractor is paid.

5.2 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Master Contract and to exercise any and all other rights or remedies which may be available under the Master Contract or which otherwise may be available at law or in equity.

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

John Brown Company

**MARYLAND DEPARTMENT OF
BUDGET AND MANAGEMENT**

Signature

Signature

By:

By: Contract Manager

Date:

Date:

Witness: _____ *Signature* _____

Witness: _____ *Signature* _____

ATTACHMENT Q – SAMPLE TOA CERTIFICATE OF CONFIDENTIALITY AGREEMENT

This Agreement, dated as of _____, 20__, is by and between the DEPARTMENT OF _____ and _____, (“the TOA Contractor”) and is incorporated into the Task Order Agreement (Audit Services Contract’s TOA _____) between the parties as Exhibit A to that Task Order Agreement.

The parties agree as follows:

1. For purposes of this Confidentiality Agreement and the Task Order Agreement executed by the parties, the term “Information” means any and all information, data, records, or documents to which the TOA Contractor gains access, learns, discovers, acquires or uses in connection with performing the duties required in connection with the Task Order Agreement.
2. The purpose of this Confidentiality Agreement is to protect and prevent unauthorized disclosure of certain confidential information (the Information) of the Department while also permitting the TOA Contractor to fulfill its obligations under the terms of the Contract.
3. With respect to the Information, the TOA Contractor shall comply with all Federal and State laws and use reasonable efforts to:
 - (a) restrict disclosure of the Information solely to those of its employees with a need to know and not disclose it to third parties;
 - (b) advise employees, agents and subcontractors who receive the Information of the obligation of confidentiality hereunder and assure that such employees, agents and subcontractors take steps consistent with this Confidentiality Agreement to protect the Information;
 - (c) use the same degree of care to protect the Information and to prevent disclosure of the Information which is at least as stringent as that used with the TOA Contractor’s own confidential information, and which shall be at least the degree of care which a reasonably prudent person would use to protect and prevent disclosure of confidential information; and
 - (d) use the Information only for the purpose of fulfilling the TOA Contractor’s obligations under the Task Order Agreement.
4. Notwithstanding anything to the contrary herein, the TOA Contractor shall not have the obligation to preserve the confidentiality of any Information which:
 - (a) was previously known by both of the parties to be free of any obligation to keep it confidential;
 - (b) is or becomes publicly available by the action of the Department, other than by unauthorized disclosure; or
 - (c) is independently developed by the TOA Contractor.
5. Upon the request of the Department, the TOA Contractor shall return all documents and records, including those in matching-readable media, which contain the Information, without retaining any copies, of such documents or records that contain the Information. Upon the request of the Department, all Information contained in the data banks of any computer or electronic data system operated by the TOA Contractor shall be destroyed. Upon request by the Department, an officer or other appropriate representative of the TOA

Contractor shall provide a certificate which shall confirm that the foregoing, including the destruction, have taken place. The TOA Contractor shall request written authorization of the Department to retain any Information in any format.

Nothing contained in this Agreement shall be construed as granting to or conferring upon the TOA Contractor any rights by license or otherwise in any Information disclosed, except for the limited right to use the Information for the purposes set forth in this Confidentiality Agreement and the Task Order Agreement.

6. This Confidentiality Agreement shall be governed and construed in accordance with the laws of the State of Maryland, and shall bind and insure to the benefit of the parties hereto and their respective successors and assigns.

7. This Agreement shall become effective on the date set forth above and shall continue through the end of the term of the Task Order Agreement between the parties. The obligation to protect the confidential nature of the Information received, used, retained or known to the TOA Contractor as a result of its performance under the Task Order Agreement shall survive the termination of the Task Order Agreement, the Master Contract and this Agreement.

The parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year set forth above.

TOA CONTRACTOR:

MARYLAND STATE AGENCY:

By: _____

By: _____

Date: _____

Date: _____

Print name: _____

Print name: _____

Title: _____

Title: _____

ATTACHMENT R – SAMPLE LABOR CATEGORY SUMMARY SHEET

**TASK ORDER REQUEST FOR PROPOSAL (TORFP)
LABOR CATEGORY SUMMARY SHEET**

TORFP NO.: ASC-2014-00-000-(DBM)

In the table below, list each of the Master Contractor’s and Subcontractor’s personnel that are proposed to perform the audit services as outlined in the Statement of Work for the TORFP noted above. If the Master Contractor is awarded the Task Order Agreement (TOA) for the TORFP, the staff listed below will be the only staff authorized to perform the services. Any requested substitutions must be per the procedure in the RFP’s Section 3.9--Substitution of Personnel. *An updated resume of each individual that is listed below must be included with this form, and the Master Contractor must sign and date this form which is a pledge to use the personnel as indicated.*

Each staff person proposed must currently meet the criteria set forth in the Master Contract for the applicable Labor Category.

Only those Labor Categories allowed by the Master Contract are to be utilized. The completed Labor Category Summary Sheet must agree with the Work Plan in the Master Contractor’s Technical TOP.

The table is filled out below as an example.

Staff’s Name	Company	MDOT MBE Subcontractor (Y or N)	Labor Category	Total Hours Proposed
John Brown	XYZ Financial Company	N	Partner	10
Calvin Long	XYZ Financial Company	N	Manager	20
Grace Hall	Able Company	Y	Senior Auditor	120
Tabitha Lomer	Able Company	Y	Staff Auditor	120
Brian Cassidy	XYZ Financial Company	N	Staff Auditor	80
TOTAL				350

Typed Name

Signature

Date

SUBMIT THIS SUMMARY WITH A TOP’S TECHNICAL RESPONSE TO A TORFP