



**Department of Information Technology
REQUEST FOR PROPOSALS (RFP)**

Emergency Generator Maintenance and Repair Services

SOLICITATION NO. F50B6400033

Issue Date: May 6, 2016

NOTICE TO OFFERORS

**Minority Business Enterprises Are Encouraged to Respond to
this Solicitation**

STATE OF MARYLAND

Department of Information Technology (DoIT)

RFP KEY INFORMATION SUMMARY SHEET

RFP Title:	Emergency Generator Maintenance and Repair Services
RFP Number:	F50B6400033
RFP Issuing Department or Agency:	Department of Information Technology 45 Calvert Street Annapolis, MD, 21401
RFP Issue Date:	May 6, 2016
Proposals Due Date and Time:	June 8, 2016 at 2:00PM Local Time
Questions Due Date and Time:	May 16, 2016 at 2:00PM Local Time
Procurement Officer:	Larif K. Hamm Phone: 410.260.4040 e-mail: Larif.Hamm@maryland.gov
Contract Manager:	Denis McElligott Phone: 410.260.6125 e-mail: Denis.McElligott@maryland.gov
Operational Contact:	Justin Ellingwood Phone: 410.693.1874 e-mail: Justin.Ellingwood@maryland.gov
Send Proposals to:	Larif.Hamm@maryland.gov
Send Questions (e-mail only) to:	e-mail address: Larif.Hamm@maryland.gov
Contract Type	Fixed Price (FP) and Time and Materials (T&M)
Contract Duration	Three (3) year base period and two (2) one-year option periods
MBE Subcontracting Goal:	5 %
VSBE Subcontracting Goal:	0 %
Small Business Reserve	No
Pre-Proposal Conference:	No pre-proposal conference will be scheduled.

STATE OF MARYLAND
NOTICE TO OFFERORS/BIDDERS/CONTRACTORS
Maryland Wants to Do Business with You

Please let us know why you are not proposing. (Check all that apply).

- We do not offer the services/commodities requested.
- Busy with other commitments.
- Specifications are unclear or too restrictive.
- Timetable is unworkable.
- Bonding/Insurance requirements are prohibitive.
- Our experience with State of Maryland has not been satisfactory.
- Other (Please specify)

Additional Comments:

Please add suggestions for improvement here:

Name of commenter and Business (optional): _____

Contact Person (optional): _____ Phone (____) _____ - _____

Bid/proposal Number: **F50B6400033** Entitled: **Emergency Generator Maintenance and Repair Services**

Your comments will help us improve the procurement process.

Thank You.

Please return your comments with your proposal. If you have chosen not to propose to this RFP, please e-mail this completed form to the Procurement Officer's e-mail address.

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1 GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Department of Information Technology (DoIT or the “Department”) is issuing this Request for Proposals (RFP) to provide emergency generator maintenance and repair services for the five (5) emergency generators supporting the statewide public radio system, Maryland First Responders Interoperable Radio System Team (MD FIRST), and two (2) additional emergency generators supporting the State data centers.
- 1.1.2 It is the State’s intention to obtain products/services, as specified in this RFP, through a Contract between the successful Offeror and the State. See Section 1.4 for contract duration information.
- 1.1.3 The Department intends to make a single award as a result of this RFP.
- 1.1.4 Offerors, either directly or through their Subcontractor(s), must be able to provide all products/services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of Subcontractor participation in the work.
- 1.1.5 The Contract applies exclusively to all entities of State of Maryland government subject to Section 3A-302(c) of the State Finance and Procurement Article.

1.2 Abbreviations and Definitions

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

Certified Technician	Contractor Personnel who are trained in all aspects of the systems – from electrical specification and performance, to fault-finding and health and safety practices, who are further certified and approved by the generator manufacturer
COMAR	Code of Maryland Regulations, available on-line at www.dsd.state.md.us
Contract	The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of Attachment 2
Contract Manager	The State representative who serves as the contract manager for the Contract. The Contract Manager monitors activities and monthly reports under the Contract.
Contractor	The Offeror awarded the Contract

Contractor's Contract Administrator	Person designated at the time of Contract award by the Contractor as the single point of contact with the authority and knowledge to resolve Contract issues
Contractor Personnel	Employees and agents and Subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract
Department of Information Technology (DoIT or the Department)	The unit of the Executive Branch of Maryland State government issuing the RFP
eMaryland Marketplace (eMM)	An electronic commerce system administered by the Maryland Department of General Services
Emergency Repairs	Repairs performed within a shortened timeframe as well as anything outside of State of Maryland Business Hours.
Fixed Price	Pricing option which places responsibility on the Contractor for the delivery of any products and the complete performance of any services in accordance with the RFP at a price that is not subject to adjustment
Fully Loaded Labor Rates	All-inclusive Labor Rates provided by the Offeror in Attachment 1 that contain all direct and indirect cost and profit for the Contractor
Key Personnel	Contractor Personnel that, should they leave during the performance period, will, in the State's opinion, have a substantial negative impact on the Contractor's performance under the Contract. As provided in Section 1.23, Key Personnel may be identified after Contract award.
Local Time	Time in the Eastern Time Zone as observed by the State of Maryland
Maryland Department of General Services (DGS)	Agency that delivers essential services and facilities operations and management to the State.
Minority Business Enterprise (MBE)	A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03
Non-Emergency Work	Work that includes preventative maintenance, non-emergency repairs within Business Hours.
Notice to Proceed (NTP)	A written notice from the Procurement Officer that, subject to the conditions of the Contract, works under the Contract is to begin as of a specified date. The start date listed in the NTP is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional

	NTPs may be issued by either the Procurement Officer or the Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
NTP Date	The date specified in a NTP for work on the Contract, project, or Work Order to begin
Offeror	An entity that submits a Proposal in response to this RFP
Operational Contact	The State representative identified as the person responsible for scheduling and supporting maintenance, repair, and design visits for the Contractor. DoIT may change the Operational Contact at any time by written notice to the Contractor.
Procurement Officer	The State representative who is responsible for the Contract, determining scope issues and is the only State representative who can authorize changes to the Contract
Proposal	As appropriate, either or both an Offeror's Technical or Financial Proposal
Request for Proposals (RFP)	This Request for Proposals for the Department of Information Technology including any amendments / addenda thereto
State	The State of Maryland
Subcontractor	An agent, service provider, supplier, or vendor selected by the Contractor to provide subcontracted services or products under the direction of the Contractor or other Subcontractors, and including any direct or indirect Subcontractors of a Subcontractor. Subcontractors are subject to the same terms and conditions as the Contractor.
State of Maryland Business Hours	7:30 A.M. to 5:00 P.M., local time, Monday – Friday, excluding State holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays
Time and Material (T&M)	Type of payment to the Contractor specific to performance, based on direct labor hours billed at specific hourly rates, plus non-routine travel costs as may be identified in a Contract, plus the actual cost of any materials provided. The fixed hourly labor category rates, plus the actual cost of materials, and non-routine travel will be the only payment made for this type of Contract. The labor category hourly rates may not exceed the hourly

	<p>rates specified in the Contract.</p> <p>The Contractor will be required to provide time records and/or other documentation documenting that all direct hours billed have actually been expended its Contractor Personnel, totally and productively in the performance of the Contract.</p> <p>In addition, the Contractor must also provide documentation of the actual cost of materials or other activities directly used in the performance of the Contract.</p>
Total Evaluated Price	The Offeror's price as submitted on Attachment F - Price Sheet, upon which the Offeror's Financial Proposal will be evaluated. (see RFP Section 5.3)
Veteran-owned Small Business Enterprise (VSBE)	A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13 and http://www.vetbiz.gov .

1.3 Contract Type

The Contract resulting from this RFP shall be Firm Fixed Price with a Time and Materials (T&M) option in accordance with COMAR 21.06.03.02 and 21.06.03.06.

1.4 Contract Duration

- 1.4.1 The Contract shall start from the date of mutual Contract execution by the parties ("Effective Date").
- 1.4.2 As of the Notice to NTP Date contained in a Notice to Proceed (NTP), the Contractor shall perform all activities required by the Contract, including the requirements of this solicitation and the offerings in its Technical Proposal, for the compensation described in its Financial Proposal.
- 1.4.3 The Contract resulting from this RFP shall be for three (3) years from the Effective Date. The State, at its sole option and direction, may renew the term of the Contract for an additional two (2) renewal periods of one (1) year each for a total potential Contract length of up to five (5) years.
- 1.4.4 The Contractor's obligations to pay invoices to subcontractors that provide products/services during the 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 Contract and continue in effect until all such obligations are satisfied.
- 1.4.5 In accordance with BPW Advisory 1995-1, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding,

one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of a contract is the Procurement Officer as listed Key Information Summary Sheet.

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

1.6 Contract Manager

The Contract Manager for the Contract is listed in the Key Information Summary Sheet.

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

1.7 Pre-proposal Conference

1.7.1 A pre-proposal conference will not be held for this RFP.

1.8 eMaryland Marketplace (eMM)

1.8.1 eMaryland Marketplace (eMM) is an electronic commerce system administered by the Maryland Department of General Services (DGS). In addition to using DoIT's website www://DoIT.maryland.gov and possibly using other means for transmitting the RFP and associated materials, the RFP, pre-proposal conference summary and attendance sheet, Offeror's questions and the Procurement Officer's responses, addenda, and other solicitation related information will be made available via eMM.

1.8.2 In order to receive a contract award, a company must be registered on eMM. Guidelines can be found on the eMaryland Marketplace website at <http://emaryland.buyspeed.com>.

1.9 Questions

All questions shall be submitted via e-mail to the Procurement Officer no later than the date and time indicated in the Key Information Summary Sheet. Please identify in the subject line the Solicitation Number and Title. Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments and posted on eMM.

1.10 Procurement Method

The Contract will be awarded in accordance with the Competitive Sealed Proposals procurement method as described in COMAR 21.05.03.

1.11 Proposals Due (Closing) Date and Time

1.11.1 Proposals, in the number and form set forth in Section 4 "Proposal Format," must be received by the Procurement Officer no later than the date and time listed on the Key Information

Summary Sheet in order to be considered. To minimize Proposal duplication costs, e-mail delivery of Proposals is strongly preferred.

- 1.11.2 Requests for extension of this date or time shall 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 by the Procurement Officer after the due date and time shall not be considered.
- 1.11.3 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the Proposals due time and date.
- 1.11.4 Proposals delivered by facsimile shall not be considered.
- 1.11.5 Companies not responding to this solicitation are requested to submit the “Notice to Offerors/Bidders/Contractors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

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

- 1.14.1 Offerors should give specific attention to the clear identification of those portions of their Proposals that they deem to be confidential, proprietary commercial information or trade secrets and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (Also, see RFP Section 4.2.2.2 “Claim of Confidentiality”). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.
- 1.14.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

1.15 Award Basis

A Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the products/services as specified in this RFP. See RFP Section 5 for further award information.

1.16 Oral Presentation

Offerors determined to be reasonably susceptible may be required to make oral presentations to State representatives. Offerors must confirm in writing any substantive oral clarification of their Proposals made in the course of discussions. Any such written clarifications then become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

1.17 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 180 days following the closing date for submission of proposals, best and final offers (if requested), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.18 Revisions to the RFP

- 1.18.1 If it becomes necessary to revise this RFP before the due date for Proposals, the DoIT shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be posted on the DoIT procurement web page and through eMM. It remains the responsibility of all prospective Offerors to check all applicable websites for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.
- 1.18.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal. 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, and may cause the Proposal to be deemed not susceptible for award.

1.19 Cancellations

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

1.20 Incurred Expenses

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

1.21 Protest/Disputes

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

1.22 Offeror Responsibilities

- 1.22.1 The successful Offeror shall be responsible for rendering products and services for which it has been selected as required by this RFP. All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see Section 1.33 "Minority Business Enterprise Goals" and Section 1.41 "Veteran-Owned Small Business Enterprise Goals").
- 1.22.2 If an Offeror that seeks to perform or provide the products/services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.
- 1.22.3 Although experience and documentation of an Offeror's parent may be used to satisfy minimum qualifications, 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 actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are transferred to and shared with the Offeror, any stated intent by the parent in its guarantee of performance for direct involvement in the performance of the Contract, and the value of the parent's participation as determined by the State.

1.23 Substitution of Contractor Personnel

- A. Key Personnel
This section does not apply to this RFP.
- B. Continuous Performance of Key Personnel
This section does not apply to this RFP.
- C. Definitions

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

1. **Extraordinary Personnel Event** – means leave under the Family Medical Leave Act; or an incapacitating injury or incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.

2. **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Contractor’s Technical Proposal.

D. Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in paragraph E of this section.

1. The Contractor shall demonstrate to the Contract Manager’s satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
2. The Contractor shall provide the Contract Manager 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, signed by the substituting individual and his/her formal supervisor;
 - c. The official resume of the current personnel for comparison purposes; and
 - d. Evidence of any required credentials.
3. The Contract Manager may request additional information concerning the proposed substitution. In addition, the Contract Manager and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Manager will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Manager will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

E. Replacement Circumstances

1. Key Personnel Replacement

This section does not apply to this RFP.

2. Key Personnel Replacement Due to Vacancy

This section does not apply to this RFP.

3. Key Personnel Replacement Due to an Indeterminate Absence

This section does not apply to this RFP.

4. Directed Personnel Replacement

- a. The Contract Manager may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Manager, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, Department or Agency policies, 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.

- b. If deemed appropriate in the discretion of the Contract Manager, the Contract Manager shall give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Manager. If the Contract Manager rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Manager within five (5) days, or in the timeframe set forth by the Contract Manager in writing.
- c. Should performance issues persist despite an approved Remediation Plan, the Contract Manager may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
- d. Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- e. If the Contract Manager determines to direct substitution under 1.23.E.4.a, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Manager deems it necessary and in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Manager may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

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 Contract, attached hereto as Attachment A. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **The volume and severity of exceptions to the Contract terms, including the terms of the RFP, will be considered in the evaluation process, and may be grounds for finding an Offeror not reasonably susceptible for award.**

1.25 Bid/Proposal Affidavit

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

1.26 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), note that a business entity that is organized outside of the State of Maryland is considered to be a "foreign" business.

1.27 Compliance with Laws/Arrearages

- 1.27.1 By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.
- 1.27.2 By submitting a response to this solicitation, the Offeror also represents that it is not in arrears in the payment of any obligations due to the State of Maryland, 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 award.

1.28 Verification of Registration and Tax Payment

- 1.28.1 Before a business entity can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://sdatcert3.resiusa.org/ucc-charter/>.
- 1.28.2 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 the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for award.

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.
 - 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 \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form

can be downloaded 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 Contract 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 Contract, Sections 8 "Prompt Pay Requirements" and 13.4.3 "MBE Prompt Pay Requirements" (see Attachment A), should an MBE goal apply to this RFP. Additional information is available on GOMA's website at: <http://goma.maryland.gov/Pages/Legislation-and-Policy.aspx>.

1.32 Electronic Procurements Authorized

- 1.32.1 Under COMAR 21.03.05, unless otherwise prohibited by law, a primary procurement unit 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.
- 1.32.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- 1.32.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- 1.32.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in this subsection, the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR21.03.05:
1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
 - a. the solicitation (e.g., the RFP)
 - b. any amendments
 - c. Pre-Proposal conference documents
 - d. questions and responses
 - e. communications regarding the solicitation or Proposal to any Offeror or potential Offeror

- f. notices of award selection or non-selection
 - g. the Procurement Officer's decision on any solicitation protest or Contract claim
2. An Offeror or potential Offeror may use e-mail to:
- a. ask questions regarding the solicitation
 - b. reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer
 - c. submit a "No Bid/Proposal Response" to the solicitation
3. The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in this subsection, utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Manager.

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

- a. filing of protests;
- b. filing of Contract claims;
- c. submission of documents determined by the DoIT to require original signatures (e.g., Contract execution, Contract modifications); or
- d. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

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

1.33 Minority Business Enterprise (MBE) Participation Goal

1.33.1 Establishment of Goal and Subgoals

An overall MBE subcontractor participation goal has been established for this procurement as identified in the Key Information Summary Sheet, representing a percentage of the total Contract dollar amount.

In addition, the following subgoals have been established for this procurement:

- A. There are no sub-goals established for this procurement.

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

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

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

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

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

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

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

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

- A. Outreach Efforts Compliance Statement (Attachment D-2).
- B. MBE Prime/Subcontractor Project Participation Certification (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 Procurement Officer to ascertain Offeror 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 Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.

- 1.33.6 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 Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:
- A. Attachment D-4A (Prime Contractor Paid/Unpaid MBE Invoice Report).
 - B. Attachment D-4B (MBE Prime Contractor Report)
 - C. Attachment D-5 (MBE Subcontractor/Contractor Unpaid MBE Invoice Report).
- 1.33.8 An Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all documentation within ten (10) Working Days from notification of recommended award 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 (Attachment D-1A), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – Attachment A, Section 2.2).
- 1.33.10 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract - Attachment A, Section 20.14.2).
- 1.33.11 As set forth in COMAR 21.11.03.12-1(D) when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (Attachment D-1A) and include information regarding the

work it will self-perform. For the remaining portion of the overall goal and the subgoals, the MBE prime must also identify other certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (Attachment D-1A)) used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE classifications but can self-perform up to 100% of the stated subgoal.

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

1.33.12 With respect to Contract administration, the Contractor shall:

- A. Submit by the 10th of each month to the Contract Manager and the Department or Agency's MBE Liaison Officer:
 - i. A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
 - ii. (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- B. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit by the 10th of each month to the Contract Manager and the Department or Agency's MBE Liaison Officer an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment D-5) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding 30 days, 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 Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. Upon completion of the Contract and before final payment and/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

1.34.1 Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000 as required by Maryland Code Ann., State Finance and Procurement Article, § 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.

- 1.34.2 If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. 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>
- 1.34.3 Additional information regarding the State's living wage requirement is contained in Attachment G. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (Attachment G-1) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- 1.34.4 Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.

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

1.35 Federal Funding Acknowledgement

The Contract does not contain federal funds.

1.36 Conflict of Interest Affidavit and Disclosure

- 1.36.1 Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (Attachment I) and submit it with their Proposal. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to Attachment I Conflict of Interest Affidavit and Disclosure.
- 1.36.2 Additionally, contractors have an ongoing obligation to ensure that any necessary personnel or subcontractor personnel have completed such agreements prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.36.3 Contractors should be aware that the State Ethics Law, Md. Code Ann., General Provisions Article, Title 5, might limit the selected Contractor's ability to participate in future related procurements, depending upon specific circumstances.

1.36.4 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all personnel and subcontractors are also without a conflict of interest as defined in COMARS 21.05.08.08A.

1.37 Non-Disclosure Agreement

Non-Disclosure Agreements are not required for this procurement.

1.38 HIPAA - Business Associate Agreement

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

1.39 Non-Visual Access

Non-Visual Access is not applicable to this solicitation.

1.40 Mercury and Products That Contain Mercury

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

1.41 Veteran-Owned Small Business Enterprise Goals

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

1.42 Location of the Performance of Services Disclosure

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

1.43 Department of Human Resources (DHR) Hiring Agreement

This solicitation does not require a DHR Hiring Agreement.

1.44 Purchasing and Recycling Electronic Products

This section does not apply to this solicitation.

1.45 Contract Extended To Include Other Non-State Governments or Agencies

Not applicable to this solicitation.

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2 COMPANY AND PERSONNEL QUALIFICATIONS

2.1 Offeror Minimum Qualifications

To be considered reasonably susceptible for award, an Offeror must provide proof with its Proposal that the following Minimum Qualifications have been met:

- a. The Offeror shall provide proof of experience, within the last three (3) years, with emergency generators supporting data centers or other critical government infrastructure listed in this RFP.
- b. The Offeror shall, within the last three (3) years, have experience maintaining at least three (3) emergency generators of the same size and type as described in Section 3.

2.2 Offeror Personnel Minimum Qualifications

Offeror Personnel shall meet the following minimum qualification criteria to be eligible for consideration in the evaluation of this RFP:

- a. The Offeror shall propose a minimum of two (2) Certified Technicians in response to this RFP who will be assigned to the Contract. Certified Technicians must be certified by at least one of the recognized engineering school (Caterpillar, Cummins, Detroit, Onan, Generac or Kohler).

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3 SCOPE OF WORK

3.1 Background and Purpose

DoIT is issuing this solicitation to provide emergency generator maintenance and repair services for the five (5) emergency generators supporting MD FiRST and two (2) additional emergency generators supporting the State data centers. The awarded Offeror shall be able to perform all requirements as detailed in Section 3 of the RFP. Offerors shall be required to furnish satisfactory evidence that they meet or exceed all minimum qualifications listed in Section 2 of this RFP.

As part of the scope of this Contract, the State shall have the right to add additional emergency generators anywhere within the State or withdraw emergency generators under contract at any time during the Contract period.

As part of the evaluation of the proposal for this RFP, Offerors shall propose exactly two (2) key resources and shall describe in a Staffing Plan how additional resources shall be furnished to meet the needs of the Department. All other planned positions shall be described generally in the Staffing Plan, and may not be used as evidence of fulfilling company or personnel minimum qualifications.

3.2 Agency / Project Background

3.2.1 DoIT supports the State's 700 MHz radio system, Maryland FiRST. Generators support the mission critical transmission facilities for the State.

3.2.2 DoIT also requires full maintenance support for two (2) Emergency Generators that support the State Data Centers. These Data Centers are vital sites for State Information Technology operations.

3.2.3 All locations are secured facilities and shall require the accompaniment of a MD FiRST or DOIT representative.

3.3 General Requirements

3.3.1 The Contractor shall provide the following immediately upon Contract award:

- A. The Contractor shall provide service technicians on twenty-four (24) hour emergency service call to respond to DoIT requests.
- B. The Contractor shall provide to the Operational Contact the names and telephone numbers of its contacts to be used by appropriate DoIT personnel in order to expedite restoration of services during an outage or to obtain status during an outage.
- C. The Contractor shall provide preferential response for any emergency services requested by DoIT over any non-agreement customers.

3.3.2 The Contractor shall hold a kick-off meeting with the State as scheduled by the Operational Contact.

3.3.3 The scope of this Contract includes all components of each covered emergency generator, including automatic transfer switches and all associated equipment.

- 3.3.4 The Contractor shall maintain records of work performed, test results, periodic performance reporting, and written recommendations for any work recommended that is beyond the scope of the standard manufacturer's servicing schedule. All labor and materials used shall be documented on the Contractor's service reports.
- 3.3.5 The Contractor shall ensure service is provided by Certified Technicians.
- a. Certified means that they are trained in all aspects of the systems – from electrical specification and performance, to fault-finding and health and safety practices.
 - b. Certified Technician shall be a certified and approved by the generator manufacturer.
- 3.3.6 Contractor Personnel shall be equipped with a means of direct access, to include one (1) of the following: digital pagers, cell phones or direct-connect radios.
- 3.3.7 The Contractor shall conduct any Non-Emergency Work between the hours of The State of Maryland Business Hours.
- 3.3.8 Scheduling Work at MD FiRST and Data Center Sites
- A. The Contractor shall coordinate any preventive maintenance at any MD FiRST site and the data center sites through the Operational Contact before any work can begin.
 - B. The emergency generators are located within secure locations and access shall require the accompaniment of a MD FiRST or data center representative.
 - C. For preventative maintenance work, the Contractor shall schedule the required escorted access needed to perform the work through the Operational Contact at least one (1) week in advance.
 - D. All routine scheduling will be confirmed through the Operational Contact at least seven (7) business days prior to any preventive maintenance or design work.
- 3.3.9 Emergency Repair and Access
- A. The Contractor shall provide a response/confirmation to a request for Emergency Repair within 15 minutes of an Emergency Repair request and on site response within two (2) hours of an Emergency Repair request.
 - B. Emergency repairs shall be completed within 24 hours of initial call.
 - C. The Contractor shall contact the Operational Contact in order to obtain the required escorted access needed to perform Emergency Repairs.
 - D. The Contractor shall provide equipment, Contractor Personnel, and management on a 24 X 7 X 365 basis.
 - E. The Contractor shall have access to parts on a 24 X 7 X 365 basis.
- 3.3.10 During State of Maryland Business Hours, the Contractor shall be able to accommodate maintenance and/or repair at a minimum of three (3) sites simultaneously.
- 3.3.11 The Contractor shall have sufficient qualified Contractor Personnel to meet all of DoIT's needs under this Contract.

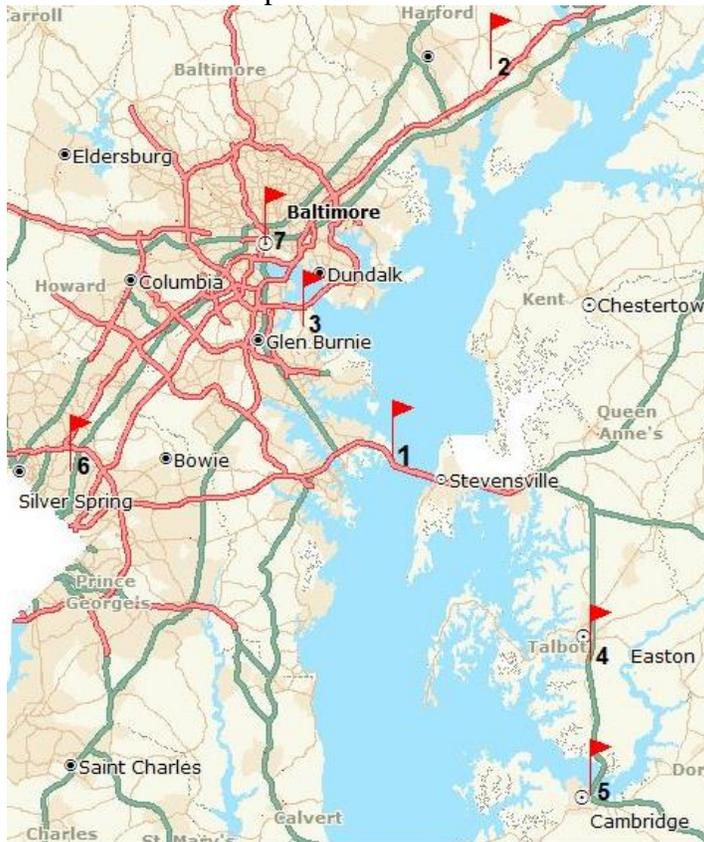
- 3.3.12 The Contractor's work shall be executed in such a manner that it does not disrupt day-to-day functions of the Department where the equipment is housed.
- 3.3.13 The Contractor shall notify the Operational Contact seven (7) calendar days in advance by e-mail of any planned service outages that may affect the State's services. This notice shall include at a minimum:
- A. reasons for the planned service outages,
 - B. scope of the planned services outages, and
 - C. expected duration of the planned service outage.
- 3.3.14 The Contractor shall utilize and describe to DoIT a structured, formalized Standard approach for problem determination, notification, and resolution. Within fifteen (15) calendar days after Contract award, the Contractor shall provide documentation to the Operational Contact describing the Contractor's Standard Operating Procedures for monitoring and management of emergency generator maintenance and repairs. The Standard Operating Procedures shall include a calendar of preventative maintenance activity for each generator covered under this Contract.
- 3.3.15 The Contractor shall provide a mechanism to perform an audit of services that appear on an invoice.

When requested, this audit of services:

- A. shall be performed at no additional charge,
 - B. shall be completed within 30 days of request, and
 - C. shall indicate any services billed on the invoice.
- 3.3.16 Procedure for adding a new emergency generator:
- A. DOIT shall provide the following information on any new emergency generators to be serviced under this Contract: location, make, model, size and fuel type.
 - B. Upon identifying the new generator, the Contractor shall provide a schedule for the preventive maintenance within one (1) week of notification of the new generator.
- 3.3.17 Locations and Components of Emergency Generators
- a. **Maryland FiRST Generator 1** - Make: Cummins/Onan, Model: GGHF, Size: 75KW
Site: Sandy Point
Address: 1100 East College Parkway, Annapolis, MD 21401
 - b. **Maryland FiRST Generator 2** - Make: Cummins/Onan, Model: GGPB, Size: 75KW
Site: Stoney Forest
Address: 1800 Carsins Run Road, Aberdeen, MD 21001
 - c. **Maryland FiRST Generator 3** - Make: Cummins/Onan, Model: GGHF, Size: 75KW
Site: Solley
Address: 7519 Steens Hill Drive, Pasadena, MD 21122

- d. **Maryland Generator 4** – Make: Cummins/Onan, Model: GGHF, Size: 75KW
Site: Easton MSP
Address: 7056 Easton, MD 21601
- e. **Maryland Generator 5** – Make: Cummins/Onan, Model: GGPC, Size: 75W
Site: Dorchester Health Department
Address: 3 Cedar St., Cambridge, MD 21613
- f. **Maryland Data Center Generator 6, (Network MD)** – Make: Generac, Model: 12052970100, Type SD400, Size: 200 KW, Volts: 277/480, Phase 3. Engine 16.0 Diesel.
Site: College Park
Address: Adjacent to Building 224, Computer Space Science Building, Farm Road, University of Maryland, College Park, MD
- g. **Maryland Data Center Generator 7 (Network MD)** – Make: Generac , Model: 2053020100, Type SG200, Size: 200 KW, Volts: 277/480, Phase 3. Engine 13.3 Natural Gas.
Site: Baltimore, MD
Address: 6 St Paul Street, 17th Floor Terrace, Baltimore, MD 21201

3.3.18 Site Locations Map



3.4 Non-Emergency Work**3.4.1 Preventative Maintenance (Fixed Price)**

- 3.4.1.1 The Contractor shall provide manufacturer-identified preventive maintenance and any additional maintenance identified for the emergency generators in-scope for this Contract, no less frequently than specified in the maintenance schedule for each model of generator as recommended by the original equipment manufacturer (similar to the sample schedule furnished in Attachment R).
- 3.4.1.2 The Contractor shall describe in its Proposal the number of times preventive maintenance will be performed on each emergency generator for each year.
- 3.4.1.3 The Contractor shall, within the scope of maintenance, perform standard tests and inspection identified by the manufacturer, as well as any other item not identified by the manufacturer, but proposed by the Contractor (following approval by DoIT) or requested by DoIT.
- 3.4.1.4 The Contractor shall include, as part of preventive maintenance work, all of, but not limited to: replacement of filters, belts and all other services recommended by the manufacturer on a schedule that meets or exceeds the manufacturer's recommendations.
- 3.4.1.5 The Contractor shall carry out full load tests on all emergency generators in-scope for this Contract following the manufacturer's recommended schedule.
- 3.4.1.6 The Contractor shall include a signed service report for preventive maintenance with the invoice.

3.4.2 Non-Emergency Repair

- 3.4.2.1 The Contractor shall identify and perform required equipment repair as part of every on-site visit.

- 3.4.3 Non-Emergency Work performed beyond the standard maintenance shall be pre-authorized in writing and include a quote containing labor and bill of materials costs. The information shall be sent via e-mail to the Operational Contact.

3.5 Emergency Repair (Time & Materials)

- 3.5.1 The Contractor shall provide emergency maintenance and repair of the emergency generators in-scope for this Contract.

The Contractor shall identify the Emergency Repair required and provide to the Operational Contact a verbal estimate of the time and materials required to repair in order to obtain approval to perform the repair.

- 3.5.2 The Contractor shall document in writing the time and material costs and send via e-mail to DoIT to substantiate Emergency Repairs. The Contractor shall charge the hourly rate specified within the Contractor's Financial Proposal for any Emergency Repairs not covered by the scope of standard maintenance.

- 3.5.3 All repairs performed outside of the preventive maintenance schedule shall be deemed an Emergency Repair.
- 3.5.4 The Contractor shall provide on-site response within two (2) hours of an Emergency Repair request from the State.
- 3.5.5 The Contractor shall, if requested, provide a temporary generator meeting the load rating of the affected site to ensure continuity of operations in the event of an emergency generator failure.

3.6 Parts and Warranty

- 3.6.1 The Contractor shall provide incidental materials in support of the preventive maintenance or optional design services activities at no cost to the State.
- 3.6.2 All replacement parts and equipment shall be new and unused and of current production. Manufacturer's standard warranty shall apply. Remanufactured parts may be substituted with prior written approval.
- 3.6.3 The Contractor shall warranty all labor and services and the manufacturer shall warranty all parts and equipment delivered under this Contract.
- 3.6.4 All parts and equipment are to be provided and installed as required to meet manufacturer's specifications and documented installation procedures.
- 3.6.5 All defective items shall be replaced at no additional cost to the State.
- 3.6.6 Unless otherwise specified, warranty repairs shall be corrected immediately upon receipt of the written or oral notice. If the Contractor, after notice, fails to proceed promptly, DoIT may have the defects corrected by a third party and the Contractor will be liable for all expense incurred. Such action shall not relieve the Contractor of further warranty liabilities.
- 3.6.7 The provisions of this section apply equally to work performed by Subcontractors, as well as to work performed by direct employees of the Contractor.
- 3.6.8 The Contractor shall assist DoIT with respect to warranty claims.

3.7 Security Requirements

- 3.7.1 The Contractor shall comply with and adhere to the Maryland State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the Maryland State IT Policy and Standards are available on-line at DoIT.maryland.gov - keyword: Security Policy.
- 3.7.2 On-site Security requirement(s)
- 3.7.2.1 For all conditions noted below, the Contractor's Personnel may be barred from entrance or leaving any site until such time that the State conditions and queries are satisfied.
- a. Each Contractor Personnel shall display his or her company ID badges at all times while on State premises and shall provide photo identification for access to a site upon request.

- b. Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the State may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the State.

3.7.2.2 Further, the Contractor, and its Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the Department that controls the facility to which access by the Contractor will be necessary. The failure of any Contractor Personnel to comply with any provision of the Contract that results from award of this solicitation is sufficient grounds for the State to immediately terminate that Contract for default.

3.7.3 At all times at any facility, the Contractor's Personnel shall ensure cooperation with State site requirements which include: being prepared to be escorted at all times, and providing information for badging and wearing the badge in a visual location at all times

3.7.4 The Contractor may not assign an employee with a criminal record unless prior written approval is obtained from the Contract Manager. The Contract Manager reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Manager as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.

3.8 Service Order Tracking and Fulfillment

- 3.8.1 The Contractor shall furnish services required in accordance with this RFP and the Contract.
- 3.8.2 When and if the State asks the Contractor to begin accessing and updating tickets in the State ticketing system, the Contractor shall follow all necessary policies currently in effect.
- 3.8.3 The Contractor will be provided e-mail status updates and an e-mailed order completion notification.

3.9 Invoicing

3.9.1 Maintenance (Fixed Price)

The Contractor shall submit signed service reports and invoices electronically to doitfiscal.invoiceservice@maryland.gov upon completion of each scheduled preventive maintenance including a copy of the detailed service report for each individual system by location. Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information.

3.9.2 Emergency Repair or Non-Emergency Work

The Contractor shall submit a signed service report with the invoices electronically to doitfiscal.invoiceservice@maryland.gov upon completion of any service (Emergency or Non-Emergency Repair) requested by DoIT beyond the preventive maintenance schedule within 15 days of completion. All invoices shall provide detailed information including labor rate, hours charged, and description and price of any parts or supplies used.

- 3.9.3 Each document supporting any invoice shall include the signature of the Operational Contact or his/her representative.
- 3.9.4 A proper invoice shall include, at the minimum, the following information:
- a. Contractor name
 - b. Products(s) and/or service(s) listed separately including the deliverable number (e.g., 3.8.4.1) and the amount for each line item, unit price applied (i.e., 5 – ABC Hardware @ \$2,000 Total \$10,000.00, 2 - CD Training @ \$100.00 Total \$200.00, Installation one-time cost \$300.00)
 - c. Supporting Documentation
 - d. Any adjustments made to the invoice
 - e. E-mail address/phone number of Contractor’s POC
 - f. Remittance address
 - g. Federal taxpayer identification or (if owned by an individual) Contractor’s social security number
 - h. Invoice period of performance, invoice date, invoice number and total amount due; and
 - i. Contract number, Purchase Order number being billed
- 3.9.5 Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information.
- 3.9.6 The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- 3.9.7 Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

3.10 Problem Escalation Procedure

- 3.10.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.10.2 The 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.
- 3.10.3 The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems

with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- A. The process for establishing the existence of a problem;
- B. 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;
- C. Circumstances in which the escalation will occur in less than the normal timeframe;
- D. The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
- E. Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
- G. A process for updating and notifying the Contract Manager of any changes to the PEP.

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

3.11 Work Order Process

This section is not applicable to this RFP.

3.12 Insurance Requirements

3.12.1 Any insurance furnished as a condition of this Contract shall be issued by a company authorized to business in this State.

3.12.2 Insurance shall be provided as specified in the Contract (Attachment A).

3.12.3 The recommended awardee must provide a certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this Section 3.13 "Insurance Requirements," within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts the Contractor shall update certificates of insurance annually, or as otherwise directed by the Contract Manager.

3.12.4 The following type(s) of insurance and minimum amount(s) of coverage are required:

- 3.12.4.1 General Liability - The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.

- 3.12.4.2 Employee Theft Insurance - The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.12.4.3 Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act. Coverage must be valid in all states where work is performed. One million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage).
- 3.12.4.4 Automobile and/or Commercial Truck Insurance - The Contractor shall maintain Automobile and/or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

3.12.5 State Inclusion on Insurance

The State shall be listed as an additional insured on all 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. 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.

3.12.6 Subcontractor Insurance

The Contractor shall require that any Subcontractors providing products/services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

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4 PROPOSAL FORMAT

4.1 Two-Part Submission

Offerors shall submit Proposals in separate volumes:

- a) Volume I – TECHNICAL PROPOSAL
- b) Volume II – FINANCIAL PROPOSAL

4.2 Volume I – Technical Proposal

Note: Provide no pricing information in the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

4.2.1 Format of Technical Proposal

The Technical Proposal will include all items detailed below. In addition to the following instructions, responses in the Offeror's Technical Proposal must reference the RFP's organization and section numbering (ex. "Section 3.2.1 Response"). This proposal organization will allow direct mapping between Offeror responses and RFP requirements by Section number and will aid in the evaluation process.

4.2.2 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:

4.2.2.1 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.

4.2.2.2 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. The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included (see Section 1.14 "Public Information Act Notice").

4.2.2.3 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 its Proposal and the requirements as stated in this RFP. The Transmittal Letter should include the following:

- A. Name and address of the Offeror;
- B. Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- C. Solicitation Title and Solicitation Number that the Proposal is in response to;

- D. Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- E. Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- F. Offeror's eMM number;
- G. Offeror's MBE certification number (if applicable);
- H. Acceptance of all State RFP and Contract terms and conditions (see Section 1.24); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.2.2.4); and
- I. Acknowledgement of all addenda to this RFP issued before the Proposal due date.

4.2.2.4 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 should identify the Service Category and Region(s) for which the Offeror is proposing to provide products/services (if applicable). The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

If the Offeror has taken no exceptions to the requirements of this RFP, the Executive Summary shall so state. Acceptance or rejection of exceptions is within the sole discretion of the State. If there are no assumptions, the Offeror shall so state.

4.2.2.5 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."

4.2.2.6 Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)

- A. The Offeror shall address each Scope of Work requirement (Section 3) in its Technical Proposal and describe how its proposed products/services, including the products/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 requirement shall include an explanation of how the work will be performed. 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. The response shall address each requirement in Section 3 of this RFP in order, and shall contain a cross reference to the RFP requirement.
- B. 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.
- C. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the 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 must be submitted as indicated in RFP Section 3.10.

- D. The Offeror shall demonstrate, in its Proposal, its ability to furnish parts quickly, including any manufacturer partnerships or Value Added reseller (VAR) relationships.

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

The Offeror shall identify the number and types of staff proposed to be utilized under the Contract.

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section. **Offerors be aware of restrictions on substitution of Key Personnel prior to RFP award (see Section 1.23.E Substitution Prior to and Within 30 Days After Contract Execution).**

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

4.2.2.8 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.

4.2.2.9 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 products/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 products/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 products/services provided.

The DoIT reserves the right to request additional references or utilize references not provided by an Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

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

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing products/services or for which services have been completed 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 products/services 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.

4.2.2.11 Financial Capability (Submit under TAB J)

Financial Statements are not required for this RFP.

4.2.2.12 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 3.12. See Section 3.12 for the required insurance certificate submission for the apparent awardee.

4.2.2.13 Subcontractors (Submit under TAB L)

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and/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. See Section 4.2.2.7 for additional Offeror requirements related to subcontractors.

4.2.2.14 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 court, case name, complaint number, and a brief description of the final ruling or determination; 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.

4.2.2.15 Additional Required Technical Submissions (Submit under TAB O)

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 4.2.2.

For e-mail submissions, submit one (1) copy of each with original signatures. All signatures must be clearly visible.

- A. Completed Bid/Proposal Affidavit (Attachment B).
- B. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit Attachment D-1A).
- C. Completed Maryland Living Wage Requirements Affidavit of Agreement (Attachment G-1).
- D. Completed Conflict of Interest Affidavit and Disclosure (Attachment I).
- E. Completed Mercury Affidavit (Attachment L)
- F. Labor Classification Personnel Resume Summary (Attachment Q)

4.3 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in Attachment F. The Offeror shall complete the Price Sheet only as provided in the Price Sheet Instructions and the Price Sheet itself.

4.4 Proposal Packaging

DoIT strongly desires e-mail delivery of Proposals.

- 4.4.1 Separate e-mails will be submitted for the Technical and Financial Proposals. The subject lines of the e-mails shall be: Volume I - Technical Proposal for F50B6400033 - Emergency Generator Maintenance and Repair Services and Volume II - Financial Proposal for F50B6400033 - Emergency Generator Maintenance and Repair Services respectively. Each e-mail shall contain the submission documents detailed in section 4.
- 4.4.2 The Technical Proposal e-mail(s) shall be in Microsoft Word format (version 2007 or greater). Provide no pricing information in the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II). A second version of Volume I in searchable Adobe .pdf format shall be submitted to support 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”).

- 4.4.3 The Financial Proposal e-mail shall include one file attachment containing all submission documents detailed in section 4.3, with password protection. DoIT will contact Offerors for the password to open each file. Each file shall be encrypted with the same password. A second electronic version of Volume II in searchable Adobe .pdf format shall be submitted to support 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”). Each .pdf format shall be packaged with the appropriate Volume.
- 4.4.4 DoIT can only accept e-mails that are less than or equal to a certain size. If a submission exceeds this size, split the submission into two or more parts and include the appropriate part number in the subject (e.g., part 1 of 2) after the subject line information above.
- 4.4.5 An Offeror wishing to deliver a hard copy (paper) Proposal shall contact the Procurement Officer for instructions.

4.5 Proposal Delivery

- 4.5.1 Offerors may submit proposals by hand, by electronic means, or by mail as described below to the address provided in the Key Information Summary Sheet. DoIT, however, strongly prefers electronic delivery of proposals. An Offeror wishing to deliver a hard copy of its Proposal shall contact the Procurement Officer for instructions.

Electronic means includes e-mail, as requested by the Procurement Officer. If the Proposal is to be submitted electronically, it must be submitted in MS Word and PDF formats. Any single e-mail must be no more than 25 Mb in size (See Sections 4.4 for additional labeling and packaging instructions).

- 4.5.2 The Procurement Officer must receive all Technical and Financial Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. If submitted via e-mail, the date and time of submission is determined by the date and time of arrival in the Procurement Officer’s e-mail box. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.

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5 EVALUATION CRITERIA AND PROCEDURE

5.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The DoIT 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 sub-criteria within each criterion have equal weight.

5.2.1 Offeror's Technical Response to RFP Requirements and Work Plan (See RFP § 4.2.2.6)

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 performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

5.2.2 Experience and Qualifications of Proposed Staff (See RFP § 4.2.2.7)

5.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 4.2.2.8 – 4.4.2.14)

5.3 Financial Proposal Evaluation Criteria

5.3.1 All Qualified Offerors (see Section 5.5.2.4) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Evaluated Price within the stated guidelines set forth in this RFP and as submitted on Attachment F - Price Sheet.

5.3.2 For proposals submitted via e-mail, DoIT will contact Offerors for the password to access financial proposal data. DoIT will only contact those Offerors with proposals that are reasonably susceptible for award. Offerors that are unable to provide a password that opens the financial submission will be deemed not susceptible for award; subsequent submissions of content will not be allowed.

5.4 Reciprocal Preference

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

- 5.4.1.1 The most advantageous offer is from a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the products/services required under this RFP is in another state.
 - 5.4.1.2 The other state gives a preference to its resident businesses through law, policy, or practice; and
 - 5.4.1.3 The preference does not conflict with a Federal law or grant affecting the procurement Contract.
- 5.4.2 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

5.5 Selection Procedures

5.5.1 General

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

5.5.2 Selection Process Sequence

- 5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Subcontractor Participation Schedule (Attachment M-1) is included and is properly completed, if there is a VSBE goal.
- 5.5.2.2 Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- 5.5.2.3 Offerors must confirm in writing any substantive oral clarifications of their Technical Proposals made in the course of discussions. Any such written clarifications then

become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.

5.5.2.4 The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

5.5.2.5 When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. **Offerors may only perform limited substitutes of proposed personnel (see Section 1.23.E Substitution Prior to and Within 30 Days after Contract Execution).**

5.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors.

5.6 Documents Required upon Notice of Recommended Award

Upon receipt of notice of recommended 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. MBE Attachments D-2, D-3A, D-3B, within ten (10) Working Days,
- D. MBE Waiver Justification within ten (10) Working Days, usually including Attachment D-1C, if a waiver has been requested,
- E. Evidence of meeting insurance certificate requirements (See Section 3.12)
- F. PEP (See Section 3.7), within ten (10) Working Days

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RFP ATTACHMENTS

ATTACHMENT A – Contract

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

ATTACHMENT B – Bid/Proposal Affidavit

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

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Minority Business Enterprise Forms

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D1-A through D-5. Attachment D-1A must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed non-responsive and rejected. Within 10 Working Days of receiving notification of recommended award, the Offeror must submit Attachments D-2, D-3A, D-3B and, if the Offeror has requested a waiver of the MBE goal, usually Attachment D-1C.

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 Price Sheet

The Price Sheet must be completed and submitted with the Financial Proposal.

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

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

ATTACHMENT H – Federal Funds Attachment - Not Required

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

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

ATTACHMENT J – Non-Disclosure Agreement - Not Required

ATTACHMENT K – HIPAA Business Associate Agreement - Not Required

ATTACHMENT L – Mercury Affidavit

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

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms- Not Required

ATTACHMENT N – Location of the Performance of Services Disclosure - Not Required

ATTACHMENT O – Non-Disclosure Agreement (Offeror) - - Not Required

ATTACHMENT P – Labor Classification Personnel Resume Summary

If required, this Attachment is to be completed and submitted with the Technical Proposal.

ATTACHMENT Q – Labor Categories

If required, this Attachment describes labor categories available for use on this Contract.

ATTACHMENT R – Periodic Maintenance Schedule for Standby Power Generators

If required, this Attachment describes labor categories available for use on this Contract.

ATTACHMENT A - CONTRACT

Department of Information Technology ((DoIT))

“Emergency Generator Maintenance and Repair Services”

F50B6400033

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 20__ by and between _____ and, on behalf of the STATE OF MARYLAND, the MARYLAND Department of Information Technology ((DoIT)).

IN CONSIDERATION of the following, the parties agree as follows:

1. Definitions

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

- 1.1. “COMAR” means the Code of Maryland Regulations available on-line at www.dsd.state.md.us.
- 1.2. “Contract” means this contract for Emergency Generator Maintenance and Repair Services.
- 1.3. “Contractor” means _____, whose principal business address is: _____.
- 1.4. “Contract Manager” means the individual identified in Section 1.6 of the Request for Proposals (RFP), or a successor designated by the Department or Agency.
- 1.5. “Department or Agency” means the Department of Information Technology (DoIT).
- 1.6. “eMM” means eMaryland Marketplace.
- 1.7. “Financial Proposal” means the Contractor’s financial proposal dated _____.
- 1.8. “Minority Business Enterprise” (MBE) means an entity meeting the definition at COMAR 21.0 1.02.01B(54), which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.9. “Procurement Officer” means the person identified in Section 1.5 of the RFP or a successor designated by the Department or Agency.
- 1.10. “Proposal” collectively refers to the Technical Proposal and Financial Proposal.
- 1.11. “RFP” means the Request for Proposals for Emergency Generator Maintenance and Repair Services, Solicitation # F50B6400033 and any amendments thereto issued in writing by the State.
- 1.12. “State” means the State of Maryland.
- 1.13. “Technical Proposal” means the Contractor’s technical proposal dated _____.
- 1.14. “Veteran-owned Small Business Enterprise” (VSBE) means 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.

2. Scope of Contract

- 2.1. DoIT is issuing this RFP to procure Emergency Generator Maintenance and Repair for the five (5) Emergency Generators supporting the statewide public radio system (MD FiRST) and two (2) Emergency Generators supporting the State Data Centers. Contractor shall provide products and services as described in the RFP.
- 2.2. These products and services shall be provided in accordance with the terms and conditions of this

Contract and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and Exhibits A through D, the terms of this Contract shall control. If there is any conflict among the exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A – The RFP

Exhibit B – The Contract Affidavit dated _____.

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

3. Period of Performance

- 3.1. The Contract shall start as of the date of full execution by the parties (the “Effective Date”). From this date, the Contract shall be for a period of 3 years in the base term of the contract and an additional two (2) one (1) year options for a total maximum contract term of five (5) years.
- 3.2. The Contractor shall provide products and services under this Contract as of the date provided in a written Notice to Proceed.
- 3.3. Audit, confidentiality, document retention, Work Product (see §5.2) retention, warranty and indemnification obligations under this Contract and any other obligations specifically identified shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1. In consideration of the satisfactory performance of the Contract, the DoIT shall promptly process a proper invoice for payment in accordance with the terms of this Contract.
- 4.2. The total payment for products and services provided under a fixed price contract or the fixed price element of a combined fixed price – time and materials contract, shall be the firm fixed price submitted by the Contractor in its Financial Proposal. For time and materials contracts, or contracts which include both fixed price and time and materials elements, total payments to the Contractor for the time and materials portion may not exceed _____ the “NTE Amount”). The Contractor shall notify the Contract Manager, in writing, at least 60 days before time and material obligations are expected to reach the NTE Amount. The Contractor shall have no obligation to perform the time and materials requirements under this Contract after payments reach the NTE Amount. The cessation of the Contractor’s obligation to perform under this paragraph 4.2 is expressly conditioned on the following: that prior to the NTE Amount being reached, the Contractor shall: (i) give the notice required under this paragraph 4.2; (ii) promptly consult with the DoIT and cooperate in good faith with the DoIT to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete critical work in progress prior to the date the NTE Amount will be reached; and (iii) secure data bases, 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.
- 4.3. The Contractor shall submit invoices as required in the RFP. Invoices that contain both fixed price and time and material items must clearly identify the items to either fixed price or time and material billing. Invoices for third-party software support and maintenance will be paid on a monthly basis. Each invoice must include the Contractor’s Federal Tax Identification Number: _____. The Contractor’s eMM identification number is _____. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department’s receipt of a proper invoice from the Contractor. 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 shall be submitted to the Contract Manager. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid

4.4. 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.

5. Patents, Copyrights, Intellectual Property

5.1. If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

5.2. Except as provided in Section 5.4 of this Contract, the Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, software, graphics, mechanical, artwork, computations and data prepared by or for the Contractor for purposes of this Contract (Work Product) shall become and remain the sole and exclusive property of the State and shall be available to the DoIT at any time. The DoIT shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.3. Except as provided in Section 5.4 of this Contract, the Contractor agrees that at all times during the term of this Contract and thereafter, the Work Product shall be "works made for hire" as that term is interpreted under U.S. copyright law and shall be owned by the State. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product. In the event any Work Product is or may not be considered a work made for hire under applicable law, Contractor assigns and transfers to the State the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall execute all documents and perform such other proper acts as the State may deem necessary to secure for it the rights pursuant to this section.

5.4. Notwithstanding anything to the contrary in this Contract, to the extent (i) the Work Product incorporates any commercial-off-the shelf software (COTS) and/or any Pre-Existing Intellectual Property or (ii) any COTS and/or Pre-Existing Intellectual Property (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such COTS and Pre-Existing Intellectual Property individually and collectively referred to herein as "Third-party Intellectual Property," which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third-party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.

5.5. Subject to the terms of Section 6, Contractor shall defend, indemnify, and hold harmless the State, including, but not limited to, the Agency and its agents, officers, and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any claim the Work Product or any Third-party Intellectual Property infringes, misappropriates or otherwise violates any Third-party Intellectual Property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent, which

consent may be withheld in the State's sole and absolute discretion. Contractor shall be entitled to control the defense or settlement of such claim (with counsel reasonably satisfactory to the State), provided that the State will, upon requesting indemnification hereunder: (a) provide reasonable cooperation to Contractor in connection with the defense or settlement of any such claim, at Contractor's expense; and (b) be entitled to participate in the defense of any such claim. Contractor's obligations under this section will not apply to the extent any Third-party Intellectual Property infringes, misappropriates or otherwise violates any third party intellectual rights as a result of modifications made by the State in violation of the license granted to the State pursuant to section 5.4; provided that such infringement, misappropriation or violation would not have occurred absent such modification.

- 5.6. Without limiting Contractor's obligations under Section 5.5, if all or any part of the Work Product or any Third Party Intellectual Property is held, or Contractor or the State reasonably determines that it could be held, to infringe, misappropriate or otherwise violate any third party intellectual property right, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the item in accordance with its rights under this Contract; (b) replace the item with an item that does not infringe, misappropriate or otherwise violate any third party intellectual property rights and, in the State's sole and absolute determination, complies with the item's specifications, and all rights of use and/or ownership set forth in this Contract; or (c) modify the item so that it no longer infringes, misappropriates or otherwise violates any third party intellectual property right and, in the State's sole and absolute determination, complies with the item's specifications and all rights of use and/or ownership set forth in this Contract.
- 5.7. Except for any Pre-Existing Intellectual Property and Third-Party Intellectual Property, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State.
- 5.8. Contractor, on behalf of itself and its subcontractors, hereby agrees not to incorporate, link, distribute or use any Third-party Intellectual Property in such a way that: (a) creates, purports to create or has the potential to create, obligations with respect to any State software (including any deliverable hereunder), including without limitation the distribution or disclosure of any source code; or (b) grants, purports to grant, or has the potential to grant to any third-party any rights to or immunities under any State intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, any code or software licensed under the GNU General Public License ("GPL"), Lesser General Public License ("LGPL"), Affero GPL ("AGPL"), European Community Public License ("ECPL"), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause any State software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or such other open source software.
- 5.9. Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third-party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received

license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

- 5.10. The Contractor shall report to the Department or Agency, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Work Product delivered under this Contract.

6. Indemnification

- 6.1. Contractor shall indemnify, defend, and hold the State, its directors, officers, employees and agents harmless from third-party liability for tangible property damage, bodily injury and death, and for fraud or willful misconduct of Contractor, including all related defense costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) arising from or relating to the performance of the Contractor or its subcontractors under this Contract.
- 6.2. The State 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 obligations under this Contract.
- 6.3. 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 obligations under this Contract.
- 6.4. 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.
- 6.5. Section 6 shall survive expiration of this Contract.

7. Limitations of Liability

- 7.1. Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees, including but not limited to personal injury; physical loss; or violations of the Patents, Copyrights, Intellectual Property sections of this Contract, as follows:
- 7.1.1. For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 5 ("Patents, Copyrights, Intellectual Property") of this Contract;
- 7.1.2. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- 7.1.3. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract where liability is not otherwise set forth as being "without limitation," and regardless of the basis on which the claim is made, Contractor's liability shall not exceed "twenty-five million dollars (\$25 Million)" for the base five-year period] Third-party claims arising under Section 6 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third-party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.
- 7.1.4. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all Subcontractors shall be held to be agents of Contractor.

8. Prompt Pay Requirements

Prompt pay does not apply to this Contract.

9. Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment and materials specified as deliverables to the State hereunder shall remain with the Contractor until the supplies, equipment, materials and other deliverables are received and accepted by the State. Title of all such deliverables passes to the State upon acceptance by the State, subject to the State's payment for the same in accordance with the terms of this Contract.

10. Exclusive Use and Ownership

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

11. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, 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 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.

12. Parent Company Guarantee (If Applicable)

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

13. General Terms and Conditions

Unless otherwise noted, the General Terms and Conditions are mandatory Contract Terms and cannot and will not be revised.

13.1. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland

Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

13.2. Maryland Law Prevails

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland. The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract, the Software, or any software license acquired hereunder. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

13.3. Multi-year Contracts contingent upon Appropriations

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 of Maryland 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.

13.4. Cost and Price Certification

13.4.1. The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- (1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or
- (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

13.4.2. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

13.5. Contract Modifications

The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. Pursuant to COMAR 21.10.04, the Contractor must assert in writing its right to an adjustment under this section 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 Section 16.8, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

13.6. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State of Maryland 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.

13.7. Termination for Convenience

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

13.8. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, 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 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 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.

13.9. 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 DoIT may withhold payment of any invoice or retainage. The DoIT may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

13.10. Non-Hiring of Employees

No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, 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.

13.11. 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, national origin, ancestry, or disability of a qualified person with a disability, sexual orientation, or any otherwise unlawful use of characteristics; (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.

13.12. Commercial Non-Discrimination

- 13.12.1. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, 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 Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 13.12.2. As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

13.13. Subcontracting and 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 State, each at the State's sole and absolute discretion. Any such subcontract or assignment shall include the terms of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to any subcontractors.

13.14. Minority Business Enterprise Participation

- 13.14.1. Establishment of Goal and Sub goals.

An overall MBE subcontractor participation goal and sub goals have been established for this procurement as described in section 1.33 of the RFP.

- 13.14.2. Liquidated Damages

- 13.14.2.1. This Contract requires the Contractor to make good faith efforts to comply with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 13.14.2.2. Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or Contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- i. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$<<insert value>> per day until the monthly report is submitted as required.
 - ii. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$<<insert value>> per MBE subcontractor.
 - iii. 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.
 - iv. Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
 - v. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this Contract: \$<<insert appropriate rate following calculation instructions from GOMA>> per day until the undisputed amount due to the MBE subcontractor is paid.

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

13.14.3. MBE Prompt Pay Requirements

- 13.14.3.1. To ensure compliance with certified MBE subcontract participation goals, the DoIT may, consistent with COMAR 21.11.03.13, take the following measures:
- A) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:

- (1) Inspecting any relevant records of the Contractor;
 - (2) Inspecting the jobsite; and
 - (3) Interviewing subcontractors and workers.
 - (4) Verification shall include a review of:
 - (a) The Contractor's monthly report listing unpaid invoices over 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 30 days and invoices for which the subcontractor has not been paid.
- B) If the DoIT determines that the Contractor is not in compliance with certified MBE participation goals, then the DoIT will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- C) If the DoIT determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the DoIT requires, then the DoIT may:
- (1) Terminate the Contract;
 - (2) Refer the matter to the Office of the Attorney General for appropriate action; or
 - (3) Initiate any other specific remedy identified by this Contract.
- 13.14.3.2. 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.

14. Insurance Requirements

The Contractor shall maintain workers' compensation coverage, and property and casualty insurance as required in the RFP. The minimum limits of such policies must meet any minimum requirements established by law and the limits of insurance required by the RFP, and shall cover losses resulting from or arising out of Contractor action or inaction in the performance of services under the Contract by the Contractor, its agents, servants, employees or subcontractors. Effective no later than the date of execution of the Contract, and continuing for the duration of the Contract term, and any applicable renewal periods, the Contractor shall maintain such insurance coverage and shall report such insurance annually or upon Contract renewal, whichever is earlier, to the Procurement Officer. The Contractor is required to notify the Procurement Officer in writing, if policies are cancelled or not renewed 35 days in advance of such cancellation and/or nonrenewal. Certificates of insurance evidencing this coverage shall be provided within five (5) days of notice of recommended award. All insurance policies shall be issued by a company properly authorized to do business in the State of Maryland. The State shall be named as an additional named insured on the property and casualty policy and as required in the RFP.

15. Veteran Owned Small Business Enterprise Participation

There is no VSBE subcontractor participation goal for this procurement.

16. Security Requirements and Incident Response

- 16.1 The Contractor agrees to abide by all applicable federal, State and local laws concerning information security and comply with current State and agency information security policy, currently found at <http://doit.maryland.gov/Publications/DoITSecurityPolicy.pdf>.
- 16.2 The Contractor agrees to notify the DoIT when any Contractor system that may access, process, or store State data or Work Product is subject to unintended access or attack. Unintended access or attack includes compromise by a computer malware, malicious search engine, credential compromise or access by an individual or automated program due to a failure to secure a system or adhere to established security procedures.
- 16.3. The Contractor further agrees to notify the DoIT within twenty-four (24) hours of the discovery of the unintended access or attack by providing notice via written or electronic correspondence to the Contract Manager, DoIT chief information officer and DoIT chief information security officer.
- 16.4. The Contractor agrees to notify the DoIT within two (2) hours if there is a threat to Contractor's product as it pertains to the use, disclosure, and security of the DoIT's data.
- 16.5. If an unauthorized use or disclosure of any personally identifiable information (PII), protected health information (PHI) or other private/confidential data (collectively "Sensitive Data") occurs, the Contractor must provide written notice to the DoIT within one (1) business day after Contractor's discovery of such use or disclosure and thereafter all information the State (or State Department or Agency) requests concerning such unauthorized use or disclosure.
- 16.6. The Contractor, within one day of discovery, shall report to the DoIT any improper or non-authorized use or disclosure of Sensitive Data. Contractor's report shall identify:
- (a) the nature of the unauthorized use or disclosure;
 - (b) the Sensitive Data used or disclosed,
 - (c) who made the unauthorized use or received the unauthorized disclosure;
 - (d) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - (e) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
 - (f) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- 16.7. The Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of PII or other event requiring notification. In the event of a breach of any of the Contractor's security obligations or other event requiring notification under applicable law, the Contractor agrees to assume responsibility for informing all such individuals in accordance with applicable law and to indemnify, hold harmless and defend the State (or State Department or Agency) and its officials and employees from and against any claims, damages, or other harm related to such security obligation breach or other event requiring the notification.
- 16.8. This Section shall survive expiration or termination of this Contract.

16.18. Suspension of Work

The Procurement Officer 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.

16.19. Nonvisual Accessibility Warranty

- 16.19.1. The Contractor warrants that the information technology to be provided under the Contract.
- (a) provides equivalent access for effective use by both visual and non-visual means;
 - (b) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use;
 - (c) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and
 - (d) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access.
- 16.19.2. The Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

16.20. Compliance with Laws/Arrearages

The Contractor hereby represents and warrants that:

- 16.20.1 It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 16.20.2 It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 16.20.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- 16.20.4 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.

16.21. Contingent Fee Prohibition

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

16.22. Delays and Extensions of Time

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts

of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

16.23. Financial Disclosure

The Contractor shall comply with the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State 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 these 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.

16.24. Political Contribution Disclosure

The Contractor shall comply with the provisions of Article 33, Sections 14-101 through 14-108 of the Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State of Maryland, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$200,000 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. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

16.25. Retention of Records and Audit

16.25.1. The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after close out of this Contract and final payment by the State under this Contract, or any applicable statute of limitations, prevailing federal or State law or regulation, or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. The Contractor shall, upon request by the Department or Agency, surrender all and every copy of documents needed by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance. All records related in any way to the Contract are to be retained for the entire time provided under this section.

16.25.2. This provision shall survive expiration of this Contract.

16.26 Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

HIPAA clauses do not apply to this Contract.

17. Administrative Information

17.1. Procurement Officer and Contract Manager

The day-to-day work to be accomplished under this Contract shall be performed under the direction of the Contract Manager and, as appropriate, the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

17.2. 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:

Denis McElligott
Department of Information Technology (DoIT)
45 Calvert Street
Annapolis, MD 21401-1994
Phone Number: 410-260-6125
E-Mail: Denis.McElligott@maryland.gov

With a copy to:

Larif K. Hamm
Department of Information Technology ((DoIT))
45 Calvert Street, Room 42
Annapolis, MD 21401-1994
Phone Number: 410-260-4040
E-Mail: Larif.Hamm@maryland.gov

If to the Contractor:

Attn: _____

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

CONTRACTOR

STATE OF MARYLAND

Department of Information Technology ((DoIT))

By:

By: Albert G. Bullock , Chief of Staff

Date

Or designee:

Date

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

Assistant Attorney General

ATTACHMENT B - BID/PROPOSAL AFFIDAVIT**A. AUTHORITY**

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all quotes 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;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
- (ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
- (ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

- (i) Made the finding; and
- (ii) Decision became final; or

(b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
- (ii) Not overturned on judicial review; or

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

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any

public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and 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. I FURTHER AFFIRM THAT:

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

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this 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)

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, Title 14, Annotated Code of Maryland, 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.

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:

The dangers of drug and alcohol abuse in the workplace;

The business's policy of maintaining a drug and alcohol free workplace;

Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

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:

Abide by the terms of the statement; and

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:

Take appropriate personnel action against an employee, up to and including termination; or

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:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D - MINORITY BUSINESS ENTERPRISE FORMS

The Minority Business Enterprise (MBE) subcontractor participation goal for this solicitation is 5%.

MBE ATTACHMENT D-1A: MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE**INSTRUCTIONS****PLEASE READ BEFORE COMPLETING THIS DOCUMENT**

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

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Sub-goals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and sub-goals. After satisfying the requirements for any established sub-goals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only entities 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 products/services **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. **NOTE: New 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 forces toward fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract. In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule, 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 sub-goals, the MBE prime must also identify other certified MBE subcontractors (see Section 4B of the MBE Participation Schedule) used to meet those goals or request a waiver. For example, for a construction contract that has a 27% MBE overall participation goal and sub-goals of 7% for African American firms and 4% for Asian American firms, subject to Section 4 above and this Section 5, a certified African American MBE prime can self-perform (a) up to 13.5 % of the overall goal and (b) up to 7% of the African American sub goal. The remainder of the overall goal and sub-goals would have to be met with other certified MBE firms or a waiver request.

For a services contract with a 30% percent MBE participation goal (overall) and sub-goals of 7% for African-American firms, 4% for Asian American firms and 12% for women-owned firms, subject to Sections 4 above and this Section 5, a dually-certified Asian American/Woman MBE prime can self-perform (a) up to 15% of the overall goal and (b) up to four percent (4%) of the Asian American subgoal OR up to twelve percent (12%) of the women sub goal. Because it is dually-certified, the company can be designated as only ONE of the MBE classifications (Asian American or women) but can self-perform up to one hundred percent (100%) of the stated sub goal for the single classification it selects.

6. Subject to the restrictions stated in Section 5 above, when a certified MBE that performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the contract equal to the distinct, clearly-defined portion of the work of the contract that the certified MBE performs with its own forces toward fulfilling the contract goal, and not more than one of the contract sub-goals, if any. For example, if a MBE firm is a joint venture partner and the State determines that it is performing with its own forces 35 percent of the work in the contract, it can use this portion of the work towards fulfilling up to fifty percent (50%) of the overall goal and up to one hundred percent (100%) of one of the stated sub-goals, if applicable.

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 e-mail 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 sub-goals (if applicable) set forth in the solicitation. If a Bidder/Offeror is unable to achieve the MBE participation goal and/or any sub-goals (if applicable), the Bidder/Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (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 Sub goal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and sub-goals, if any.

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

This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be included with the bid/proposal for any solicitation with an MBE goal greater than 0%. If the Bidder/Offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

In connection with the bid/proposal submitted in response to Solicitation No. F50B6400033, I affirm the following:

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

_____ I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of 5 percent and, if specified in the solicitation, the following sub-goals (complete for only those sub-goals that apply):

- _____ 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.

Notwithstanding any sub-goals established above, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

OR

_____ I conclude that I am unable to achieve the MBE participation goal and/or sub-goals. I hereby request a waiver, in whole or in part, of the overall goal and/or sub-goals. Within 10 Working days of receiving notice that our firm is the apparent awardee or as requested by the Procurement Officer, I will submit the completed Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all required waiver documentation in accordance with COMAR 21.11.03.

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) Outreach Efforts Compliance Statement (Attachment D-2);

(b) MBE Subcontractor Project Participation Statement (Attachment D-3);

(c) Any other documentation, including waiver documentation if applicable, required by the Procurement Officer to ascertain Bidder or Offeror responsibility in connection with the certified MBE participation goal and sub-goals, 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 are performing work activities for which they are MDOT certified.

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

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUB-GOALS, 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)

MBE Prime Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <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	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): _____% 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): _____% Description of the Work to be performed with MBE prime's own forces: _____
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SECTION B: For all Contractors (including MBE Primes in a Joint Venture)

MBE Prime Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <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	Percentage of Total Contract to be performed by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Prime Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <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	Percentage of Total Contract to be performed by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Prime Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <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	Percentage of Total Contract to be performed by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Prime Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) <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	Percentage of Total Contract to be performed by this MBE: _____% Description of the Work to be Performed: _____ _____ _____

CONTINUE ON SEPARATE PAGE IF NEEDED

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

 Bidder/Offeror Name
 (PLEASE PRINT OR TYPE)

 Signature of Authorized Representative

 Address

 Printed Name and Title

 City, State and Zip Code

 Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

MBE ATTACHMENT D-1B WAIVER GUIDANCE**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 sub-goals) on a contract, the Bidder/Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

I. Definitions

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

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

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

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

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

II. Types of Actions Agency will consider

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

A. Identify Bid Items as Work for MBE Firms

1. Identified Items of Work in Procurements

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

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

2. Identified Items of Work by Bidders/Offerors

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

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

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

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

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

2. MBE Firms Identified by Bidders/Offerors

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

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

C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Bidder/Offeror should:
 - (a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;
 - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; and
 - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Bidder/Offeror provides written solicitations.
3. “Electronic Means” includes, for example, information provided via a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Bidder/Offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
 - (a) by telephone using the contact information in the MBE Directory, unless the Bidder/Offeror has a valid basis for using different contact information; or
 - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:
 - (a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
 - (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate With Interested MBE Firms

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

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
 - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

- (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. A Bidder/Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Bidder's/Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
- (a) the dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Bidder/Offeror;
 - (b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Bidder/Offeror;
 - (c) the percentage that the MBE subcontractor's quote represents of the overall contract amount;
 - (d) the number of MBE firms that the Bidder/Offeror solicited for that portion of the work;
 - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (f) the number of quotes received by the Bidder/Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Bidder/Offeror may not use its price for self-performing work as a basis for rejecting a MBE Firm's quote as excessive or unreasonable.
6. The "average of the other subcontractors' quotes received" by the Bidder/Offeror refers to the average of the quotes received from all subcontractors. Bidder/Offeror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.
7. A Bidder/Offeror shall not reject a MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Bidder/Offeror concludes is not acceptable, the Bidder/Offeror must provide a written detailed statement listing the reasons for this conclusion. The Bidder/Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
- (a) The factors to take into consideration when assessing the capabilities of a MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
 - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the Bidder/Offeror:

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

III. Other Considerations

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

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

IV. Documenting Good Faith Efforts

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

A. Items of Work (Complete Good Faith Efforts Documentation Attachment 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 Bidder's/Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). (**Complete Outreach Efforts Compliance Statement – 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, e-mail, telephone, etc.) (**Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations**); and

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

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

1. For each MBE Firm that the Bidder/Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Bidder's/Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Bidder/Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Bidder's/Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by a MBE Unavailability Certificate (see Exhibit A to this Part 1) signed by the MBE contractor or a statement from the Bidder/Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Bidder's/Offeror's Good Faith Efforts.
2. Submit any other documentation the Bidder/Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**Exhibit A
MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of _____

(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 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 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
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	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

Part 2 – identified MBE firms and record of solicitations

Page __ of __

Prime Contractor:	Project Description:
Solicitation Number:	

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Bidder/Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Bidder/Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Bidder/Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment D-1B). If the Bidder/Offeror used a Non-MBE or is self-performing the identified items of work, Part 4 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: 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"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	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: 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"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	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 1 indicates that a MBE quote was rejected because the Bidder/Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

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

Please check if Additional Sheets are attached.

MBE ATTACHMENT D- 2

OUTREACH EFFORTS COMPLIANCE STATEMENT

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

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

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

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

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

4. Please Check One:

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

5. Please Check One:

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MBE Attachment D-3A

MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

Please complete and submit one form for each certified MBE firm listed on the MBE Participation schedule (Attachment D-1A) within 10 Working Days of notification of apparent award. If the Bidder/Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that the Bidder/Offeror is not responsible and therefore not eligible for Contract award.

Provided that _____ (Prime Contractor’s Name) is awarded the State contract in conjunction with Solicitation No. F50B6400033, 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: _____</p> <p>Printed Name and Title: _____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____ _____</p> <p>Telephone: _____</p> <p>Date: _____</p>	<p>SUBCONTRACTOR Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____ _____</p> <p>Telephone: _____</p> <p>Date: _____</p>
---	--

MBE Attachment D-3B

MBE PRIME PROJECT PARTICIPATION CERTIFICATION

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

Provided that _____ (Prime Contractor's Name) with Certification Number _____ is awarded the State contract in conjunction with Solicitation No. F50B6400033, 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</p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Address: _____ _____</p> <p>Telephone: _____</p> <p>Date: _____</p>
--

This form must be completed monthly by the prime contractor.

MBE ATTACHMENT D-4A MBE Prime Contractor Paid/Unpaid MBE Invoice Report

**Department of Information Technology
Minority Business Enterprise Participation**

Prime Contractor Paid/Unpaid MBE Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Report is due to the MBE Officer 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		List dates and amounts of any outstanding	

<p>above during this reporting period:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Invoice#</th> <th style="width: 65%;">Amount</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="3">Total Dollars Paid:</td> </tr> <tr> <td colspan="3">\$ _____</td> </tr> </tbody> </table>		Invoice#	Amount	1.			2.			3.			4.			Total Dollars Paid:			\$ _____			<p>invoices:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Invoice #</th> <th style="width: 65%;">Amount</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="3">Total Dollars Unpaid:</td> </tr> <tr> <td colspan="3">\$ _____</td> </tr> </tbody> </table>		Invoice #	Amount	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. 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
(Department or Agency)	
_____	mailto:

Signature: _____ Date: _____

(Required)

This form must be completed monthly by MBE subcontractor

Sample MBE D-5 Subcontractor Paid/Unpaid MBE Invoice Report

**Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report**

Report#: _____	Contract # _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
Report is due by the 10th of the month following the month the services were performed.	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 border="1"> <thead> <tr> <th>Invoice Amount</th> <th>Date</th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr><td>4. _____</td><td>_____</td></tr> <tr> <td>Total Dollars Paid: \$ _____</td> <td></td> </tr> </tbody> </table>		Invoice Amount	Date	1. _____	_____	2. _____	_____	3. _____	_____	4. _____	_____	Total Dollars Paid: \$ _____		List dates and amounts of any unpaid invoices over 30 days old. <table border="1"> <thead> <tr> <th>Invoice Amount</th> <th>Date</th> </tr> </thead> <tbody> <tr><td>1. _____</td><td>_____</td></tr> <tr><td>2. _____</td><td>_____</td></tr> <tr><td>3. _____</td><td>_____</td></tr> <tr><td>4. _____</td><td>_____</td></tr> <tr> <td>Total Dollars Unpaid: \$ _____</td> <td></td> </tr> </tbody> </table>	Invoice Amount	Date	1. _____	_____	2. _____	_____	3. _____	_____	4. _____	_____	Total Dollars Unpaid: \$ _____	
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4. _____	_____																									
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																										
(Department or Agency)																										

_____ mailto: _____																										

Signature: _____ Date: _____
(Required)

This form must be completed monthly by MBE subcontractor

MBE D-5 Subcontractor Paid/Unpaid MBE Invoice Report

**Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report**

Report#: _____	Contract # _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
Report is due by the 10th of the month following the month the services were performed.	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.		List dates and amounts of any unpaid invoices over 30 days old.
Invoice Amount	Date	Invoice Amount Date
1. _____	_____	1. _____
2. _____	_____	2. _____
3. _____	_____	3. _____
4. _____	_____	4. _____
Total Dollars Paid: \$ _____		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		
(Department or Agency)		
_____ mailto: _____		

Signature: _____ Date: _____
(Required)

ATTACHMENT E - FINANCIAL PROPOSAL PRICING INSTRUCTIONS

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

The Price Sheet is used to calculate the Offeror's TOTAL EVALUATED PRICE. Follow these instructions carefully when completing your Price Sheet:

- 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 Price Sheet shall be filled in. Any changes or corrections made to the Price Sheet by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Price Sheet, nothing shall be entered on or attached to the Price Sheet 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 Price Sheet have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Price Sheet. 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 Price Sheet.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to: all labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Price Sheet are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the DoIT does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

ATTACHMENT F – PRICE SHEET

F.1 PRICE SHEET (TIME AND MATERIALS) FOR RFP # F50B6400033

The total class hours (Column B) are not to be construed as “guaranteed” hours; the total number of hours is an estimate only for purposes of price sheet evaluation.

A year for this task order shall be calculated as one calendar year from NTP.

Job Title from RFP	Labor Category Certified Technicians	Hourly Labor Rate (A)	Total Class Hours (B)	Subtotal Proposed RFP Price (C)
Year 1				
Generator Technician (Routine Hours)	Certified Technician	\$	40	\$
Generator Technician (Emergency After Hours)	Certified Technician	\$	40	\$
Sr. Generator Technician (Routine Hours)	Certified Technician	\$	20	\$
Sr. Generator Technician (Emergency After Hours)	Certified Technician	\$	20	
		Evaluated Price Year 1		\$
Year 2				
Generator Technician (Routine Hours)	Certified Technician	\$	40	\$
Generator Technician (Emergency After Hours)	Certified Technician	\$	40	\$
Sr. Generator Technician (Routine Hours)	Certified Technician	\$	20	\$
Sr. Generator Technician (Emergency After Hours)	Certified Technician	\$	20	\$
		Evaluated Price Year 2		
Year 3				
Generator Technician (Routine Hours)	Certified Technician	\$	40	\$
Generator Technician (Emergency After Hours)	Certified Technician	\$	40	\$
Sr. Generator Technician (Routine Hours)	Certified Technician	\$	20	\$
Sr. Generator Technician (Emergency After Hours)	Certified Technician	\$	20	\$
		Evaluated Price Year 3		\$

Job Title from RFP	Labor Category Certified Technicians	Hourly Labor Rate (A)	Total Class Hours (B)	Subtotal Proposed RFP Price (C)
Year 4 (Option Year 1)				
Generator Technician (Routine Hours)	Certified Technician	\$	40	\$
Generator Technician (Emergency After Hours)	Certified Technician	\$	40	\$
Sr. Generator Technician (Routine Hours)	Certified Technician	\$	20	\$
Sr. Generator Technician (Emergency After Hours)	Certified Technician	\$	20	\$
		Evaluated Price Year 4		\$
Year 5 (Option Year 2)				
Generator Technician (Routine Hours)	Certified Technician	\$	40	\$
Generator Technician (Emergency After Hours)	Certified Technician	\$	40	\$
Sr. Generator Technician (Routine Hours)	Certified Technician	\$	20	\$
Sr. Generator Technician (Emergency After Hours)	Certified Technician	\$	20	\$
		Evaluated Price Year 5		
Total Evaluated Price Years 1 – 5				\$

Authorized Individual Name

Company Name

Title

Company Tax ID #

Signature

Date

The Hourly Labor Rate is the actual rate the State will pay for services and shall be recorded in dollars and cents. The Hourly Labor Rate cannot exceed the Contract Rate but may be lower. Rates shall be fully loaded, all-inclusive, i.e., include all direct and indirect costs and profits for the Contractor to

perform under the Contract.

F.2 PRICE SHEET (FIXED PRICE) FOR RFP # F50B6400033

Annual Price by site for Preventive Maintenance	Year 1	Year 2	Year 3	Year 4 (Option Year)	Year 5 (Option Year)	Extended Price
Generator #1 Sandy Point	\$	\$	\$	\$	\$	\$
Generator #2 Stoney Forest	\$	\$	\$	\$	\$	\$
Generator #3 Solley	\$	\$	\$	\$	\$	\$
Generator #4 Easton MSP	\$	\$	\$	\$	\$	\$
Generator #5 Dorchester	\$	\$	\$	\$	\$	\$
Generator #6 College Park	\$	\$	\$	\$	\$	\$
Generator #7 Baltimore	\$	\$	\$	\$	\$	\$

Total Preventative Maintenance Proposed Price	\$
---	----

F.3 Total Evaluated Price

Total Time & Material Price (F.1)	\$
Total Fixed Price (F.2)	\$
TOTAL EVALUATED PRICE (F.1 + F.2)	\$

Authorized Individual Name

Company Name

Title

Company Tax ID #

Signature

Date

ATTACHMENT F - LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

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

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

G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.

H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.

I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage for State Service Contracts.

ATTACHMENT G-1 Maryland Living Wage Requirements Affidavit of Agreement

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 with Bid/Proposal)

ATTACHMENT G - FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT H - CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

(submit with Bid/Proposal)

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

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

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

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

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

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

Date: _____ By: _____

(Authorized Representative and Affiant)

ATTACHMENT I - NON-DISCLOSURE AGREEMENT (CONTRACTOR)

This solicitation does not require a Non-Disclosure Agreement.

ATTACHMENT J - HIPAA BUSINESS ASSOCIATE AGREEMENT

This solicitation does not require a HIPAA Business Associate Agreement.

ATTACHMENT K - MERCURY AFFIDAVIT

**MERCURY AFFIDAVIT
(submit with Bid/Proposal)**

AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:

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

MERCURY CONTENT INFORMATION:

The product(s) offered do not contain mercury.

OR

The product(s) offered do contain mercury.

In an attachment to this Mercury Affidavit:

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

I ACKNOWLEDGE THAT this affidavit is to be furnished to the procurement officer and may be distributed to units of (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this affidavit or any contract resulting from the submission of this 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: _____ Signature

Print Name: _____
Authorized Representative and Affiant

ATTACHMENT L - VETERAN-OWNED SMALL BUSINESS ENTERPRISE

The Veteran-Owned Small Business Enterprise (VSBE) subcontractor participation goal for this solicitation is 0%.

**ATTACHMENT M - LOCATION OF THE PERFORMANCE OF SERVICES
DISCLOSURE**

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

Attachment N - NON-DISCLOSURE AGREEMENT (OFFEROR)

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

ATTACHMENT O - LABOR CLASSIFICATION PERSONNEL RESUME SUMMARY

INSTRUCTIONS:

1. For each person proposed, complete one Labor Category Personnel Resume Summary to document how the proposed person meets each of the minimum requirements.

For example: If you propose John Smith, who is your subcontractor, and you believe he meets the requirements of the Group Facilitator, you will complete the top section of the form by entering John Smith’s name and the subcontractor’s company name. You will then complete the right side of the Group Facilitator form documenting how the individual meets each of the requirements. Where there is a time requirement such as three months experience, you must provide the dates from and to showing an amount of time that equals or exceeds mandatory time requirement; in this case, three months.

2. Additional information may be attached to each Labor Category Personnel Resume Summary that may assist a full and complete understanding of the individual being proposed.

LABOR CLASSIFICATION PERSONNEL RESUME SUMMARY (CONTINUED)

RFP # F50B6400033

Instructions: Enter resume information in the fields below; do not submit other resume formats. Submit one resume for each proposed resource

Candidate Name:

Contractor:

A. Education / Training

Institution Name / City / State	Degree / Certification	Year Completed	Field Of Study
<add lines as needed>			

B. Relevant Work Experience

Describe work experience relevant to the Duties / Responsibilities and Minimum Qualifications described in the RFP. Starts with the most recent experience first; do not include non-relevant experience.

[Organization] [Title / Role] [Period of Employment / Work] [Location] [Contact Person (Optional if current employer)]	Description of Work...

[Organization] [Title / Role] [Period of Employment / Work] [Location] [Contact Person]	Description of Work...
<add lines as needed>	

C. Employment History

List employment history, starting with the most recent employment first

Start and End Dates	Job Title or Position	Organization Name	Reason for Leaving
<add lines as needed>			

Personnel Resume Summary (Continued)

*“Candidate Relevant Experience” section must be filled out. Do not enter “see resume” as a response.

D. References

List persons the State may contact as employment references

Reference Name	Job Title or Position	Organization Name	Telephone / E-mail
<add lines as needed>			

Authors: Update the Section Numbers

Proposed Individual’s Name/Company Name:	How does the proposed individual meet each requirement?
LABOR CATEGORY TITLE:	[Enter the Labor Category Name]
Requirement (See Section <<2.5.4>>)	Candidate Relevant Experience *
Education: [Insert the education description from Section <<x.x>>for the applicable labor category]	Education:
Experience: [Insert the experience description from Section <<x.x>>for the applicable labor category]	Experience:
Duties:	Duties:

[Insert the duties description from Section <<x.x>>for the applicable labor category]	
---	--

The information provided on this form for this labor category is true and correct to the best of my knowledge:

Contractor Representative:

Print Name	Signature	Date
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Proposed Individual:

Signature	Date
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Sign each form.

**ATTACHMENT P - PERIODIC MAINTENANCE SCHEDULE FOR STANDBY
POWER GENERATORS**

The following maintenance table is provided as a guide. Contractor shall follow the maintenance schedule for each model of generator as recommended by the original equipment manufacturer (OEM).

Table 1	SERVICE TIME					
	Daily or after hours	Monthly or after 100 hrs.	After 100 hrs.	6 months or after 2500 hrs.	Yearly or after 500 hrs.	2 Years or after 1000 hrs.
General Set Inspection	X(1)					
Check engine oil level	X					
Check coolant level	X					
Check coolant heater(s)	X					
Check air cleaner (normal duty filter)		X(2,3)				
Check all hardware (fittings, clamps, fasteners, etc.)		X				
Check battery electrolyte level		X				
Check generator air outlet		X				
Check engine oil and filter (normal duty filter)			X(2,9)			
Check radiator hoses for wear and cracks				X(4)		
Inspect exterior of radiator for obstructions				X		
Inspect engine coolant port caps				X(10)		
Check drive belt				X(5)		
Check AC generator and controls				X		
Check anti-freeze concentration					X	
Inspect spark plugs					X(6)	
Inspect or replace oxygen sensor					X(7,11)	
Test catalytic converter restriction					X(7,8)	
Drain and flush radiator						X

Notes as flagged in the table above:

- X (1) – Check for oil, fuel, cooling and exhaust system leaks. Check exhausts system audibly and visually with set running and repair any leaks immediately.
- X (2) – Perform more often in extremely dusty conditions.
- X (3) – Replace element after 500 hours.
- X (4) – Replace if hard or brittle.
- X (5) – Visually check belt for evidence of wear or slippage. Replace if hard or brittle.
- X (6) – Replace every 1000 hours.
- X (7) – Must be performed by a qualified mechanic. Contact your authorized service center.
- X (8) – Replace every 8 years or 2000 hours.
- X (9) – Perform at least once a year.
- X (10) – Replace after 4 years or 1000 hours.
- X (11) – Replace every 1500 hours (recommended).