

STATE OF MARYLAND

Request for Proposals

Audit Services for State Employee and Retiree Benefits Program

Solicitation No. F10B0400010



DEPARTMENT OF BUDGET & MANAGEMENT

Issue Date: April 26, 2010

NOTICE

Prospective Offerors who have received this document from the Department of Budget and Management's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

Minority Business Enterprises are encouraged to respond to this solicitation

VENDOR COMMENTS

In order to help us improve the quality of State proposal solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please fax this completed form to the attention of Joy Epstein at (410)-260-7570. Thank you for your assistance.

Solicitation No: F10B0400010

Entitled: Audit Services for Maryland State Employee and Retiree Benefits Program

I. If you have responded with a "no bid", please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not in our business line.
- We lack experience in the work/commodities required.
- The scope of work is beyond our present capacity.
- We cannot be competitive. (Please explain below.)
- The specifications are either unclear or too restrictive (Please explain below.)
- Bid/proposal requirements, other than the specifications, are unreasonable or too risky. (Please explain below.)
- Time for completion is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are prohibitive. (Please explain below.)
- Doing business with government is simply too complicated.
- Prior experience with State of Maryland contracts was unprofitable or otherwise unsatisfactory. (Please explain below.)
- Other: _____

II. Please explain your response further, offer suggestions, or express concerns. (Use back for additional information.)

REMARKS: _____

OPTIONAL:

Vendor Name: _____ Date: _____

Contact: _____ Phone: _____

Address or email: _____

THANK YOU!!!

KEY INFORMATION SUMMARY SHEET

**STATE OF MARYLAND
Department of Budget and Management
Request for Proposals**

**AUDIT SERVICES FOR
STATE EMPLOYEE AND RETIREE BENEFITS PROGRAM**

SOLICITATION NO: F10B0400010

RFP Issue Date: April 26, 2010

RFP Issuing Office: Department of Budget and Management
Employee Benefits Division (EBD)

Procurement Officer: Joy Epstein
Procurement Officer
Office Phone: (410) 260-7570
Fax: (410) 974-3274
E-mail: jepstein@dbm.state.md.us

Proposals are to be sent to: Department of Budget and Management
45 Calvert Street, Room 143
Annapolis, MD 21401
Attention: Joy Epstein

Pre-Proposal Conference: May 13, 2010, 1:00PM (Local Time)
Department of Budget and Management
300 W. Preston Street, Ground Floor Auditorium
Baltimore, MD 21202
For directions, see Attachment E

Closing Date and Time: **June 3, 2010 at 2:00 PM (Local Time)**

Prospective Offerors who have received this document from the Department of Budget and Management's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them. Contact the Procurement Officer to obtain an electronic file of the RFP in Microsoft software.

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

The Department of Budget and Management is issuing this Request for Proposals (RFPs) to obtain one or more qualified auditing firms to complete annual audits of the claims adjudication and payment functions, clinical functions, and administrative performance of the following plans in the State Employee and Retiree Health and Welfare Benefits Program. The Department intends to award contracts for audit in the following categories:

Category 1 – Self Funded Medical Benefits Plans;

- Preferred Provider Organization Plans (PPO);
- Point of Service Plans (POS);and
- Exclusive Provider Organization Plans (EPO).

Category 2 – Fully Insured Dental Benefits Plans;

- Dental Preferred Provider (DPPO);and
- Health Maintenance Organization Plan (DHMO).

Category 3 - Mental Health/Substance Abuse Benefits Coverage;

Category 4 - Prescription Drug Benefits Plan, including pharmacy rebate audit; and

Category 5 - Flexible Spending Accounts.

The initial audit under the Contract(s) will be of the plan year 07-01-2010 through 06-30-2011. This is the initial audit cycle.

The State desires a statistical review of all claims processing elements through an audit of actual paid claims, in addition to a review of onsite operational procedures in place at the claims office. The State will also require a rebate audit of its' Prescription Drug Benefits Plan.

Offerors may submit proposals to provide auditing services for any combination of or all Plan Categories. The State will award up to five contracts (one for each category) for the desired auditing services.

Hereafter, in this solicitation any time the word "Contract" appears in the singular, it shall mean each of the five contracts to be awarded. The term of any contracts awarded will cover five (5) audit cycles and will terminate upon successful completion of the last audit cycle (an audit of the coverage period beginning July 1, 2014 and ending June 30, 2015). Each audit is expected to begin shortly after the conclusion of the plan year.

1.2 Abbreviations and Definitions

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

(a) **ACCOUNT MANAGER** means the individual identified by the Contractor as the primary contact for the State in the management of the contract issued pursuant to this RFP.

(b) **AUDIT CYCLE** refers to the period for the successful completion of the audits in the Service Category and covers the beginning of the audit through performance of the audit, preparation and reviewing draft reports, and acceptance by the State of the final audit report. It is anticipated that each audit cycle will last only 12 months. See RFP § 3.3.2 for a description of the scheduling and minimum tasks necessary for an audit cycle.

(c) **AWP** means the average wholesale price of a drug.

(d) **BREACH** has the meaning provided in §13400 of the HI-TECH Act and 45 CFR §164.402 and shall include the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information.

(e) **COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1986. Reference to this Act generally refers to the federal continuation of coverage requirements; the specific provisions that apply to the Program health benefit plans are codified in the Public Health Service Act, at 42 USC §§300bb-1 et. seq.

(f) **COMAR** means the Code of Maryland Regulations, located online at www.dsd.state.md.us.

(g) **DBM** or **DEPARTMENT** means the Department of Budget and Management.

(h) **EBD** means Employee Benefits Division within DBM.

(i) **ELECTRONIC HEALTH RECORD** has the meaning provided in §13400 of the HI-TECH Act, and includes an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

(j) **FIXED UNIT PRICE LABOR RATE** Fully loaded hourly rates by labor category established in the Contract that include all direct and indirect costs and profit for the Contractor.

(k) **FULLY LOADED RATES** means the billing rate of a labor category that includes all profit, direct and indirect costs. The indirect costs shall include all costs that would normally be considered general administrative and clerical costs and/or travel costs, or that are in any way allocated by the Contractor against direct labor hours as a means of calculating profit or

recouping costs which cannot be directly attributable to a work order. General administrative, clerical, and travel costs cannot be billed to the State under this Contract.

(l) HIPAA means Health Insurance Portability Accountability Act of 1996 and the regulations promulgated pursuant thereto, including the administration simplification provisions relating to the privacy and security of protected health information, the electronic exchange of health information, standard data transaction codes and code sets, and national unique identifiers.

(m) HI-TECH Act means Subtitle D of the Health Information Technology for Economic and Clinical Health Act, which is Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

(n) LOCAL TIME means time in the Eastern Time zone as observed by the State of Maryland.

(o) MAC means maximum allowable cost as defined in the contract between the State and the Pharmacy Benefits Manager.

(p) MBE means a Minority Business Enterprise that is certified as such by the Maryland Department of Transportation.

(q) MEDICAL RECORDS ACT means the Maryland Confidentiality of Medial Records Act, Annotated code of Maryland, Health General Article, Title 4, subtitle 3.

(r) OFFEROR means a vendor who responds to the RFP by submitting a proposal to provide the requested services.

(s) PBM means pharmacy benefits manager. In the context of the State Program, this refers to the contractor that administers the State's employer-sponsored self-funded prescription benefits plan and the Maryland Rx Program.

(t) PHI means protected health information, as that phrase is defined and used in the HIPAA statute and regulations (see also 45 CFR §164.501).

(u) PLAN YEAR means the 12-month period of benefit coverage beginning July 1 and ending June 30 of the next calendar year. The Plan Year for the State's benefits plans coincides with the State's fiscal year.

(v) PRIVACY RULE, means the Standards for Privacy and Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as amended by operation of the HI-TECH Act and from time to time.

(w) PROGRAM, when capitalized, means the State Employee and Retiree Health and Welfare Benefits Program, administered by the Department. The Program is the collection

of benefits plans sponsored by the State for its employees, retirees and their dependents. See Maryland Annotated Code, State Personnel and Pensions Article, §§2-501 et. seq.

(x) REBATE AUDIT means the audit of manufacturer agreements and contracts of the PBM with the pharmaceutical vendors/manufacturers or other third parties; the purpose of this audit is to ensure that 100% of the manufacturer payments, formulary rebates, administrative fees, educational grants, detailing payments, bonuses, and payments of any kind associated with the State pharmacy benefit program are passed through to the State, as required by the State's contract with the PBM. *See* RFP §3.3.7.

(y) RFP means this Request for Audit Services for State Employee and Retiree Benefits Program.

(z) SECURITY RULE, means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and B.

(z) STATE means the State of Maryland.

(aa) SUBCONTRACTOR means an organization or entity that the Offeror plans to utilize for the purposes of services covered under this contract.

(bb) TPA means a third party administrator, a contractor who processes claims and administers the self-funded plans offered through the Program.

(cc) TPA CONTRACTOR means an organization that is contracted with the State to provide services in connection with a benefits plan option administered through the Program. For purposes of this RFP, this term includes the third party administrators of the State's self-funded benefits plan options (mental health, PPO, POS and EPO), the PBM, insurers (dental plans), and the third party administrator of the health care and dependent care FSAs.

(dd) UNSECURED PROTECTED HEALTH INFORMATION OR UNSECURED PHI means PHI that is not secured through the use of a technology or methodology specified by the Secretary of DHHS in guidance or as otherwise defined in the §13402(h) of the HI-TECH Act and 45 CFR §164.402.

- B. Terms, phrases, and words in this Agreement which are defined in HIPAA, the Privacy Rule, or the Security Rule shall have the meaning provided in HIPAA, the HI-TECH Act, the Privacy Rule, or the Security Rule.

1.3 Contract Type

The contract that results from this RFP shall be a combination of Firm Fixed Price contract for certain audit services pursuant to COMAR 21.06.03.02A and a Labor Hour contract for optional audit services pursuant to COMAR 21.06.03.05A.

1.4 Contract Duration

The contract resulting from this RFP shall be for a period of five audit cycles beginning on or about July 1, 2011. The Contract shall cover the performance of work necessary to successfully complete five audit cycles, including audits, preparation and revision of the audit report, and final acceptance of the audit report by the State. (See Attachment J)

Each contract year shall coincide with the work period to complete an audit cycle.

1.5 Procurement Officer and Contract Manager

The sole point of contact at the State for purposes of this RFP, prior to the award of any contract, is the Procurement Officer at the address listed below:

Joy Epstein
Procurement Officer
Department of Budget and Management
45 Calvert Street, Room 143
Annapolis, Maryland 21401
Telephone #: 410-260-7570
Fax #: 410-974-3274
E-mail: jepstein@dbm.state.md.us

The individual responsible for day-to-day administration and management of the Contract issued pursuant to this RFP shall be the Contract Manager identified below:

Anne Timmons, Director
Employee Benefits Division, Department of Budget and Management
Room 510, 301 West Preston Street
Baltimore, Maryland 21201
Telephone#: 410-767-4710
Fax #: 410-333-7122
Email: atimmons@dbm.state.md.us

The Department may change the Procurement Officer and/or the Contract Manager at any time during the pendency of the Contract by notice to the Contractor. The Contract Manager may establish a designee to oversee the Contractor's work or for receipt of reports or invoices pursuant to the RFP. However, all notices required under the Contract (see Attachment A, §28) must be submitted to the Contract Manager and not a designee.

1.6 Pre-Proposal Conference

A Pre-Proposal Conference will be held on May 13, 2010 at 1:00 PM, local time, at 300 W. Preston Street, Ground Floor Auditorium. Attendance at the Pre-Proposal Conference is not mandatory, but all interested Offerors are encouraged to attend in order to facilitate better

preparation of their proposals. In addition, attendance may facilitate the Offeror's understanding and ability to meet the State's Minority Business Enterprise (MBE) goals.

As promptly as is feasible subsequent to the Conference, a summary of the Pre-Proposal Conference and all questions and answers known at that time will be distributed, free of charge, to all prospective Offerors known to have received a copy of this RFP.

If there is a need for sign language interpretation and/or other special accommodations due to a disability, it is requested that at least five days advance notice be provided. DBM will make reasonable efforts to provide such special accommodation.

1.7 Use of e-Maryland Marketplace

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

eMarylandMarketplace is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM web site (<http://www.dbm.maryland.gov>) and other means for transmitting the RFP and associated materials, the solicitation and minutes of the pre-bid/proposal conference, Offeror questions and DBM responses, addenda, and other solicitation related information will be provided via eMarylandMarketplace.

This means that all such information is immediately available to organizations that subscribe to eMarylandMarketplace. Because of the instant access afforded by eMarylandMarketplace, it is recommended that all Offerors interested in doing business with Maryland State agencies subscribe to eMarylandMarketplace. The successful bidder/Offeror must register with e-Maryland Marketplace prior to contract award.

In order to receive a contract award, an Offeror must be registered on e-Maryland Marketplace. **Registration is free.** Go here to register: <https://ebidmarketplace.com>. Click on "Registration" to begin the process and follow the prompts.

1.8 Questions

The Procurement Officer prior to the pre-proposal conference will accept written questions from prospective Offerors. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Officer. Questions, both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference.

Questions will also be accepted subsequent to the Pre-Proposal Conference. All post-conference questions should be submitted in a timely manner to the Procurement Officer only. The

Procurement Officer shall, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the proposal due date. Answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all Offerors who are known to have received a copy of the RFP.

1.9 Proposals Due (Closing) Date

An unbound original and six (6) bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.5 no later than 2:00 PM (local time) on June 3, 2010 in order to be considered. Two (2) electronic versions on CD of the Technical Proposal (in MS WORD) must be enclosed with the original Technical Proposal. Two (2) electronic versions on CD of the Financial Proposal in MS Word or Excel format must be enclosed with the original Financial Proposal. Offerors must ensure that the CDs are labeled with the RFP title, RFP number and Offeror name, and are packaged with the original copy of the appropriate proposal (technical or financial).

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02F, proposals received by the Procurement Officer after June 3, 2010 at 2:00 PM (local time) will not be considered. Proposals may not be submitted by e-mail or facsimile.

1.10 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date of proposals or of Best and Final Offers (BAFOs), if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.11 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be posted on the DBM website and eMarylandMarketplace.com, and provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

1.12 Cancellations; Discussions

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 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 of Maryland. The State also reserves the right, in its sole discretion, to award a contract based upon the written proposals received without prior discussions or negotiations.

1.13 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation must be reduced to writing. All written representations will 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. Typically, oral presentations occur approximately two weeks after the proposal due date.

1.14 Incurred Expenses

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

1.15 Economy of Preparation

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

1.16 Protests/Disputes

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

1.17 Multiple or Alternative Proposals

Neither multiple nor alternate proposals will be accepted for any of the five individual categories listed in the RFP Section 1.1; however, an Offeror may submit separate proposals for any or all of the five categories.

1.18 Access to Public Records Act Notice

An Offeror should give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and

provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Title 10, Subtitle 6, of the State Government Article of the Annotated Code of Maryland. (See Section 4.4.2.1)

Information, which is claimed to be confidential, is to be placed after the Title Page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in its Financial Proposal. Offerors are advised that, upon request for this information from a third party, the State will make an independent determination whether the information must be disclosed (see COMAR 21.05.08.01).

1.19 Offeror Responsibilities

The selected Offeror/Contractor shall be responsible for all products and services required by this RFP. Subcontractors must be identified, and a complete description of their roles relative to the proposals must be included in the Proposal. The selected Offeror retains the responsibility for all work performed by and any deliverable submitted by a subcontractor. Additional information regarding MBE subcontractors is provided in paragraph 1.23 below, and ATTACHMENT D.

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror such as, but not limited to, proposed services, description of the Offeror's ability to perform the scope of work, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.20 Mandatory Contractual Terms

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the Contract, attached as ATTACHMENT A. Any exceptions to this RFP or the Contract must be clearly identified in the Executive Summary of the technical proposal. A proposal that takes exception to these terms may be rejected. (See Section 4.4.2.2)

1.21 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.

1.22 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 completed and submitted within five business days of notification of proposed contract award.

1.23 Minority Business Enterprises

A Minority Business Enterprise (MBE) subcontractor participation goal expressed as a percent of the total contract value for audits has been established for each Category under this procurement as follows:

- Category 1 (Medical Benefit Plans): 20%
- Category 2 (Dental Benefit Plans): 15%
- Category 3 (Mental Health/Substance Abuse Benefit Plans): 15%
- Category 4 (Prescription Drug Benefit Plan): 15%
- Category 5 (Flexible Spending Accounts): 15%

Reporting for MBE participation provided directly by a MDOT-certified MBE subcontractor will be based upon the total dollar value under the Contract for each Category, as reflected in Attachment F (Total, Audit Services Prices for Audit Cycles 1-5), Row F. The prime Contractor's reported payments to its MBEs may only include the portions that are directly attributable to this Contract with the State.

Each Offeror shall complete, sign and submit Attachment D-1 (Certified MBE Utilization and Fair Solicitation Affidavit) at the time it submits its technical response to the RFP for each category proposed. Failure of an Offeror to complete and sign the Attachments D-1 (Certified MBE Utilization and Fair Solicitation Affidavit) at the time it submits its technical response to the RFP, will result in the State's rejection of the Offeror's Proposal to the RFP.

The selected Offeror, once notified of award will be responsible for timely submitting the following forms for each category awarded within 10 business days of receiving notice of award:

- D-2 (Outreach Efforts Compliance Statement) provided with Attachment D.
 - D-3 (Subcontractor Project Participation Statement) provided with Attachment D.
- Additional forms will be provided to awardee for monthly MBE compliance reporting.

An Offeror that does not commit to meeting the entire MBE participation goal for each category proposed and outlined in this Section 1.24, must submit a good faith request for waiver with its proposal submission for each category proposed. See COMAR 21.11.03.11.

The Contractor and its subcontractors, once awarded a contract, will be responsible for submitting monthly by the 10th the following MBE forms to provide the State with ongoing monitoring of MBE Participation:

- D-5 (MBE participation Prime Contract Paid/Unpaid MBE Invoice Report) (Contractor responsibility)
- D-6 (MBE Subcontractor/Contractor Unpaid MBE Invoice Report) (Contractor shall follow-up with MBE subcontractors to ensure timely and accurate submission.

A current directory of certified Minority Business Enterprises is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate

Center Drive, Hanover, Maryland 21076. The phone number is 410-865-1269. The directory is also available at <http://www.mdot.state.md.us>. The most current and up-to-date information on Minority Business Enterprises is available via this website.

1.24 Arrearages

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State 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 contract award.

1.25 Procurement Method

This contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

1.26 Verification of Registration and Tax Payment

Before a corporation 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. 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 contract award.

1.27 False Statements

Offerors are advised that section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provides as follows:

- (a) In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

1.28 Electronic Funds Transfers

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Forms are available from the Comptroller's Offices or website. 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/GAC X-10 form can be downloaded from:

[http://compnet.comp.state.md.us/General Accounting Division/Static Files/gadx-10.pdf](http://compnet.comp.state.md.us/General_Accounting_Division/Static_Files/gadx-10.pdf).

1.29 Conflict of Interest

The successful Offeror will provide auditing services to the State and must do so impartially and without any conflicts of interest. 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, the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

1.30 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in this solicitation (see Attachment L, "Living Wage Requirements for Service Contracts"). If the Offeror fails to submit and complete the Living Wage Affidavit of Agreement (see Attachment L), the State may determine an Offeror to be not responsible.

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

The contract resulting from this solicitation will be deemed to be a Tier 1 contract or a Tier 2 contract depending on the location(s) from which the Contractor provides 50% or more of the services. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the contract will be a Tier 1 contract. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the contract will be a Tier 2 contract. If

the Contractor provides more than 50% of the services from an out-of-State location, then the contract will be deemed to be a Tier 1 contract. The Offeror must identify in their Offer the location(s) from which services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

1.31 Electronic Procurement Transaction

1.31.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department of Budget & Management (DBM) may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

1.31.2 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 the Contract which are specifically authorized under the RFP or the Contract.

1.31.3 “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, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.

1.31.4 In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g. §1.31 related to payments by electronic file transfer) and subject to the exclusions noted in subsection 5 of this section, the following transactions are authorized to be conducted by electronic means on the terms described:

- A. The Procurement Officer may conduct the procurement using eMarylandMarketplace, e-mail or facsimile to issue:
 - (i) the solicitation (e.g. the RFP);
 - (ii) any amendments;
 - (iii) pre-proposal conference documents;
 - (iv) questions and responses;
 - (v) communications regarding the solicitation or proposal to any Offeror or potential Offeror including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
 - (vi) notices of award selection or non-selection; and
 - (vii) the Procurement Officer's decision on any protest or Contract claim.

- B. An Offeror or potential Offeror may use e-mail or facsimile to:
 - (i) ask questions regarding the solicitation;

- (ii) 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;
- (iii) request a debriefing; or,
- (iv) submit a "No Bid Response" to the solicitation.

C. The Procurement Officer, the State's Contract Manager and the Contractor may conduct day-to-day Contract administration, in accordance with the limitations of section 5 of this subsection, utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Manager.

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

- A. submission of initial bids or proposals;
- B. filing of protests;
- C. filing of contract claims;
- D. submission of documents determined by DBM to require original signatures (e.g. Contract execution, Contract modifications, etc); or
- E. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.

1.31.6 Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the RFP, the Contract, or in the direction from the Procurement Officer or Contract Manager.

1.32 Data Transfer Via Electronic File Transfers

All electronic file transfers by the Contractor shall be secure, using encryption and other security protocols as appropriate. All electronic file transfers between the Contractor and the State shall be exchanged using a secure electronic file transfer methodology to be approved by the Department of Information Technology. In addition, additional secure electronic file transfer methodology may be approved during the contract term in accordance with procedures and approval by the Department of Information Technology.

1.33 Prompt Payment to Subcontractors

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) dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt

payment of all subcontractors on non-construction procurement contracts. The successful Offeror who is awarded a contract must comply with the prompt payment requirements outlined in the Contract, §26 (see Attachment A). Additional information is available on the GOMA website at http://www.mminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf.

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SECTION 2 – OFFEROR MINIMUM QUALIFICATIONS

2.1 Minimum Qualifications Requirements

Each Offeror must clearly state and demonstrate that it satisfies the stated experience qualification and provide evidence thereof. The primary evidence shall be in the form of a self-certification stated in the Executive Summary of the Technical Proposal. The references submitted in response to RFP Section 4.4.2.4 shall be used to validate the self-certification.

Experience of an individual employee or principal/officer of the Offeror may not be used to satisfy the experience requirements. The Offeror itself – as an organization or corporate entity – must meet the experience requirements.

Offerors must provide proof that they satisfy the minimum qualification below. If the Offerors are unable to comply with this requirement, their offer will be found not susceptible of receiving an award and will be rejected, with the financial proposal returned unopened.

The minimum experience requirements for this procurement are:

- **Categories 1, 3 and 4** (Medical Benefits, Mental Health/Substance Abuse Benefits and Prescription Drug Benefits Plans): Three years experience auditing (including at least processing accuracy and contract compliance) for these types of plans/third party administrators/PBMs since January 1, 2006.
- **Category 2** (Dental Benefits Plans): One year experience auditing fully-insured dental benefits plans for contractual compliance since January 1, 2006

Subcontractors are not subject to the experience minimum qualification requirements.

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SECTION 3 – SCOPE OF WORK

3.1 Background

- 3.1.1** The State of Maryland Department of Budget and Management administers a comprehensive benefits program for State employees, retirees, and eligible dependents. The Program includes a mix of self-funded and fully insured medical, dental and prescription plans and Health and Dependent Care Flexible Spending Account benefits. The State subsidizes the premiums for certain plans but the member pays the entire premium for other plans. Deductible and co-pay arrangements are also used for various plans. The State’s total benefit expenditures (premiums for fully-insured plans and claims expenditures for self-funded plans) for FY 2010 are anticipated to be approximately \$1.2 billion.
- 3.1.2** The plan year runs on a fiscal year basis, from July 1 of one year to June 30 of the following year. An annual Open Enrollment period is held prior to the beginning of each Plan Year, typically in May or June. Benefits elections for most plans are evergreen elections, but elections for FSAs must be made during each Open Enrollment.
- 3.1.3 Enrollment Data and Payment for Coverage**
- The State Benefit Employee Enrollment Data by Benefits Plan and Coverage Level prepared for enrollment year of FY 2010 and enrollment month of February, 2010 are found in ATTACHMENT G.
- 3.1.4 Program Benefits Plans**
- 3.1.4.1 Detailed descriptions of employee and retiree benefit plans are provided in the 2010-2011 Summary of Health Benefits Guide. The guide is issued annually to all eligible members during the annual Open Enrollment period. The Summary of Health Benefits Guide may be accessed through the Department website at www.dbm.maryland.gov, using the tabs/links entitled “State Employees” and “Health Benefits.”
- 3.1.4.2 Each TPA Contractor is subject to at least one annual audit. The scope of the audits varies with the type of plan option/benefit administered, whether the plan option is self-funded or fully-insured, and other factors.
- 3.1.4.3 The various benefits plans of the Program are described in limited detail below. These plans are part of the comprehensive benefits program that the State of Maryland provides for its active employees and retirees.
- 3.1.5 Medical Benefits Plans**
- 3.1.5.1 Medical benefit plans offered include PPOs, POS, and EPOs. Each of the 3 types of plans provides a standard set of benefits. The contracts and RFP for each of

the administrators of these various self-funded benefits plan options are available on the Department's website (www.dbm.maryland.gov), using the "Procurement & Contracts" and "Contract Library" links; the contracts also incorporate the TPA Contractors' proposals, which will be made available to the audit Contractor for use in properly performing under this Contract. The Contracts for these health plans required claims administration services beginning July 1, 2009 and will expire on June 30, 2014. The RFP, and its attachments, contain the plan design and a significant portion of the performance requirements for those contracts. All of these contracts include performance guarantees, reporting requirements, specific plan design and claims processing requirements, member communications requirements, and overall administrative duties in connection with the respective PPO, POS or EPO plan option.

- 3.1.5.2 Two PPO plans are offered to State employees and retirees. These PPO plans are administered by separate third party administrators (TPAs) and do not operate under managed care guidelines. Both PPO plans offer nationwide and statewide coverage and network access. The State pays the TPAs an administrative fee to process claims and reimbursement of claims paid on behalf of State participants.
- 3.1.5.3 Three POS plans are administered by separate TPAs and are available in all regions of the State. All three POS plans offer statewide coverage but access out-of-state is limited. The State pays the TPAs an administrative fee to process claims and reimbursement of claims paid on behalf of State participants.
- 3.1.5.4 Three self-funded EPO plans are also offered; the three EPOs are based on a managed care model. The EPO networks are nationwide and there is no coverage for out-of-network care. The State pays the TPAs an administrative fee to process claims and reimbursement of claims paid on behalf of State participants. Unlike the PPO and POS contractors, the EPO contractors also administer mental health and substance abuse benefits for EPO members.

3.1.6 Prescription Drug Benefits Plan

- 3.1.6.1 The prescription drug plan is self-funded and is administered by a PBM. Enrollees attain maximum benefits through use of a pharmacy network, generic medications when available, a drug formulary, MAC pricing and preferred drugs. The current plan includes an extensive national retail network as well as access to a voluntary mail order program and specialty pharmacies.

The current State plan also includes a number of managed access components, including: prior authorization, quantity limits; step therapy requirements, and a specialty drug management program.

- 3.1.6.2 The Maryland Rx Program is a purchasing pool for pharmacy benefits for the State Employee and Retiree Health and Welfare Benefits Program, local governments and certain not-for-profit organizations. These other entities will be

entitled to participate in the purchasing pool and to secure pharmacy benefit management services from the PBM on the same terms and conditions as the State through contracts with the PBM, with certain exceptions noted in the RFP. When participation in the Maryland Rx Program grows, the pricing terms for the State (AWP discounts, administrative fees, dispensing fees, etc) may be affected by aggregate enrollment in the Maryland Rx Program.

3.1.6.3 The RFP for PBM services, issued in November of 2009 (to cover plan years July 1, 2011 through June 30, 2016) requires, among other things, that the PBM submit to a rebate audit of its manufacturer agreements and a transparent and pass-through pricing model that provides the following components:

- (a) **Complete Pass-Through Pricing at Retail Pharmacies (For All Offerors)** - For the retail component, the PBM contractor shall pass-through the actual price the PBM contractor has negotiated with the dispensing retail pharmacy; spread pricing with participating retail pharmacies shall not be permitted. The amount billed to the State will be the exact amount remitted to the pharmacy, less applicable participant share.
- (b) **Complete Pass-Through Pricing at Mail Order and Specialty Pharmacies (For Offerors that DO NOT own or are not part of a common ownership structure with the Mail Order and Specialty Pharmacies)** - For the mail order and specialty components, the PBM contractor shall pass-through the actual price the PBM contractor has negotiated with the dispensing mail order and specialty pharmacies respectively; spread pricing with mail order and specialty pharmacies shall not be permitted. The amount billed to the State will be the exact amount remitted to the pharmacy, less applicable participant share.
- (c) **Pass-Through Pricing on Mail Order and Specialty Pharmacies (For Offerors that own or are part of a common ownership structure with the Mail Order and Specialty Pharmacies)** - For the mail order and specialty pharmacy components, the PBM contractor shall apply a traditional fixed discount rate for brand and generic medications, including MAC pricing. The MAC pricing applied at Mail order pricing shall be at least equivalent to the MAC pricing applied at Retail but in no case shall it produce a higher cost to the plan than the Retail MAC. The actual acquisition price of medications and pharmaceutical supplies purchased by the Mail Order and Specialty Pharmacy is not required to be pass-through to the State.
- (d) **Revenue Transparency and Pass-Through (all Offerors)** - For the retail, mail and specialty components, the PBM contractor shall DISCLOSE any and all of the following when such items are directly or indirectly attributable to the State's Plan or the provision of PBM Services to the State:
 - Manufacturer payments; and

- Other revenue, payments, compensation, or remuneration from **any source** other than the administrative fees paid to it by the State (except as specified in (c) above, to accommodate a traditional mail order pricing model for those Offerors who own their own mail order and specialty pharmacies).

When such are directly or indirectly attributable to the State Plan or PBM services provided to the State, the PBM contractor shall pass through the funds, revenue, remuneration, payment, compensation or Manufacturer payments to the State and must provide reporting that discloses the value of this revenue from each source and also demonstrates where and how the revenue is passed to the State.

Such are directly or indirectly attributable to the State's business when based on the provision of PBM services to the State or State Plan membership, drug utilization, claims volume, formulary development/placement, or otherwise the State Plan contributes to the PBM contractor's receipt of the revenue, payments, compensation, remuneration or Manufacturer Payments.

- (e) **Pricing Guarantees** - For the retail, mail and specialty components, the Contractor shall guarantee a maximum amount for dispensing fees, minimum percentage discounts off AWP (as published on or after 11/15/2009) by drug-type (brand and generic) and place of service (retail, mail and specialty pharmacies) and minimum guarantees per claim for Manufacturer Payments.
- (f) **Transparency** - For the retail, mail and specialty components, the PBM contractor shall provide full transparency reporting as further described in Reporting Requirements section of Attachment J-4: Administrative Requirements. The selected PBM contractor shall also provide complete and auditable verification that the PBM contractor is **not** engaging in any administrative activity that increases the revenue of the PBM contractor at the expense of the State/State Plan.

3.1.7 Dental Benefits Plans

Preventive and diagnostic dental benefits are available to employees and retirees through two stand-alone fully-insured dental plans, including one Dental HMO, and one Dental PPO with in-network and out-of-network benefits. Premiums for the two stand-alone dental plans are paid 50% by the employee and 50% by the State. Performance guarantees are to be met. No claim audit is to be performed for these insurers.

3.1.8 Mental Health and Substance Abuse Benefits Plan

- 3.1.8.1 EPO enrollees receive mental health and substance abuse services through their EPO coverage. Each EPO contractor is responsible for the correct administration of mental health and substance abuse coverage.

3.1.8.2 For PPO and POS enrollees, mental health and substance abuse services are provided by a separate TPA. These services are self-funded by the State. The cost (administrative fees and premiums to cover anticipated claims costs) for mental health and substance abuse services is added to the PPO and POS premiums and is shared between the State and enrollees in the same proportion as for those plans. A member who elects PPO or POS coverage automatically receives mental health and substance abuse benefits through this carve-out. This contract has certain performance guarantees that are to be met.

3.1.8.3 The current contract for these mental health plan TPA services was awarded for the plan year beginning July 1, 2006 and expires June 30, 2011. A competitive procurement for these services for the period July 1, 2011 through June 30, 2014 will determine the next contractor.

3.1.9 Flexible Spending Accounts

The State offers active employees the opportunity to participate in a pre-tax Health Care Spending Account and/or Dependent Care Spending Account. A TPA administers the two FSA plans. Flexible Spending Accounts are entirely funded by the active employee. The current contract for the TPA services for these accounts was awarded for the plan years covering July 1, 2010 through June 30, 2015.

The FSA Plan permits a grace period for the filing of health care reimbursements in the health care FSA plan only in accordance with Internal Revenue Service Notice 2005-42. The grace period extends from July 1 to September 15 at the end of each plan year.

3.2 Purpose

The State requires audit and review of the contract performance of the TPA Contractors that provide services in connection with the Program. The audit(s) must be performed in a manner that provides the State with an adequate level of confidence in the findings.

The purposes of audit services are to:

- Ensure that the State receives the benefit of the contractual pricing arrangements with all TPA Contractors (e.g. AWP discounts for the prescription drug benefits plan, receipt of rebates, etc);
- Ensure TPA Contractor accountability for compliance with contractual requirements, including performance guarantees;
- Verify appropriate administrative procedures and control measures are in place;
- Confirm the accuracy of benefit payments to providers;
- Improve quality of service through the review of clinical processes; and
- Ensure that State funds in connection with the Program are used correctly.

Audits of TPA Contractor performance are essential for the successful operation of the Program.

3.3 General Requirements

Please note that for purposes of this RFP, the phrase “TPA Contractor” includes third party administrators for self-funded benefits, the PBM, insurers, and the FSA administrator. The audit Contractor(s) shall audit the TPA Contractors as provided in this RFP and the Contract(s) awarded pursuant to it.

3.3.1 A. The Contractor shall perform, at a minimum, the following audits as required for the applicable Service Category in accordance with this RFP:

- (1) audits of **administrative/operational procedures**;
- (2) audits of **claims** (accuracy, timing, consistent with the plan design, etc);
- (3) audits of **compliance with performance guarantees**;
- (4) compliance with **all contract terms** (including pricing, full pass-through of provider pricing and discounts to the State as required by the TPA contracts, negotiated rates, fees, financial and pricing issues, services standards, reporting requirements, etc.);
- (5) audits of **Manufacturer Payments and Rebates** for the prescription plan;
- (6) audits of **clinical processes**; and
- (7) review of **internal audits** conducted by or at the direction of the TPA Contractor (including at a minimum hospital billing or pharmacy audits) for adequacy of the internal program and verification that any recoveries, rebates or payments were appropriately credited to the State (including prior external Program audit findings).

B. The Contractor shall be familiar with and review the applicable TPA Contracts to determine and apply the correct contract terms during the audit. This requirement applies to all phases and the entire scope of the audit. A written contract is in place for all TPA Contractors in each of the categories. Additional contractual agreements or modifications applicable to the TPA contractors may be instituted during the contract period. In addition, due to the nature of State procurement processes, the TPA Contractor for a particular benefit plan option may change during the Audit Contract term. The State will make the written contract documents available to the Audit Contractor, in electronic format when possible and reasonable.

C. The audit(s) may be performed using different methodologies, so long as (1) the methodology is supported by generally accepted auditing standards for these types of audits and (2) the State may rely upon and have adequate confidence in the audit findings. Each type of audit may include additional parameters and requirements related to the methodology used in connection with the audit.

3.3.2 Timing and Schedules. The Contractor shall complete the required audits promptly and in accordance with the established timeframe(s). Milestones indicated on the Gantt chart submission should detail level of effort. The necessary Milestones for each Category are identified in RFP §3.7

3.3.2.1 The Contractor shall complete and provide to the Department, the final audit report for all audit(s) in the Service Category no later than June 30th of the year after the end of the audit period. Included, as ATTACHMENT J to this RFP, is a table showing the audits required for each benefit plan and audit period.

3.3.2.2 The Contractor shall, provide a Gantt Chart, showing schedules for the audit work for each audit cycle. Include detailed information regarding projected manhours of effort by job title for each Milestone. The Gantt chart(s) shall be filled in and submitted by each Offeror as part of its technical proposal in response to the RFP Section 4.4.2.3. The Contractor (Awardee(s)) must submit copies of the final Gantt charts for all audit cycles to the Contract Manager within 15 business days after the effective date of the contract and prior to the beginning of an audit of a TPA contractor. The schedule shall include, at a minimum:

- Preparatory work prior to on-site reviews and meetings: review of the TPA contract terms, data exchange testing, data exchanges, etc.
- On site reviews with TPA Contractors. These reviews would constitute preparatory work and conducting the on-site aspects of the audit;
- Draft audit reports (including the audited TPA Contractor's response to draft audit findings);
- Meetings with the State, TPA Contractors and audit Contractor to discuss and coordinate audit findings as described in the draft audit report;
- Final audit reports (after discussions among the Department, the audit Contractor and the audited TPA Contractor);
- Monthly reports to the Contract Manager; and
- Quarterly meetings with the Contract Manager or a designee (monthly meetings are not mandatory).

3.3.3 Audit of Administrative Procedures/Operational Audits

A. The Contractor shall conduct audits of administrative procedures and operational audits that address at least the following issues in conjunction with the TPA Contractor's performance:

- Staff assignments and division of responsibilities;
- Transfer of loading and verification of eligibility data,;
- Third party recovery procedures;
- Identification and recovery of erroneous payments, discovered by the Audit Contractor or otherwise. Ensure that any claims errors identified in the audit samples of previous audit reports have been credited or debited to the State's account. Ensure any systematic errors identified by previous audit reports have been corrected and retroactive adjustments made and credited to the State;
- Identification of payments received by the TPA Contractor in connection with the administered plan (such as fraud recoveries, audit recoveries, claim reversals, rebates [inpatient claims in the PPO, POS and EPO and in connection with the PBM contract], coordination of benefits to participants, subrogation, other miscellaneous recoveries, etc.) and ensuring remittance to the State;
- Automated and manual claims processing functions;
- Internal controls for accuracy of processing and payment;
- Management of claims costs to ensure procedures supported maximized savings;

- The adequacy and functionality of the TPA Contractor's fraud and abuse detection program, including whether it conforms to industry standards; and
- Additional specific issues identified by the Contract Manager as within the scope of the audit.

B. The written report shall address whether the TPA Contractor's administrative policies and procedures are appropriate for the State's plan(s) and offer recommendations to improve the overall efficiency of administrative and operational procedures in connection with the State plan.

C. The administrative procedures/operational audit must be performed for the following Service Categories:

- Category 1 (Medical Benefits Plans): all plans;
- Category 2 (Dental Benefits Plans): all plans;
- Category 3 (Mental Health/Substance Benefits Abuse Plan);
- Category 4 (Prescription Drug Benefits Plan); and
- Category 5 (Flexible Spending Accounts).

3.3.4 Audit of Claims Processing

A. The Contractor shall audit claims processing in at least the following areas,;

- Confirm claims are processed in accordance with the TPA Contractor's established administrative procedures and contract terms;
- Review and assess financial, procedural, and payment accuracy (e.g. identifying over and under payments to providers);
- Review system edits and controls for claims processing, including data integrity and sufficient to support claims payments;
- Review of patient eligibility;
- Ensure that third party recovery procedures, including COB, are followed in accordance with standard insurance industry protocols and the contract;
- Verify allowances and provider discounts are within appropriate fee schedules;
- Verify that coverage is provided in accordance with State plan design (e.g. that services are not denied when they should be covered or covered when they should be denied, that Medicare-eligible retirees are provided with only Medicare A and B supplemental coverage, that FSA reimbursements are permitted by the applicable federal tax code provision, etc.);
- Identify error patterns or trends and identify causes, assess effects, and provide recommendations for corrections;
- Confirm accuracy of benefit accumulators (*i.e.*, deductibles, out-of-pocket, maximums), including across the PPO/POS and the behavioral health plan; and
- Confirm that overpayments identified in prior audits have been credited to the State.

B. The audit must include an electronic screening for 100% of all claims data. Such analysis shall determine and address whether claims are properly processed. The State expects

that this in-depth analysis will provide greater confidence in the results and identify outlying claims processes, systemic processing errors, etc. Where appropriate to provide 95% confident with 3% precision in the claims analysis, a sampling methodology may be used in addition to the 100% electronic claims analysis.

C. The claims processing audit must be performed for the following categories:

- Category 1 (Medical Benefits Plans): all plans;
- Category 3 (Mental Health/Substance Abuse Benefits Plan);
- Category 4 (Prescription Drug Benefits Plan); and
- Category 5 (Flexible Spending Accounts).

3.3.5 Audit of Performance Guarantees

A. The Contractor shall review and be familiar with the performance guarantees provided in each TPA Contractor's contract with the State. The Contractor shall obtain from the State and from the TPA Contractor the necessary documentation to confirm compliance with the performance guarantees.

B. The Contractor shall audit the TPA Contractors' compliance with the performance guarantees applicable to each TPA contract. The audit of performance guarantees may involve data or findings developed in connection with other audits to be performed of the respective TPA contractor. For example, the financial accuracy of claims payments is a performance guarantee in the PPO TPA contract. The audit Contractor shall recommend whether the liquidated damages associated with each performance guarantee should be assessed and in what amount.

C. The performance guarantees audit must be performed for the following categories:

- Category 1 (Medical Benefits Plans): all plans;
- Category 2 (Dental Benefits Plans): all plans;
- Category 3 (Mental Health/Substance Abuse Benefits Plan);
- Category 4 (Prescription Drug Benefits Plan); and
- Category 5 (Flexible Spending Accounts).

3.3.6 Audit of Contract Terms

A. The Contractor shall review the TPA Contract terms and conditions to ensure that TPA Contractors comply with all terms of the contract with the State. These audits shall include but not be limited to:

- Review contracts, technical proposals and financial proposals to ensure all pricing terms and negotiated fees are compliant with terms in contract;
- Review and reconcile any third party recoveries or payments due State under the TPA contract;
- Verify appropriate contracted administrative fees;

- Verify and ensure that the TPA Contractor is performing in accordance with the TPA Contract (member services requirements, member communications requirements, adequate staffing levels, HIPAA compliance, etc); and
- For PBM, audit pharmacy and pharmaceutical manufacturer agreements to verify that pricing in the prescription benefits plan properly flows through to the State. See RFP §3.1.6.3 for a more detailed discussion of the rebate audit requirements.

B. The contractual compliance audit must be performed for the following categories:

- Category 1 (Medical Benefits Plans): all plans;
- Category 2 (Dental Benefits Plans): all plans;
- Category 3 (Mental Health/Substance Abuse Benefits Plan);
- Category 4 (Prescription Drug Benefits Plan); and
- Category 5 (Flexible Spending Accounts).

3.3.7 Manufacturer Payment and Rebate Audits

A. The Contractor shall conduct a complete and reliable manufacturer payment and rebate audit, geared to verifying and ensuring that the State received all manufacturer payments, rebates, etc. due to the State under the PBM Contract. Herein, the term “rebates” refers to all payments required under the PBM contract to be passed on or accounted to the State.

B. The Contractor shall review all categories of payments from manufacturers or other third parties to the PBM as they relate to the State’s plan, regardless of the nature or type of payment.

C. The Contractor shall complete an analysis of all rebatable claims by quarter, or payment period, and if necessary, additional quarters to validate payment for all earned claims. This audit shall include, at a minimum, the following tasks in connection with such payments:

- Identification of the quarters/payment periods covered by the audit and plan to address the entire plan year;
- Identification of all rebatable claims and identification of categories properly excluded from rebate contention
- Review and test of claim adjudication for all rebatable claims including paid, denied, COB, etc.;
- All non-rebatable claims will be filtered to remove them from rebate contention;
- Calculate earned rebate quantities by National Drug Code (NDC) by quarter, or payment period;
- Compare earned rebate file to file submitted to pharmacy manufacturer;
 - Review master screen setup for rebates;
 - Review detail report for all screens for claim processing logic applied;
 - Review all accruals per month or quarter for estimated rebate calculations; and

- Review monthly or quarterly reconciliation, by manufacturer, of actual received versus the estimated rebates;
- Review applicable manufacturer contracts for values to attribute to each NDC quantity or claim;
- Compare PBM receipts from manufacturer/payor(s) to earned rebate file;
 - Review detail report that supports total rebate receipts;
 - Review detail report for unpaid or denied payments;
 - Review pursuit detail report for unpaid rebates;
- Compare payments to the State with PBM receipts from manufacturers/payors;
 - Review all calculations for the PBM's payment methodology by quarter, particularly to verify that the correct payments are made to the State. The auditors will need to know how the PBM can confirm the State's percentage of its overall book of business, if that is the basis for rebates; and
 - Provide a listing of all first and second payments, along with settlement payments to the State, for the timeframe under audit.

D. This in-depth Manufacturer Payment and Rebate Audit must be performed for the following Category:

Category 4 (Prescription Drug Benefits Plan)

3.3.8 Audits of Clinical Processes

A. The Contractor shall perform clinical evaluations of programs conducted by TPA Contractors. The evaluation shall compare the programs implemented and administered by the TPA Contractor to relevant industry standards, norms and Benchmarks as well as contract requirements. The programs to be evaluated include but are not limited to:

- Utilization management programs (e.g. prior authorization, pre-certification, continued stay review and discharge planning functions);
- Case management and disease management programs, specifically addressing for each: case identification methodology and systems, member communications and proactive outreach mechanisms, diagnosis-focused programs, and return-on-investment/results monitoring capability, based on a review of policies and of a sample of cases utilizing the management program(s);
- Claims appeals processes, including timing and adequate clinical review systems are in place; and
- For the prescription benefits plan, perform a review of managed access components of the plan design (following program parameters, whether parameters are clinically supported or appropriate, etc).

B. The Clinical Audit must be performed for the following categories:

- Category 1 (Medical Benefits Plans): all plans
- Category 3 (Mental Health/Substance Abuse Benefits Plan)
- Category 4 (Prescription Drug Benefits Plan)

3.3.9 Review of Internal Audits

A. The Contractor shall review internal audits conducted by TPA contractors, including but not be limited to:

- Review the TPA Contractor's internal audit controls to ensure proper controls are in place for improper billing, claims processing, fraud, etc.;
- Verifying that hospital bill audits have been conducted in accordance with the contractual requirements and industry standards;
- Verify that pharmacy audits (desk audits and on-site audits) are conducted in accordance with contractual requirements and industry standards;
- Verify appropriateness of the internal audit program(s), i.e. that it meets industry standards;
- Verify that any recoveries identified through the TPA Contractor's internal audits have been credited back to the State;
- Verify that significant findings or payment due to the State under the previous year's audit have been corrected or paid, and
- Review of TPA Contractor SAS-70 Reports.

B. The review of internal audits must be performed for the following categories:

- Category 1 (Medical Benefits Plans): all plans;
- Category 3 (Mental Health/Substance Abuse Benefits Plan);
- Category 4 (Prescription Drug Benefits Plan); and
- Category 5 (Flexible Spending Accounts).

3.4 Audit Reporting

3.4.1 Reports for Individual Contracts Audited – Content Requirements

A. The Contractor shall provide a detailed written report for each contract and TPA contractor audited. Every written report shall include an Executive Summary and be tabbed accordingly for easy readability.

B. The Contractor shall submit the draft audit report to the respective TPA contractor for review and comment prior to submitting the draft report and the audit Contractor's findings to the State.

C. Each report (draft and final) shall include a discussion of at least the following elements:

- General statement of audit objectives and identify the scope of the audit performed (e.g. administrative and operational, performance guarantees, etc.);
- List of the claim adjudication and administration procedures evaluated;

- Summary of audit steps and sampling methodology, including identification of the applicable general auditing standard that endorses the methodology;
- Total number and dollar value of claims processed during the audit period by the TPA Contractor;
- Summary of audit findings including;
 - Total number and dollar value of claims examined;
 - Total number and percentage of claims with financial errors (dollar value broken down into over - and under-payments and combined for percentage of total claims paid);
 - Total number and percentage of claims with administrative errors;
- Listing of claims audited to measure processing time;
- Identification and listing of all claims with errors, including a brief description of nature and amount of error;
- Results to applicable TPA Contractor performance guarantees;
- Comments and recommendations for improving claims administration;
- Verification of recovery, adjustment of errors identified in prior audit reports;
- List of pharmacy and pharmaceutical manufacturer agreements audited and representation of the size of the sample compared to the number of pharmacies in the network and manufacturers with which the PBM contractor has agreements;
- Identification of the period(s) for which rebates have been audited from claim payment through payment to the State;
- Findings related to all pricing points (such as pricing guarantees and pass-through pricing requirements);
- Results of internal audits;
- Results of external audits of the TPA Contractor;
- Summary results of audits of applicable contract terms;
- Summary of clinical reviews and clinical audit issues;
- Copy of the TPA Contractor's response to the draft report and any modifications the TPA Contractor has implemented as a result of the audit; and
- Comparison of current year's audit with prior year results (for audits after the initial audit); and
- Recommendations related to TPA Contractor performance.

3.4.2 Standards and Acceptance Criteria for Final Audit Reports (Deliverables)

A. When presented for acceptance, a written deliverable provided to the State must satisfy the scope and requirements of the RFP for that deliverable. Final written audit reports shall not contain structural errors such as poor grammar, misspellings or incorrect punctuation, and must:

- Be submitted on or before the due date;
- Be presented in a format appropriate for the subject matter and depth of discussion;
- Be organized in a manner that presents a logical flow and discussion of the deliverable's content;
- Identify the date of submission and version number if applicable;

- Represent factual information reasonably expected to have been known at the time of submittal;
- Present information that is relevant to the portion of the deliverable in the submittal; and
- Meet the content requirements of the RFP Section 3.4.1 as determined by the Contract Manager.

B. An audit report is not accepted by the State until the Contract Manager determines that the report is compliant with this section 3.4 of the RFP. The Contractor shall revise and supplement the audit report until it is accepted by the Contract Manager. Subsequent or revised reports shall be identified as such.

3.4.3 Monthly Reports/Meetings

The Contractor shall submit the following status/progress reports and comply with the following meeting requirements:

A. Monthly reports to the State, due on the tenth day of each month.

- Monthly reports to the Contract Manager shall include the information noted below with regard to each Audit Category. Reports shall be provided in MS Word or MS Excel unless the Contract Manager approves in writing another software format. The Contractor shall deliver reports to the Contract Manager as directed no later than the 10th of each month for the preceding month's activities.

Monthly reports shall include but are not limited to the following information:

- a) Agency Name;
- b) Audit Category;
- c) Audit Start Date;
- d) Target Completion Date;
- e) Not To Exceed (NTE) Contract Dollar Value for each Category;
- f) Payments Received to Date for each Category;
- g) Status of Projects by Category; and
- h) Any other relevant information the State's Contract Manager requests due within the scope of work.

B. Schedule and attend quarterly meetings with the State to provide status of audit(s).

3.5 Optional Services

3.5.1 The Contractor must be available to perform any additional optional audit-type services requested by the State on a task order basis. The State shall request a quote for hours in each of the labor categories (identified in Section 3.5.2) using the task order process outlined in Section 3.5.3. Performance of task order (optional) services shall be governed by the issued task order and the Contract. These optional services may include but are not limited to audits of large claims or disputed claims, litigation support in connection

with an audit, or targeted in-depth audits of specialized processes. Such additional services, if any, will be billed in addition to the fixed price for scheduled audits at the labor rates proposed in the Contractor's financial proposal.

3.5.2 Labor Requirements for Optional Services

- A. All labor rates charged by the Contractor for the three services labor categories outlined in the price proposal (ATTACHMENT F) shall be fully loaded labor rates including direct and indirect charges. Reimbursement for administrative/clerical duties, travel, parking and mileage will not be paid under the terms of the Contract.
- B. Contractors must use the labor categories provided for auditing services as indicated. Proposed audit services personnel must meet the following minimum requirements for experience and proficiency to be eligible for these labor categories:
- Principal/Partner - Must have a minimum of ten (10) years experience providing healthcare auditing services;
 - Senior Auditor - Must have a minimum of five (5) years experience providing healthcare auditing services; and
 - Junior Auditor - Must have a minimum of one (1) year of experience providing healthcare auditing services.

3.5.3 Task Order Process

Services shall be provided via a task order process using the pre-approved fully-loaded labor rates applicable to their labor categories as follows:

- A. The Contract Manager will e-mail or fax a request to the Contractor to provide services. On occasion, the Contract Manager may contact the Contractor's Account Manager by telephone to orally convey the contents of a task order request. The request shall include at a minimum:
- a) The due date and time for submitting a response to the request;
 - b) Technical requirements and description of the services needed;
 - c) Specific information to be provided by the Contractor, such as:
 - A proposed work plan for the required services;
 - Any maximum timeframe to complete the services required;
 - Any required places(s) where work must be performed; or
 - State furnished information, work site, and /or access to equipment, facilities, or personnel; and
 - d) Requirements for meetings and reports;

- B. The Contractor shall e-mail or fax a response to the Contract Manager within the specified time and shall include at a minimum:
- a) A response to the description of the service that details the Contractor's understanding of the work;
 - b) A description of the proposed work plan including time schedules, in narrative (including, if specifically required/requested, a GANTT chart) to accomplish the requisite task. This description shall include a schedule of resources and related tasks, including an explanation of how these tasks will be completed;
 - c) Identification of those activities or phases that can be completed independently or simultaneously versus those that must be completed before another activity or phase can commence;
 - d) The personnel resources, including those of subcontractor(s), and estimated hours to complete the task;
 - e) A detailed written description of any work to be subcontracted, and the name and address of the subcontractor(s), including the participation of MBEs to support the Contractor's MBE plan for the Audit Contract;
 - f) Proposed approach to satisfying the requirements of the task and development of task deliverables; and
 - g) A detailed cost estimate, using projected hours for each labor category and identification of staff members, to complete the project.
- C. The Contract Manager will review the response and will either approve the work and provide a notice to proceed (NTP) or contact the Contractor to obtain additional information, clarification or revision to the work. If satisfied, the Contract Manager will then provide the written Notice to Proceed.

3.6 HIPAA Business Associate Agreement Requirements.

The Department acknowledges its responsibilities in connection with the self-funded health plan(s) that are covered entities under HIPAA. The State has established additional performance requirements in connection with HIPAA compliance than required by HIPAA, the Privacy Rule, the Security Rule and the HI-TECH Act. The Contractor shall comply with the Business Associate Agreement requirements as provided in this section of the RFP.

3.6.1 Permitted Uses and Disclosures

3.6.1.1 The Contractor shall not use or disclose PHI except as permitted by this Business Associate Agreement.

3.6.1.2 The Contractor may use or disclose PHI to perform functions, activities, or services for or on behalf of Department or the State as specified in the RFP and the Contract, provided that such use or disclosure would not violate HIPAA or the Medical Records Act. Contractor shall not use or disclose PHI other than as permitted or required by the RFP and the Contract or as required by law, in accordance with 45 CFR §164.512.

3.6.1.3 Contractor acknowledges it is a business associate of the Department in connection with the group health plan(s) of the Program and, therefore, subject to its own compliance obligations under the HI-TECH Act and HIPAA. Contractor shall comply with 45 CFR §164.504(e).

3.6.1.4 The Contractor shall implement and use appropriate and reasonable administrative, physical and technical safeguards to maintain the security of and to prevent use or disclosure of PHI other than (a) as provided in this Agreement, (b) permitted by the HIPAA or the Privacy Rule for a covered entity, and (c) permitted by the Medical Records Act. In the event that the HIPAA, the HI-TECH Act, and the Medical Records Act conflict regarding the degree of protection provided for PHI, the Contractor shall comply with the more restrictive protection requirements.

3.6.1.5 Contractor shall use, disclose or request only the minimum necessary amount of PHI and act in compliance with 45 CFR §164.502(b) as if Contractor were a covered entity in connection with the Program. Contractor shall comply with guidance issued by DHHS in determining the minimum necessary amount of PHI to accomplish the intended purpose of such use, disclosure, or request, respectively.

3.6.1.6 Contractor shall not use any PHI for marketing or fundraising activities. Contractor shall not receive, whether directly or indirectly, remuneration in exchange for access, disclosure or other use of information in the Contractor's knowledge, custody, possession or control by virtue of performing under the RFP and the Contract. This prohibition does not apply to the Department's payment of Contractor for its performance pursuant to the RFP and the Contract.

3.6.1.7 The Contractor shall report to the Department any use or disclosure of PHI that is not permitted by these Business Associate Agreement provisions in this RFP as soon as possible, but in any event within 10 days of when the Contractor becomes aware of such use or disclosure. This provision shall not limit the Contractor's obligations to provide notice as specifically described in section 3.6.3.

3.6.1.8 The Contractor agrees to review any guidance from DHHS specifying the technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals or otherwise rule out treatment of the PHI as Unsecured PHI. The Contractor further agrees, to the extent practical, appropriate and reasonable, to incorporate such guidance into its administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI, in all forms. The Contractor will notify the Department, by

quarterly reports, if PHI in its possession or control or that Contractor receives, transmits or exchanges, is secured within the meaning of 45 CFR §164.400 et seq.

3.6.1.9 The Contractor shall use reasonable efforts to mitigate the effect of any use or disclosure of PHI known to Contractor that is not permitted by these Business Associate Agreement provisions of the RFP and the Contract,

3.6.1.10 The Contractor shall ensure that any agents, including subcontractors, to whom it provides PHI agree to the same restrictions and conditions that apply to the Contractor with respect to such PHI.

3.6.1.11 The Contractor shall maintain PHI and make available to the Department any PHI in a Designated Record Set relating to an individual upon request of the Department to permit the Department to comply with an individual's request pursuant to 45 CFR §164.524.

3.6.1.12 The Contractor shall make available for amendment and amend PHI in a Designated Record Set it holds at the request of the Department.

3.6.1.13 The Contractor shall document and track disclosures, including sufficient information as would be required by the Department to respond to a request for an accounting in accordance with 45 CFR §164.528, and provide an accounting of disclosures of PHI to the Department upon request. Any disclosure or use of PHI by the Contractor shall be noted.

3.6.1.14 The Contractor shall make internal practices, books and records, including privacy and confidentiality policies and procedures and PHI, available to DHHS, for purposes of determining whether the Department is compliant with HIPAA in the administration of the Program.

3.6.1.15 Upon written request, the Contractor shall provide a written certification to the Department that the Contractor's obligations under these Business Associate Agreement provisions have been met. Such requests for certification shall occur no more frequently than once per quarter.

3.6.1.16 The Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI (i.e. PHI in electronic format or media) that the Contractor creates, receives, maintains, or transmits in performing the Contractor's obligations under the RFP and the Contract, Such activities shall be consistent with the Security Rule, as if the Contractor were a covered entity in connection with the PHI.

3.6.1.17 The Contractor shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect such electronic PHI.

3.6.1.18 The Contractor shall report to the Department any security incident in connection with the Contractor's systems that contain, house, or have access to PHI, including but not

limited to any back-up copies. In the event of a security incident, the Contractor shall notify the Department within 10 days and shall take reasonable and appropriate steps in mitigation or remediation of the security incident and shall notify the Department of such steps.

3.6.1.19 The Contractor shall transmit or exchange PHI in a secure fashion at all times.

3.6.2 Permitted Uses and Disclosures by Contractor

3.6.2.1 The Contractor may use only the minimum amount of PHI necessary to provide the services required by the RFP and the Contract.

3.6.2.2 The Contractor may disclose PHI as required by law in compliance with 45 CFR § 164.512.

3.6.2.3 The Contractor may use and disclose PHI for the proper management and administration of its organization or to carry out its legal responsibilities only as permitted by 45 CFR § 164.504(e)(4).

3.6.2.4 The Contractor may use or disclose PHI to report violations of the law to appropriate State and Federal authorities consistent with 45 CFR §164.502 (j).

3.6.3 Breaches of Unsecured PHI.

3.6.3.1 A Breach shall be treated as discovered on the terms described in 45 CFR §164.410.

3.6.3.2 Notice to the Department.

(a) The Contractor shall promptly notify the Department of a Breach of Unsecured PHI following the first day on which Contractor (or Contractor's employee, officer, agent or subcontractor) knows of such Breach or following the first day on which Contractor (or Contractor's employee, officer, agent or subcontractor) reasonably should have known of such Breach. Such notice shall occur without unreasonable delay and in no event more than 60 days following discovery of the Breach.

(b) In the event that Contractor determines that there is no risk that an unauthorized access, acquisition, use, or disclosure compromises the integrity, security or privacy of the PHI of an individual, Contractor shall promptly notify the Department of the event and the basis for that determination. Such notice shall occur as soon as is reasonable but in no event more than 60 days following discovery of the unauthorized access, acquisition, use or disclosure of PHI of an individual. Such determination shall be in writing and signed by an appropriate officer or employee of Contractor and maintained until the expiration of any audit rights or record retention requirements of the RFP and the Contract, HIPAA, and the HI-TECH Act.

(c) Contractor's notice to the Department of a Breach or other unauthorized access, acquisition, use, or disclosure of Unsecured PHI pursuant to this subsection 3.6.3.2 shall include, at a minimum:

- (i) the number of individuals affected by the Breach;
- (ii) the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or otherwise the subject of the Breach;
- (iii) a description of what happened, the date of the Breach (if known), and the date of the discovery of the Breach;
- (iv) a brief description of the types of unsecured PHI that were involved in the Breach (such as name, social security number, date of birth, etc.);
- (v) identification of an individual who can provide additional information concerning the Breach; and
- (vi) a description of the steps Contractor is taking to mitigate the Breach, investigate the Breach, and to protect against further Breaches or Security Incidents.

(d) Contractor's notice to the Department pursuant to this section 3.6.3.2 may provide on a rolling basis, with information provided to the Department as it becomes available.

3.6.3.3 Notice to Individuals.

(a) At its own cost, the Contractor shall provide notice to affected members and to the media in the form, content, manner, method, and timing required to meet the requirements of §§13400-13402 of the HI-TECH Act and 45 CFR §§164.404 and 164.406, applied as if Contractor were a covered entity, in the event of a Breach.

(b) The notice(s) required by section RFP §3.6.3.3(a) may not be issued until the Department has reviewed and approved the notice(s). Such approval may not be unreasonably delayed or withheld.

(c) If §§13400-13402 of the HI-TECH Act and 45 CFR §§164.404 – 164.406 do not require that notice be provided to individuals, this subsection 3.6.3.3 does not apply.

3.6.3.4 Contractor may delay the notice(s) required pursuant to sections 3.6.3.2 and 3.6.3.3 only if permitted pursuant to 45 CFR §164.412. In such event, Contractor shall provide the notice(s) as soon as permissible pursuant to 45 CFR §164.412.

3.6.3.5 In the event of any unauthorized use or disclosure of PHI, Security Incident, or Breach of Unsecured PHI, Contractor shall use reasonable efforts to mitigate any harmful effects of said disclosure that are known to it.

3.6.3.6 Notices to DHHS.

(a) In the event of a Breach of Unsecured PHI described in 45 CFR §164.408(b) (i.e. a Breach of the PHI related to 500 or more individuals), Contractor shall provide to Department all information required by that section to be submitted to the Secretary of DHHS.

(b) Contractor shall maintain a log of Breaches of Unsecured PHI, regardless of the number of individuals whose PHI is involved, that includes at least the information described in

section 5.2(c). Such log will be provided to the Department at the close of each calendar year for Breaches occurring during the calendar year. Such log must contain information sufficient for the Department to comply with 45 CFR §164.408(c).

3.6.3.7 Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Contractor agrees to the notice provisions contained in this section 3.6.3 with respect to such PHI.

3.6.3.8 Records Retention.

(a) To the extent that Contractor retains any PHI covered by the Contract awarded pursuant to this RFP, Contractor shall protect, use, and disclose such PHI in a manner consistent with the HIPAA Business Associate Agreement provisions of the RFP and HIPAA.

(b) The obligations of this section 3.6.3.8 shall survive termination of the Contract.

(c) Except as provided in section 3.6.3.8(d), upon termination of the Contract, Contractor shall return or destroy all PHI received from Department, created or received by Contractor on behalf of Department, or otherwise created or received by Contractor in performing pursuant to the RFP and the Contract. This provision shall apply as well to PHI that is in the possession of subcontractors or agents of Contractor. Contractor shall not retain any copies of the PHI. Destruction must be by means or method that renders the PHI unreadable, undecipherable, and unusable.

(d) In the event that Contractor and the Department agree that returning or destroying the PHI is infeasible or the Contract requires the Contractor to retain PHI for a period of time, Contractor shall provide to Department written notification of the conditions that make return or destruction infeasible and/or the provisions that require retention of PHI. PHI retained by the Contractor for such reasons shall be protected as provided in these Business Associate Agreement provisions of the RFP.

3.6.3.9 The Department will provide the Contractor with the notice of privacy practices that the Department produces in accordance with 45 C.F.R. § 164.520, as well as any changes to that notice. The Department may not request the Contractor to use or disclose PHI in any manner that would not be permissible under HIPAA or the HI-TECH Act if done by the Department. The Contractor shall notify the Department if the Contractor believes that any request or direction from the Department creates a violation of HIPAA or the HI-TECH Act.

3.6.3.10 Upon the Department's knowledge of a material breach by the Contractor in connection with this Section 3.6, the Department shall:

(a) Provide a reasonable opportunity for the Contractor to cure the breach or end the violation and, if the Contractor does not cure the breach or end the violation within the time specified by the Department, terminate the Contract;

(b) Immediately terminate the Contract if the Contractor has breached a material term and cure is not possible; or

(c) If neither termination nor cure is feasible, report the violation to the Secretary of DHHS.

3.7 Retainage and Invoices

3.7.1 Retainage

Ten percent (10%) of each applicable invoice payment shall be held by the Department as retainage. Disbursement of the total retainage will be dependent upon Contractor's invoicing of the retainage. The Contractor may invoice for retainage when all work for an audit cycle is complete (per Category) and the final audit report has been accepted by the State.

3.7.2 Invoice Format

A. All invoices must include the following information:

- Name, address and federal tax identification number of the Contractor;
- Remittance address;
- Invoice period (i.e. the period during which services covered by the invoice were performed);
- Invoice date and invoice number;
- Amount due;
- The Fixed Rate Audit Category and Milestone, or Task Order, being billed; and
- An identification of the labor category under which each person was working (if for optional services).

B. A pre-authorized representative of the Contractor must sign each invoice. Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information. The Contractor's Account Manager shall be the authorized representative that signs each invoice, but the Contractor may choose a different individual, so long as the Contractor notifies the Contract Manager of the designated representative's name, phone number and e-mail address within 15 business days of contract execution.

3.7.3 Invoice Timing and Procedure

A. An invoice may not be submitted by the Contractor until the Contract Manager (or a designee) has accepted that the applicable Milestone has been successfully completed or achieved. Prior to the submission of an invoice, the Contractor shall submit a written notice to the Contract Manager that the Milestone has been completed. Such notice shall include at a minimum:

- Identification of Milestone;

- An expenditures report or detailed billing report that provides a description of the work performed toward completion of the Milestone and identification of the person performing the work; and
- Certification from an authorized representative of the Contractor that the work has been completely performed as described in the expenditures or detailed billing report. This individual should be the same person who signs invoices submitted to the Department and should be authorized to bind the Contractor to the certification of the work.

B. Milestones for each audit cycle. The Contractor will be paid progress payments based upon successful completion of the following Milestones for each Audit Category during the course of the audit process:

1. Planning and Preparation for On-Site reviews
2. On-Site Reviews
3. Development and Delivery of Draft Audit Report
4. Audit TPA Meeting to discuss Draft Audit Report
5. Final Audit Report

C. Task Orders (Optional Services). In connection with any Optional Services that are billed on a fixed-rate hourly basis (See Section 3.5), the Contractor shall bill for the hours completed in the prior month. When all work under a Task Order (for optional services) has been completed and accepted, the Contractor may submit an invoice to recover retained amounts in connection with the Task Order.

3.7.4 Administrative and Travel Expenses

Reimbursement for travel, parking and mileage will not be paid by the State under the terms of the Contract. The State will not pay for administrative or clerical services; such services must be accounted for in the Contractor's fully-loaded labor rates. Administrative and clerical expenses will not be paid by the State. The Contractor's fully-loaded rates must account for such services.

3.8 Staffing Requirements and Categories for Primary Audit Services

3.8.1 Staffing

3.8.1.1 The Contractor shall adequately staff this Contract such that the State's auditing needs are met, including, as appropriate, an account team.

3.8.1.2 The Contractor shall designate an Account Manager to serve as the primary contact for this Contract and for all billing/invoice matters.

3.8.1.3 The Contractor shall also designate additional key personnel to perform specific functions, such as:

- Audit Manager – Person(s) who oversee, supervise, monitor or approve the work of others performing auditing activities. Only personnel who

have minimum of five (5) years experience providing auditing services relevant to the Category audit(s) being performed may fill this role.

- Lead Auditor – Individual(s) responsible for on site supervision of audit staff. Only personnel who have minimum of three (3) years experience providing auditing services relevant to the Category audit(s) being performed may fill this role.

3.8.1.4 The Contractor may use the same personnel for such functions, e.g. the Account Manager may also be the Audit Manager for the Category audit(s) performed by the Contractor. To the extent that more than one audit is required for the Category for which the Contractor is awarded a Contract, each audit shall have an individual that fulfills the Lead Auditor role for each audit being performed. For any Optional Services, the Contractor may designate a lead staff person other than the Account Manager.

For example, Category No. 1 requires eight audits to be performed, across three different plan types. Due to the overlapping of organizations that administer the different plans (e.g. Carefirst of Maryland, Inc. administers a PPO plan, a POS plan and an EPO plan pursuant to contracts with the State), the eight required audits can be broken into various subgroups. As a result, an Offeror may propose to have one individual oversee the audits of all three plans administered by Carefirst. In the alternative, an Offeror may propose to have one individual oversee all PPO audits, regardless of TPA Contractor.

As another example, Category No. 4 requires a number of audits to be performed of one PBM contractor. The different audits may be broken into different subgroups, such as the claims and pricing component audits while the pharmaceutical manufacturer agreement audits are performed by a different team lead by a different Lead Auditor.

3.8.1.5 Offerors should note that all personnel including subcontractors who perform services in connection with fixed rate audits (see Section 3.3) need not meet the minimum requirements for the junior auditor labor category. In performing the necessary audits of the various plans, the Contractor may use accounting or other auditing personnel that do not have personal healthcare auditing experience, so long as their experience is relevant to the tasks they are assigned in connection with the audit. For example, an accountant may perform the audit of the financial accuracy of reimbursements provided in the FSA plans.

3.8.2 Availability of Key Personnel

Offerors shall ensure the key personnel identified in its proposal will be available to perform Contract requirements. Contractor key personnel shall not be reassigned to another task without the written concurrence of the State's Contract Manager for 180 calendar days from the Contract award date. If any key personnel leave the employment of the Contractor, or are approved for

reassignment by the State's Contract Manager, the replacement must have equal or better qualifications than the incumbent and be approved by the State's Contract Manager.

3.8.3 Substitution of Key Personnel

During the first 180 calendar days of the Contract performance period, no substitutions of key personnel will be permitted unless such substitutions are necessitated by extraordinary circumstances such as sudden illness, death, or as otherwise approved by the Contract Manager. In any of these events, the Contractor shall promptly notify the Contract Manager and provide the information required below. After the initial 180 calendar day period, all proposed substitutions of key personnel must be submitted in writing, at least 15 business days in advance of the proposed substitution, to the Contract Manager, with the information required in below. The Contract Manager must agree to the substitution in writing before such substitution shall become effective.

All proposed substitutes of key personnel must have qualifications at least equal to that of the person initially proposed by the Offeror and evaluated and accepted by the Contract Manager. The Contract shall bear the burden of illustrating this comparison. The resumes of the initially assigned key personnel shall become the minimum requirement for qualifications for the duration of the total Contract term. If one or more of the key personnel are unavailable for work under this Contract for a continuous period exceeding 15 business days during the performance of an audit, the Contractor shall immediately notify the Contract Manager and propose to a replacement with key personnel of equal or better qualifications within 15 business days of notification. All substitutions shall be made in accordance with this provision.

All requests for substitutions must provide a detailed explanation of the circumstances necessitating the proposed substitution, a resume of the proposed substitute (See below), and any other information requested by the Contract Manager to make a determination as to the appropriateness of the proposed substitution. All proposed substitutes must have educational qualifications and work experience equal to or better than the resume initially proposed for other personnel; the burden of illustrating this comparison shall be the Contractor's.

Resumes shall be signed by all substituting individuals and their formal supervisor, and the official resume of the previous employee shall be provided for comparison purposes.

The State shall, at any time, have the right to require the Contractor to replace any of its key personnel assigned to this Contract if any such Contractor personnel are uncooperative, inefficient, unprofessional in their appearance or actions, or otherwise demonstrate an inability to perform the requirements specified in the RFP.

3.9 Conflicts of Interest

3.9.1 The successful Offeror will provide auditing services to the State and must do so impartially and without any conflicts of interest. Subcontractors and any employees or other agents of the Contractor shall also be without any conflict of interest in connection with services provided pursuant the Contract. 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, the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

- 3.9.2** The Offeror, and all subcontractors will be required to complete Conflict of Interest Affidavits to establish that the contractual requirement of impartiality would be met. A copy of this Affidavit is included as ATTACHMENT H of this RFP.
- 3.9.3** If the Procurement Officer makes a determination that facts or circumstances exist that give rise to or could in the future give rise to a conflict of interest within the meaning of COMAR 21.05.08.08A, the Procurement Officer may reject an Offeror under COMAR 21.06.02.03B or may, during the term of the Contract, terminate the Contract in whole or in part as necessary to avoid the actual or potential conflict of interest. See COMAR 21.05.08.08,
- 3.9.4** The Contractor must investigate and disclose any potential conflict of interest on the part of a subcontractor, consultant, sub-consultant, employee or agent who will perform or supervise work under this Contract. The Contractor shall notify the Procurement Officer and Contract Manager of any conflict of interest concerning a subcontractor, consultant, sub-consultant, employee or agent immediately upon discovery. The Contractor shall cooperate in connection with the investigation of any potential conflict of interest.
- 3.9.5** If the Contractor has a question or requires clarification as to a contract term of the TPA contracts, the Contractor shall submit all questions to the Contract Manager for the State's guidance on the TPA Contract. The procurement officer of each TPA Contract has the authority to determine and interpret the contract. The Contractor may not undertake any interpretation of the underlying contracts without the express approval of the Contract Manager.
- 3.9.3** The Contractor shall provide periodic updates to the Department and the Procurement Officer, providing information such as that required by the Conflict of Interest affidavit attached as ATTACHMENT H, certifying whether a conflict of interest or potential conflict of interest exists for the Contractor and each subcontractor (including MBEs). The Contractor shall notify the Department and Procurement Officer whenever the Contractor provides services to, contracts with, or receives any compensation or remuneration from an organization or company that provides services in connection with the Program.

3.10 Insurance Requirements

3.10.1 The Contractor shall maintain general liability (**see 3.10.3**), property and casualty insurance with minimum 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, employees or subcontractors.

3.10.2 The Contractor shall provide a copy of the Contractor's current certificate of insurance that, at a minimum, shall contain the following for categories 1 through 4. Category 5 shall

contain the following with the exception of \$1,000,000 requirement for Errors and Omissions Insurance:

- Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.

\$5,000,000 -Errors and Omissions Insurance

\$2,000,000 - General Aggregate Limit (other than products/completed operations)

\$2,000,000 - Products/completed operations aggregate limit

\$1,000,000 - Each Occurrence Limit

\$1,000,000 - Personal and Accidental Injury Limits

\$ 50,000 - Fire Damage Limit

\$ 5,000 - Medical Expense

3.10.3 Upon execution of a Contract with the State, Contractor shall provide the State with current certificates of insurance, and shall maintain and report such insurance annually to the procurement officer.

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SECTION 4 - PROPOSAL SUBMISSION FORMAT

4.1 Two Part Submission

Offerors must submit separate proposals for each Category in RFP Section 1.1 in two separate volumes. Each submission for each category shall be presented in separate binders for each category, labeled as Category 1, Category 2, etc. Any general information may be submitted once for one or more categories and must be labeled as “general” information:

- “Volume I – (TECHNICAL PROPOSAL)”
- “Volume II – (FINANCIAL PROPOSAL)”

4.2 Proposals

Volume I-Technical Proposal must be sealed separately from Volume II-Financial Proposal but submitted simultaneously to the Procurement Officer (address listed on Key Information Summary and in Section 1.5). This is the only address to which proposals may be submitted. An unbound original, so identified, and six (6) bound copies of each volume are to be submitted. Hard copies must be a complete proposal containing all information contained on the CDs unless otherwise directed in Section 4.

Offerors must attach to the original Technical Proposal two (2) separate CDs containing an electronic version of Volume I- Technical Proposal (in MS Excel format and WORD, as appropriate). Offerors must also attach to the original Financial Proposal two (2) separate CDs containing an electronic version of the Volume II- Financial Proposal (in MS Excel format).

Please note that the Offeror must provide separate CDs for the Technical Proposal and the Financial Proposal, resulting in four (4) CDs attached to the proposal. The CDs containing the electronic responses should be placed in separate envelopes labeled “Offeror Response CDs – Volume “X” (“X” is Volume I or Volume II, as appropriate).

4.3 Submission

Each Offeror is required to submit a separate sealed package for each Volume, to be labeled “Volume I-Technical Proposal” and “Volume II-Financial Proposal” respectively. Each sealed package must bear the RFP title and number, name and address of the Offeror, the volume number (I or II), and the closing date and time for receipt of the proposals on the outside of the package. Please label the electronic media with Volume I-Technical Proposal and Volume II-Financial Proposal, as appropriate. All pages of both proposal volumes must be consecutively numbered from beginning (Page 1) to end (Page “x”).

Offerors’ are reminded that a signed MBE D-1 forms must be submitted with each separately sealed technical package for each Category being proposed. Failure to submit the required D-1 forms shall deem the offer to be not reasonably susceptible of being selected for award.

4.4 Volume I – Technical Proposal

4.4.1 Transmittal Letter

A transmittal letter must accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda/amendments. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP.

4.4.2 Format of Technical Proposal; Required Submissions

Inside a sealed package described in Section 4.3, above, an unbound original, to be so labeled, six (6) copies and the electronic version shall be provided. Sections 2 and 3 of this RFP provide requirements and Section 4 provides reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposals should be organized and numbered in the same order as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by paragraph number.

The Technical Proposal shall include the following sections in this order:

4.4.2.1 Title and Table of Contents

The technical proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents for the technical proposal should follow the title page. Information, which is claimed to be confidential, is to be identified after the Title Page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included.

4.4.2.2 Executive Summary

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary" including how the Offeror meets the minimum qualifications outlined in Section 2.

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. If there are no exceptions, the summary should so state.

Note: Exceptions to terms and conditions of the RFP, the contract, or any other attachment may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

4.4.2.3 Offeror Technical Response to RFP Requirements

A. Per each Service Category, in a concise manner, the Offeror shall address each requirement in Section 3 “Scope of Work” of this RFP and describe how the Offeror’s proposed services will meet those requirements.

The Offeror should use the sub-headings provided by this RFP to organize the response (e.g. describe auditing capabilities in the Technical Proposal section noted as a response to Section 3.3.1, address HIPAA and information security as part of the response to Section 3.6, list the Offeror’s existing insurance coverage as part of the response to Section 3.10). The response to the audit requirements for each Category should take into account the background information provided in Section 3.1 and shall note how the Offeror’s proposed methods of performing the work required under this RFP meet the purposes outlined in Section 3.2. The Offeror may draw from its experience to provide examples and to illustrate how its proposed processes for the audit are proven to be successful. Do not duplicate information.

B. If the State is seeking Offeror agreement to a requirement, the Offeror shall state agreement or disagreement. However, the Offeror should not merely rely on a stated agreement to perform the requested work; rather the Offeror should outline **how the Offeror can fulfill the requested tasks in a manner that best meets the State’s needs.**

C. In responding to RFP §3.3.2, the Offeror shall include a completed Gantt Chart for each audit cycle. The Gantt chart should be labeled as an attachment to the proposal and referenced in the narrative response to §3.3.2.

D. In responding to RFP §3.3 concerning each type of audit, the Offeror shall identify the proposed methodology, including the extent to which statistical sampling is used, the method by which a sample is selected, the confidence and precision levels associated with the methodology, and illustrating how the methodology comports with generally accepted auditing principles.

E. In responding to RFP §3.3.7, the Offeror shall address in detail the manufacturer payment and rebate audit process the Offeror proposes to use.

F. In responding to RFP §3.7, the Offeror shall describe the process for achieving each Milestone and how the Offeror proposes to demonstrate that a Milestone has been achieved.

G. In responding to RFP §3.9, the Offeror shall describe the steps it takes to discover and prevent conflicts of interest.

4.4.2.4 Corporate Experience and Capability

A. The Offeror shall describe its overall experience and past performance in providing services similar to those solicited and the Category for which the Offeror is submitting a proposal.

B. As part of its offer, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which has been completed within the last 5 years. For each identified contract the Offeror is to provide in its Technical Proposal:

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

The Procurement Officer or a designee will contact the identified State agencies, or the most appropriate ones if many contracts are involved, to ascertain the Offeror's level of performance of State contracts.

Information obtained regarding the Offeror's level of performance on State contracts will be considered as part of the experience and past performance evaluation criteria of the RFP.

C. References. As part of its offer, each Offeror is to provide a list of references for which similar health care auditing services have been provided, in the following categories:

- Three references including at least one from governmental accounts/clients
- Three references from terminated accounts/clients

The references shall be structured to permit validation that the minimum qualifications shown in Section 2 have been met. In the event that an Offeror is submitting proposals for more than one Category, the Offeror may duplicate references but must provide references that may address the Offeror's capabilities in connection with each Category.

4.4.2.5 Staffing Plan, Personnel Qualification and Professional Experience

The Offeror shall provide a staffing plan that describes how the Offeror intends to staff this Contract to meet the State's needs and how it will comply with the requirements of RFP §3.8. The Offeror shall identify its proposed Account Manager and, to the extent applicable based on the Category to which the proposal applies, any other key personnel. As part of the staffing plan, the Offeror shall submit the resumes of the proposed key personnel to complete the work required by the Contract.

The Offeror shall provide a short summary of the professional experience, achievements and capabilities of those staff and personnel proposed to perform the requirements of the Contract.

The resumes and staffing plan should also include a description of whether the proposed staff worked on the accounts submitted as references by the Contractor.

In the Technical Proposal (in addition to the requirements of Attachment D), Offerors must identify both MBE and non-MBE subcontractors and the role these subcontractors will have in the performance of the contract. A summary of the experience and expertise of the proposed subcontractors shall be provided as part of the Offeror's Technical Proposal.

4.4.2.6 Economic Benefit Factors

- A. The Offeror shall describe the benefits that will accrue to the State of Maryland economy as a direct or indirect result of the Offeror's performance of the contract resulting from this RFP. The Offeror will take into consideration the following elements. **(Do not include any detail of the financial proposal with this technical information):**
- The estimated percentage of contract dollars to be recycled into Maryland's economy in support of the contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Offerors should be as specific as possible and provide a percentage breakdown of expenditures in this category.
 - The estimated number and types of jobs for Maryland residents resulting from this contract. Indicate job classifications, number of employees in each classification, and the aggregate Maryland payroll percentages to which the contract has committed at both prime and, if applicable, subcontract levels.
 - Tax revenues to be generated for Maryland and its political subdivisions as a result of this contract. Indicate tax category (sales tax, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the contract.
 - The estimated percentage of subcontract dollars committed to Maryland small businesses and MBEs.
- B. In addition to the factors listed above, the Offeror should explain any other economic benefit to the State of Maryland that would result from the Offeror's proposal.

4.4.2.7 Conflict of Interest

- A. Each Offeror must complete and submit a Conflict of Interest Affidavit with the Technical Proposal. A copy of this Affidavit is included as ATTACHMENT H of this RFP.
- B. Each Offeror must submit a Conflict of Interest Affidavit completed and signed by each subcontractor who will perform work on this Contract.
- C. If the Procurement Officer makes a determination that facts or circumstances exist that give rise to or could in the future give rise to a conflict of interest within the meaning of COMAR 21.05.08.08A, the Procurement Officer may reject an Offeror under COMAR 21.06.02.03B. In completing this affidavit, each Offeror should give special consideration to the existing contractual relationships the Department has (see ATTACHMENT I).

4.4.2.8 Financial Capability and Statements

The Offeror shall provide evidence that the Offeror has the financial capacity to provide the services by providing copies of the last two (2) statements of year end abbreviated Profit and Loss (P&L) and Balance Sheets (independently audited preferred, or at the very least adherence to GAAP). The financial statements must be for the entity proposing to provide services under this RFP and not for any prospective owners or parent companies not directly involved in the provision of services.

4.4.2.9 Certification of Review of Contracts/RFPs.

The requests for proposals that form the majority of the scope of work of the contracts to be audited in Categories 1 – 5 are posted on the Department's website (www.dbm.maryland.gov, using the links "Contractors," "Contract Library" and "Employee Benefits Contracts"). The RFP's for this year's rebid of Category 3 and Category 4 are posted on the Department's website (www.dbm.maryland.gov, using the links "Contractors," "Procurements in Progress" and "Open Solicitations"). Each Offeror may review these requests for proposals in order to be familiar with the contractual obligations to be audited. The State requires that the Offeror acknowledge that access to these public documents has been provided and that the Offeror reviewed the documents to the extent the Offeror deemed necessary to prepare the Offeror's proposal (technical and financial). The Contractor to which a contract is awarded for each Service Category shall be required to be familiar with the TPA contracts to be audited.

4.4.2.10 Summary of Required Technical Proposal Attachments

- Transmittal Letter (Sec 4.4.1);
- Technical Proposal, Volume I (Sec 4.4.2.1 through 4.4.2.7 and 4.4.2.9);
- Conflict of Interest Affidavits – Attachment H from Offeror and all subcontractors (Sec 4.4.2.8);
- Bid/Proposal Affidavit (Attachment B);
- MBE Forms (Attachments D-1);
- Financial Statements;
- Certification of Review of Contract/RFPs (Attachment K);
- Living Wage Affidavit (Attachment L);
- Gantt Chart(s); and
- Current Insurance Certificates (Sec. 3.10).

4.5 Volume II - Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified with the same information noted on the Technical Proposal, the Offeror must submit an original unbound copy, six (6) bound copies, and two (2) electronic copies (in MS Word format) in a separate envelope

labeled as described in Section 4.2, of the Financial Proposal. The Financial Proposal must contain all cost information in the format specified in ATTACHMENT F.

SECTION 5 - EVALUATION CRITERIA AND SELECTION PROCEDURE

5.1 Evaluation Criteria

Evaluation of the proposals will be performed by a committee organized for that purpose. Evaluations will be based on the criteria set forth below. Each Category shall be separately evaluated and ranked.

5.2 Technical Criteria

The criteria to be applied to each technical proposal are as follows, listed in descending order of importance:

1. Offeror's Experience and Capability;
2. Staffing Plan, Personnel/Subcontractors, Qualification and Professional Experience;
3. Offeror's Technical Proposal and Work Plan in response to the RFP requirements;
and
4. Economic Benefit Factors.

5.3 Financial Criteria

All qualified Offerors will be ranked from the lowest to the highest price based on the total price proposed as shown in ATTACHMENT F, line F (Total, Audit Services for Audit Cycles 1-5, per Category). An Offeror must comply with the instructions provided in Attachment F.

5.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement contract. The preference given shall be identical to the preference that the other state, through law, policy or practice gives to its residents.

5.5 Selection Procedures

5.5.1 General Selection Process

The contract will be awarded in accordance with the competitive sealed proposals process under Code of Maryland Regulations 21.05.03. The competitive sealed proposals method is based on discussions and revision of proposals during these discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions. In either case of holding discussions or not doing so, 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 the review of those proposals.

5.5.2 Selection Process Sequence

- A. The first level of review will be an evaluation for technical merit. During this review oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform, and to facilitate arrival at a contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two to four weeks of the delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.
- B. Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.
- C. The financial proposal of each Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of Offerors, the Procurement Officer may again conduct discussions.
- D. When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs).

5.6 Award Determination

Upon completion of all discussions and negotiations, reference checks, and site visits, if any, the Procurement Officer will recommend award of the contracts to the responsible Offeror whose proposals are determined to be the most advantageous to the State considering technical

evaluation factors and price factors as set forth in this RFP. In making the most advantageous Offeror determination, technical factors will be given equal weight to financial factors.

ATTACHMENTS

ATTACHMENT A—CONTRACT

ATTACHMENT B—BID/PROPOSAL AFFIDAVIT

ATTACHMENT C—CONTRACT AFFIDAVIT

ATTACHMENT D—MINORITY BUSINESS ENTERPRISE PARTICIPATION

ATTACHMENT E—PRE-PROPOSAL CONFERENCE RESPONSE FORM

ATTACHMENT F—PRICE PROPOSAL INSTRUCTIONS AND FORM

**ATTACHMENT G— STATE BENEFIT EMPLOYEE ENROLLMENT DATA BY PLAN
AND COVERAGE**

ATTACHMENT H—CONFLICT OF INTEREST AFFIDAVIT/DISCLOSURE

ATTACHMENT I—CURRENT BENEFITS CONTRACTS

ATTACHMENT J—PLAN YEARS TO BE AUDITED

ATTACHMENT K— CERTIFICATION OF REVIEW OF CONTRACTS/RFPs

ATTACHMENT L—LIVING WAGE AFFIDAVIT

ATTACHMENT M—PROCUREMENT OFFICER’S CHECKLIST

ATTACHMENT A - CONTRACT

**AUDIT SERVICES CONTRACT
CATEGORY _____**

THIS CONTRACT is made this _____ day of _____, 2010 by and between _____ and the MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT.

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

1. Definitions

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

- 1.1 “Contract” means this Contract for Audit Services, Category _____.
- 1.4 “Contractor” means _____ whose principal business address is _____.
- 1.5 “Contract Manager” means the individual identified in section 1.5 of the RFP or a successor designated by the Department.
- 1.6 “Department” means the Maryland Department of Budget and Management.
- 1.7 “Financial Proposal” means the Contractor’s Financial Proposal dated _____.
- 1.8 “Procurement Officer” means the individual identified in section 1.5 of the RFP or a successor designated by the Department.
- 1.9 “RFP” means the Request for Proposals for Audit Services for the State Employees and Retirees Benefits Program, No. F10R7200018 dated July 31, 2006.
- 1.10 “State” means the State of Maryland.
- 1.11 “Technical Proposal” means the Contractor’s Technical Proposal, dated _____.

2. Scope of Work

2.1 The Contractor shall provide audit services in connection with the Maryland State Employees and Retirees Health and Welfare Benefits Program by auditing the contracts in _____ [insert applicable category]. These services shall be provided in accordance with this Contract and the following exhibits, which are attached and incorporated herein by reference:

Exhibit A – The RFP.

Exhibit B – The Technical Proposal.

Exhibit C – The Financial Proposal.

Exhibit D – Contract Affidavit.

2.2 If there are any inconsistencies between this Contract and Exhibits A, B, C, and D, the terms of this Contract shall control. If there is any conflict among the Exhibits, Exhibit A shall control.

2.3 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, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Article 8, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance

The Contractor shall begin providing services under this Contract upon the later of execution by the Department or April 1, 2011. Unless terminated earlier as provided in this Contract, the Contractor shall continue to provide services through the successful performance and completion of five (5) audit cycles, covering the five (5) plan years occurring from July 1, 2010 through June 30, 2015. Such services shall be provided on the schedule provided in the RFP and the Technical Proposal.

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of Exhibits A and C. Except with the express written consent of the Procurement Officer, payment to the Contractor for the services required pursuant to this Contract shall not exceed \$_____ during the entire term of this Contract, including the fixed fee services and any optional audit services authorized by the State.

4.2 Invoices must be provided in the format and on the schedule identified in the RFP. Each invoice must reflect the Contractor's federal tax identification number, which is _____. The Contractor's e-MarylandMarketplace identification number is _____. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State'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. 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.

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

4.4 Electronic funds transfer will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State's Comptroller Office grants the Contractor an exemption.

4.5 Progress Payments.

- (a) All payments for services under this Agreement are progress payments only and dependent upon the Department's final acceptance of the work. Contractor shall not be entitled to retain any payments unless the State accepts the final audit report. Progress payments shall be tied to tangible work has been performed that is at least as valuable to the State as the requested payment amount. The accomplishment of tangible work is not the same as merely accruing hours of effort expended and amounts paid for materials. Rather, it means the completion of work that can be reasonably quantified, and that would not have to be redone by the State or another contractor if, for any reason, the contract would terminate as of the end of the period for which the bill has been submitted.
- (b) Examples of such tangible work include tests completed satisfactorily, records entered into a deliverable database, deliverable document sections completed, site surveys performed and documented, and documented interviews conducted with personnel that possess information or expertise essential to the task. In the event the State does not accept any work or audit report and requests Contractor repay all or a portion of the progress payments made hereunder, upon receipt by the State of such payments, the State will return all deliverables associated with such payments to Contractor.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials, including but not limited to, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor for purposes of this Contract shall be the sole property of the Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. Nothing in

this Article 5 shall abrogate or transfer any intellectual property rights of the Contractor in its proprietary information related to its methodologies, methods of analysis, ideas, know-how, methods, techniques and skills possessed prior to this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, the works created and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created under this Contract are not works for hire for the Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

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

5.4 The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Confidentiality

6.1 Subject to the Maryland Public Information Act and any other applicable laws, including the Health Insurance Portability and Accountability Act, the Maryland Confidentiality of Records Act and the implementing regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor’s computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law and the confidentiality provisions of the RFP. 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.

6.2 The Contractor shall notify the Department promptly of any request for information, request for statement, or other similar request from any entity or organization other than the Department if such request requires the Contractor to discuss or disclose information related to this contract or gathered in the performance of this Contract

7. Non-Hiring of Employees

No official or employee of the State of Maryland as defined under State Government Article section 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 dependency 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.

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.

9. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

10. 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 individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any 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.

11. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the 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, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.

12. Non-availability of Funding

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

13. Termination for Cause

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

14. Termination for Convenience

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

15. Delays and Extensions of Time

The Contractor agrees to perform the work under 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. Suspension of Work

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

17. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, 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.

18. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, which requires that every business that enters into contracts, leases, or other agreement 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 the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

19. Political Contribution Disclosure

The Contractor shall comply with the Election Law Article, Sections 14-101 through 14-108, of the Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county or an incorporated municipality or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. 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.

20. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for six years after final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section.

21. Compliance with Laws

The Contractor hereby represents and warrants that:

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

22. Cost and Price Certification

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

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 by the parties, was inaccurate, incomplete, or not current.

23. Living Wage

- 23.1 A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10.
- 23.2 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. If Contractor is an out of state Contractor, this contract is deemed to be a Tier 1 Contract.

- 23.3 The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10, including the submission of payroll reports to the Commissioner of Labor and Industry and the posting 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.
- 23.4 The Contractor shall make any subcontractor on this Contract aware of the Living Wage law requirements.

24. Commercial Non-Discrimination

- 24.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 24.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department of Budget and Management, in all subcontracts.
- 24.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid 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 Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of sections 5 through 7, and 9 through 24 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 the subcontractors.

26. Prompt Pay Requirements

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

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

26.2. An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:

- (a) Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
- (b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

26.3. An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:

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

- 26.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 26.5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - (b) This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - a. The Contractor's monthly report listing unpaid invoices over 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.
 - (c) If the Department determines that the Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
 - (d) If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
 - (e) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

27. Indemnification

- 27.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

- 27.2 The State of Maryland has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 27.3 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.
- 27.4 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.
- 27.5 This Section 26 survives the termination of this Contract.

28. Administrative

28.1 Procurement Officer. 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.

28.2 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:

Procurement Officer
Department of Budget and Management
Room 143
45 Calvert Street
Annapolis, Maryland 21401

With a copy to:
Contract Manager [Anne Timmons]
Director, Employee Benefits Division
State of Maryland
Director of Employee Benefits
301 W. Preston Street, Room 510
Baltimore, MD 21201

If to the Contractor:

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

CONTRACTOR

MARYLAND DEPARTMENT OF
BUDGET AND MANAGEMENT

By:

By: T. Eloise Foster Secretary

Date

Date

Witness

Witness

Approved for form and legal
sufficiency this _____ day
of _____ 2010.

Assistant Attorney General

APPROVED BY BPW: _____
(Date)

(BPW Item #)

ATTACHMENT B - BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder 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 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 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.

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 or 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 or proposals for a public or private contract;

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

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

_____.

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

G. SUB-CONTRACT 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 or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or 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 or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of Section 13-221 of the State Finance and Procurement Article of the 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.

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

K. 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 or offer, 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 whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
- (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
- (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

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

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic ___) (foreign ___) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is: Name: _____ Address: _____ .

(If not applicable, so state).

(2) 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.

M. 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.

N. Repealed.

O. 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 or 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: _____ (Authorized Representative and Affiant)

ATTACHMENT C - CONTRACT AFFIDAVIT

COMAR 21.07.01.25

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic_____) (foreign_____) corporation registered in accordance with Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessment and Taxation is:

Name: _____
Address: _____

(2) 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 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.

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Bid/Proposals Affidavit dated_____, 20____, and executed by me for the purposed 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:_____
(Signature)

(Authorized Representative and Affiant)

ATTACHMENT D - MINORITY BUSINESS ENTERPRISE PARTICIPATION

**EXHIBIT TO SOLICITATION
STATE OF MARYLAND
DEPARTMENT OF BUDGET AND MANAGEMENT
MINORITY BUSINESS ENTERPRISE PARTICIPATION**

PURPOSE

Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the minority business enterprise (MBE) goal stated in the Request for Proposals. MBE performance must be in accordance with this Attachment, as authorized by Minority Business Enterprise policies as set forth by 21.11.03 of the Code of Maryland Regulations. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

Separate Forms are required for each Category for which a proposal is submitted

MBE GOALS

The MBE subcontract participation percent goal of the total value of contract value as reflected in Attachment F (Price Proposal form), Row F for each respective Category has been established for this procurement. By submitting a response to this solicitation, the Offeror agrees that each percentage by Category of the total dollar amount of each Contract will be performed by certified minority business enterprises for the following Category as shown below.

20 % for Category 1;
15% for Category 2;
15% for Category 3;
15% for Category 4; and
15% for Category 5.

By submitting a response to each Category of this solicitation, Offeror agrees that each percentage by Category of the total dollar amount of each Contract will be performed by certified minority business enterprises for each Category as proposed.

A prime contractor - including an MBE prime contractor - must accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.

SOLICITATION AND CONTRACT FORMATION

An offeror must include with its offer a completed *Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1)* whereby:

- (1) the offeror acknowledges the certified MBE participation goal or requests a waiver, (in whole or in part), commits to making a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- (2) the offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The Offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the Certified MBE Utilization and Fair Solicitation Affidavit.

If an Offeror fails to submit a completed Attachment D-1 with each Category's proposal as required, the Procurement Officer shall deem the Offer is not reasonably susceptible of being selected for award.

Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer:

- (1) **Outreach Efforts Compliance Statement** (Attachment D-2)
- (2) **Subcontractor Project Participation Statement** (Attachment D-3)
- (3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11.
- (4) Any other documentation required by the Procurement Officer to ascertain offeror responsibility in connection with the certified MBE participation goal.

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

Attachment D-1
MDOT Certified MBE Utilization and Fair Solicitation Affidavit
(submit one (1) attachment D-1 form for each Category proposed)

This document **MUST BE** included with the Offer submitted for each Category proposed. If the Offeror fails to complete and submit this form with the Proposal as required, the procurement officer shall determine that the offer is not reasonably susceptible of being selected for award. All MBEs must be identified and the specific portion of the Total Contract Value committed to each MBE must be identified.

In conjunction with the Offer submitted in response to Solicitation No. F10B0400010, I affirm the following:

1. I acknowledge and intend to meet the certified Minority Business Enterprise (MBE) participation goal for the Category checked below. Check only one box per Category per proposal. Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

- 20% percent for Category 1;
- 15% for Category 2;
- 15% for Category 3;
- 15% for Category 4; and
- 15% for Category 5

OR

I conclude that I am unable to achieve the MBE participation goal. I hereby request a waiver, in whole of the overall goal. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11.

OR

I conclude that I am unable to achieve the entire MBE participation goal. I hereby request a partial waiver of the overall goal and have identified the portion of the MBE goal I intend to achieve through a specific commitment of the certified Minority Business Enterprises listed in the MBE Participation Schedule below. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation (for the portion I am unable to achieve) in accordance with COMAR 21.11.03.11.

2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
 - (a) Outreach Efforts Compliance Statement (Attachment D-1)
 - (b) Subcontractor Project Participation Statement (Attachment D-2)
 - (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE participation goal.

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

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

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Attachment D-1 (cont'd)
MDOT Certified MBE Utilization and Fair Solicitation Affidavit
(submit one (1) attachment D-1 form for each Category proposed)

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

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name _____	MBE Certification Number _____
Percentage of Total Contract - _____%	
Minority Firm Name _____	MBE Certification Number _____
Percentage of Total Contract - _____%	
Minority Firm Name _____	MBE Certification Number _____
Percentage of Total Contract - _____%	

Continue on a separate page, if needed.

Total MBE Participation _____%

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

 Offeror Name
 (PLEASE PRINT OR TYPE)

 Signature of Affiant

Name: _____
 Title: _____
 Date: _____

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 or offer submitted in response to Solicitation No.F10B0400010 Offeror states the following:

1. Offeror identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
 - a. This project does not involve bonding requirements.
 - OR**
 - b. Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
 - a. Offeror did/did not attend the pre-bid/proposal conference.
 - OR**
 - b. No pre-proposal conference was held.

	By:	
Offeror Printed Name		Signature

Address: _____

Attachment D-3

Subcontractor Project Participation Certification

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

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

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

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or 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 or proposal;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or 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 or proposal.

PRIME CONTRACTOR SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____
 Name, Title
 Date _____

By: _____
 Name, Title
 Date _____

ATTACHMENT E - PRE-PROPOSAL CONFERENCE RESPONSE FORM

Project No. F10B0400010

Project Title: Audit Services for the State Employee and Retiree
Benefits Program

A Pre-proposal Conference will be held on May 13, 2010 at 1:00PM local time at:

Baltimore State Office Complex
300 W. Preston St.
Ground Level Auditorium
Baltimore, Md. 21201

Directions to the Pre-proposal meeting site:

From I-95: Exit I-395 North, exit Martin Luther King (MLK) Blvd, continue north on MLK to Eutaw Street. Left on Eutaw Street, one block to right on Preston Street. One block to left into Public Parking Lot. 300 W. Preston Street is on the same side as the parking lot.

Please e-mail, Fax or return this form by 1:00 PM on Thursday, May 10, 2010 advising whether or not you plan to attend this Conference.

E-mail or fax this form to the Procurement Officer:

Ms. Joy Epstein
Office Phone: (410) 260-7570
Fax: (410) 974-3274
E-mail: jepstein@dbm.state.md.us

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Company/Firm/Vendor Name

Telephone

Contact Name

ATTACHMENT F - PRICE PROPOSAL INSTRUCTIONS AND FORM

General Instructions:

In order to assist Offerors in the preparation of their price proposal and to comply with the requirements of this solicitation, Price Instructions and Price Forms have been prepared. Offerors shall submit their price proposal on the forms in accordance with the instructions on the forms and as specified herein. Do not alter the forms or the price proposal shall be rejected. The Price Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to all proposed prices.

Offerors are required to record the fully loaded prices they are proposing for each listed item, and compute the total. The price forms are used to calculate the Offeror's TOTAL PRICE.

- A) All Fixed and Unit Prices for hourly rates must be clearly entered with dollars and cents, e.g., \$24.15. All Fixed and Unit Prices must be the actual unit price the State shall pay for the proposed item per this RFP and may not be contingent on any other factor or condition in any manner.
- B) All calculations shall be rounded to the nearest cent, i.e. .344 shall be 34 and .345 shall be 35.
- D) All goods or services required or requested by the State and proposed by the Offeror at No Cost to the State must be clearly entered in the Unit Price and Extended Price with \$0.00.
- E) Every blank in the price sheet shall be filled in.
- F) Except as instructed on the forms, nothing shall be entered on the forms that alters or proposes conditions or contingencies on the prices or percentages.
- G) It is imperative that the prices included on the Price Proposal Forms have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Price Proposal Forms.

Specific Instructions:

- A) At top of price sheet, fill in the Category which corresponds to the Price Proposal for each proposal submitted.
- B) In Section 1:
 - Record for each performance Milestone for each specified audit cycle the proposed fixed price associated with successful completion of the Milestone;
 - Record for each specified audit cycle the total proposed fixed prices for each of the Milestones 1 through 5 for services as outlined in Attachment F in rows A through E;
 - Add the Proposed Cycle Total prices for each of the five audit cycles A through E and enter a total on line F for the Total Price for Audit Service; and
 - The fixed price associated with successful completion of the first three Milestones may not exceed 60% of the total cost of completion of the audit cycle.
- C) In Section 2:
 - Record for each labor classification and each Audit Cycle enter the proposed fully-loaded hourly rate in columns A, B, and C.

Attachment F- Price Proposal Form for F10B0400010
Category No. _____

Section						
Proposed Annual Price, Auditing Services						
Auditing Services for the following Milestones						
	Planning & Preparation for On-Site Review	On-Site Reviews	Draft Audit Report	Audit Commission Meetings	Final Audit Report	(1) (2)+(3)+(4)+(5)=Proposed Cycle Total Price*
A. Audit Cycle 1- PY July 1, 2010 to June 30, 2011						
	\$	\$	\$	\$	\$	\$
B. Audit Cycle 2- PY July 1, 2011 to June 30,						
	\$	\$	\$	\$	\$	\$
C. Audit Cycle 3- PY July 1, 2012 to June 30,						
	\$	\$	\$	\$	\$	\$
D. Audit Cycle 4- PY July 1, 2013 to June 30,						
	\$	\$	\$	\$	\$	\$
E. Audit Cycle 5- PY July 1, 2014 to June 30,						
	\$	\$	\$	\$	\$	\$
F. Total, Audit Services Prices for Audit Cycles 1-5						\$

*Note: The proposed Audit Cycle price may vary cycle-to-cycle depending on how an Offeror wishes to compensate for overhead, cost of labor, profit and inflation. Important to note the price proposed is all-inclusive and fully loaded with no other fees, surcharges, taxes or any other factor allowed as a supplemental charge for services.

Attachment F- Price Proposal Form for F10B0400010 (cont'd.)

Section 2

**Proposed Price, Optional Audit Services			
Fully Loaded Labor Rate for each Labor Category for each Audit Cycle			
	A. Principal	B. Senior Consultant	C. Junior Consultant
Audit Cycle 1	\$	\$	\$
Audit Cycle 2	\$	\$	\$
Audit Cycle 3	\$	\$	\$
Audit Cycle 4	\$	\$	\$
Audit Cycle 5	\$	\$	\$
**Optional Audit Services may or may not be required during the contract term.			

Authorized Signature Company Name

Printed Name and Title Company Tax ID #

Phone # & Fax #

**ATTACHMENT G - STATE BENEFIT EMPLOYEE ENROLLMENT DATA BY
BENEFITS PLAN AND COVERAGE LEVEL**

Enrollment data is provided for four groups within the Program:

- | | |
|-----------------------------------|--------------------------------|
| 1. Active State Employees | 3. Satellite Employees |
| 2. Retired State Employees | 4. Direct Pay Enrollees |

The enrollment data for all four subgroups must be aggregated for the total enrollment in each plan.

See Attachment G for February 2010 Enrollment Data

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ATTACHMENT H- CONFLICT OF INTEREST AFFIDAVIT

A. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Terms Defined.

(a) "Conflict of interest" means that, because of other activities or relationships with other persons:

(i) A person is unable or potentially unable to render impartial assistance or advice to the State;

(ii) The person's objectivity in performing the contract work is or might be otherwise impaired; or

(iii) A person has an unfair competitive advantage.

(b) Person.

(i) "Person" has the meaning stated in COMAR 21.01.02.01B (64).

(ii) "Person" includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent or any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

B. A solicitation that will result in the selection of a contractor who will assist a unit in the formation, evaluation, selection, award, or execution of a State contract shall provide notice of the requirements of State Government Article, §15-508, Annotated Code of Maryland, and this regulation.

C. If the procurement officer makes a determination before award that facts or circumstances exist giving rise or which could in the future give rise to a conflict of interest, the procurement officer may reject a bid or offer under COMAR 21.06.02.03B.

D. Termination.

(1) After award, the State may terminate the contract, in whole or in part, if it considers termination necessary to avoid an actual or potential conflict of interest.

(2) If the contractor knew or reasonably could have been expected to know of an actual or potential conflict of interest before or after award and did not disclose it or misrepresented relevant information to the procurement officer, the State may terminate the contract for default, institute proceedings to debar the contractor from further State contracts, or pursue other remedies as may be permitted by law or the contract.

E. A conflict of interest may be waived if the procurement officer, with approval of the agency head, determines that waiver is in the best interest of the State. The determination shall state the reasons for the waiver and any controls that avoid, mitigate, or neutralize the conflict of interest.

F. A bidder or offeror responding to a solicitation that will result in the selection of a contractor who will assist a unit in the formation, evaluation, selection, award, or execution of another State contract shall provide the affidavit and disclosures set forth in §G of this regulation to the procurement officer with the bid or offer and at other times as may be required by the procurement officer.

G. The affidavits and disclosures required by §F of this regulation shall be in substantially the same form as follows:

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

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 subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The bidder or 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 detail—attach additional sheets if necessary):

E. The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or 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 or 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 - CURRENT BENEFITS CONTRACTS

Contractor Name, Description of Services	DBM Contact and phone number	Contract Starting Date	Contract Ending Date	Renewal Options
<p>Contract to perform Third Party Administrative services for Flexible Spending Account Plans - Employee Benefit Health Care and Dependent Care programs Flexible Spending Accounts provide employees with pre-tax dollars to cover health care expenses not covered by insurance and dependent care expenses (i.e., day care). Also included is non-discrimination testing.</p> <p>ConnectYourCare, LLC</p>	<p>William Tress DBM/OPSB/EBD (410) 767-4710</p>	<p>7/1/2010</p>	<p>6/30/2015</p>	<p>none</p>
<p>This contract provides for a Third party administrator to administer the Dental, DPPO & DPOS Services for State employees and retirees. The dental benefits are available through two plan options 1) Dental Health Maintenance Organization (DHMO) plan and a Dental Point-of-Service (DPOS) plan.</p> <p>United Concordia DPPO/DPOS</p>	<p>William Tress DBM/OPSB/EBD (410) 767-4710</p>	<p>7/1/2009</p>	<p>6/30/2014</p>	<p>None</p>
<p>This contract provides for a Third party administrator to oversee the PPO Health Benefits Plan administration & claims disbursement for State employees and retirees.</p> <p>CareFirst- PPO United Healthcare Options PPO</p>	<p>William Tress DBM/OPSB/EBD (410) 767-4710</p>	<p>7/1/2009</p>	<p>6/30/2014</p>	<p>None</p>

Contractor Name and Description of Services	DBM Contact and phone number	Contract Starting Date	Contract Ending Date	Renewal Options
<p>This contract provides for a Third party administrator to oversee the POS Health Benefits Plan administration, capitation fee & claims disbursement for State employees and retirees.</p> <p>CareFirst BCBS MD POS (MPOS) UnitedHealthcare ChoicePlus POS Aetna Choice POS II</p>	<p>William Tress DBM/OPSB/EBD (410) 767-4710</p>	<p>7/1/2009</p>	<p>6/30/2014</p>	<p>None</p>
<p>This contract provides for a Third party administrator to oversee the Exclusive Provider Organization Benefit Plans for State employees and retirees.</p> <p>CareFirst BCBS- EPO</p>	<p>William Tress DBM/ OPSB/EBD (410) 767-4710</p>	<p>7/1/2009</p>	<p>6/30/2014</p>	<p>None Rebid 2008</p>
<p>This contract calls for a third party administrator provide Pharmacy Benefit Manager (PBM) services, administer the Rx Benefit Plan administration and claims disbursements for the State plan, and to administer the Maryland Rx Program. This will include comprehensive concurrent, prospective and retrospective drug utilization reviews for Maryland State employees and retirees.</p> <p>Catalyst</p>	<p>William Tress DBM/OPSB/EBD (410)-767-4710</p>	<p>7/1/2011</p>	<p>6/30/2016</p>	<p>None</p>
<p>The contract is to provide mental health and substance abuse insurance benefits for Maryland State employees and retirees enrolled in the PPO and Point-of-Service health insurance plans. The contract also provides Employee Assistance Plan (EAP) benefits to all active State employees.</p> <p>APS Healthcare</p>	<p>William Tress DBM/OPSB/EBD (410) 767-4710</p>	<p>7/1/2006</p>	<p>6/30/2011</p>	<p>Rebid 11/2010</p>

ATTACHMENT J- PLAN YEAR TO BE AUDITED

Plan Year to be Audited	7/1/2010 6/30/2011	7/1/2011 6/30/2012	7/1/2012 6/30/2013	7/1/2013 6/30/2014	7/1/2014 6/30/2015
<u>Audit to be performed & completed</u>	<u>07/01/2011 6/30/2012</u>	<u>7/1/2012 6/30/2013</u>	<u>7/1/2013 6/30/2014</u>	<u>7/1/2014 6/30/2015</u>	<u>7/1/2015 6/30/2016</u>
1. Medical Plan					
a) PPO - Claims/Operational/PGs/Contract					
* CareFirst BCBS	x	x	x	x	TBD
* United Healthcare Options PPO	x	x	x	x	TBD
b) POS - Claims/Operational/PGs/Contract					
* CareFirst BCBS Md POS (MPOS)	x	x	x	x	TBD
* United Healthcare Choice POS	x	x	x	x	TBD
* Aetna Choice POS II	x	x	x	x	TBD
c) EPO - Operational/PGs/Contract					
* CareFirst BCBS EPO	x	x	x	x	TBD
* United Healthcare Select EPO	x	x	x	x	TBD
* Aetna Select EPO	x	x	x	x	TBD
d) Clinical Reviews/Hospital Bill Audits					
* CareFirst BCBS	x	x	x	x	TBD
* United Healthcare	x	x	x	x	TBD
* Aetna	x	x	x	x	TBD
2. Dental Benefit Plans					
a) DPPO - Operational/PGs/Contract					
* United Concordia	x	x	x	x	TBD
b) DHMO - Operational/PGs/Contract					
* United Concordia	x	x	x	x	TBD
3. Mental Health/Sub. Abuse - APS					
* Claims/Operational/PGs/Contract	x	TBD	TBD	TBD	TBD
* Clinical/Hospital bill audits	x	TBD	TBD	TBD	TBD
4. Prescription Drug Plan					
Catalyst					
* Claims/Operational/PGs/Contract	x	TBD	TBD	TBD	TBD
* Clinical/Rebates/Pharmacy Audits	x	TBD	TBD	TBD	TBD
5. Flexible Spending Accts. CYC					
* Claims/Operational/PGs/Contract	x	x	x	x	x

TBD= To be Determined

ATTACHMENT K - CERTIFICATION OF REVIEW OF CONTRACTS/RFP'S

1. The Offeror, _____, hereby acknowledges that: (a) it has been provided with access by means of the Department's website (www.dbm.maryland.gov), to the request(s) for proposals that form the scope of the work of the underlying contracts that will be audited pursuant to RFP No. F10B0400010 Audit Services for State Employees and Retirees Health Benefits Program; and (b) in order to protect the confidential and proprietary information of the State's contractors, access to the proposals submitted by the Department's contractors that perform the services to be audited will only be provided to the Contractor awarded an audit contract.
2. The Offeror certifies that it reviewed to its satisfaction the following request(s) for proposals in the course of preparing its technical and financial proposals in response to RFP No. F10B0400010 Audit Services for State Employees and Retirees Health Benefits Program: (check applicable category)
 - _____ **Category No. 1: Medical Plans**
Health Plan Administration and Services F10B8200015 (7/1/2009-6/30/2014)
 - _____ **Category No. 2: Dental Plans**
Request for Proposals F10B9200014 for Dental Benefits Program (7/1/2009-6/30/2014);
 - _____ **Category No. 3: Mental Health**
Request for Proposals F10R6200070 for Behavioral Health/EAP Services (7/1/2006 – 6/30/2011);
Request for Proposals XXXXXXXX for Behavioral Health and EAP Benefit Administration Services (7/1/2011-6/30/2014).
 - _____ **Category No. 4: Pharmacy Benefits**
Request for Proposals F10R6200071 for Pharmacy Benefits Purchasing Pool Management and Pharmacy Benefits Plan Administration Services (7/1/2007 – 6/30/2011);
Request for Proposals F10B0400006 for Pharmacy Benefits Plan, Management Services and Pharmacy Purchasing Pool Management (7/1/2011-6/30/2016); and
 - _____ **Category No. 5: Flexible Spending Accounts**
Request for Proposals F10B5200052 for FSA Administration (7/1/2005 – 6/30/2011)
Request for Proposals F10B9200017 for FSA Administration (7/1/2011-6/30/2015).
3. The undersigned represents and warrants that he/she has the authority to bind the Offeror to the provisions of this certification.

OFFEROR NAME: _____

By: _____ Title: _____ Date _____

ATTACHMENT L - LIVING WAGE REQUIREMENTS AND AFFIDAVIT**Living Wage Requirements for Service Contracts**

A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. 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 Title 18, State Finance and Procurement, Annotated Code of Maryland.

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 of Labor and Industry 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 §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. 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 of Labor and Industry.

H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, 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 §3-413, Labor and Employment Article, Annotated Code of Maryland.

I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, 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 DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

**Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts**

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 our 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.

**Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts**

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

___ All employee(s) proposed to work on the State contract will spend less than one-half of the employee’s time during every work week on the State contract;

___ All employee(s) proposed to work on the State contract will be 17 years of age or younger during the duration of the State contract; or

___ All employee(s) proposed to work on the State 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

ATTACHMENT M - PROCUREMENT OFFICER'S CHECKLIST

RFP	Requirement	Y/N	Remarks
4.2	Was Vol I sealed separately from Vol II.?		
4.2	Were there an unbound original and six copies of the Vol I- Technical Proposal?		
4.2	Were 2 electronic versions submitted in MS Word format for Vol I enclosed in the original copy of the Tech Proposal?		
4.3	Were separate volumes labeled Vol I—Technical Proposal and Vol II—Financial Proposal, in sealed packages bearing RFP title & number, name/address of Offeror, and closing date/time on outside of the packages? Were tech proposal pages numbered consecutively?		
4.4.1	Was there a letter, which transmitted the technical proposal, acknowledged the receipt of addenda, and did an individual authorized to commit the Offeror to the services and requirements of the RFP sign the letter?		
4.4.2	Were proposals numbered to match numbering in RFP?		
4.4.2.1	Did the technical proposal begin with a title page bearing the name and address of the Offeror and the name and number of the RFP followed by a table of contents for the tech proposal? Was confidential info identified after title page?		
4.4.2.2	Is there a separate executive summary, which condenses and highlights the contents of the technical proposal? Does the executive summary identify any exceptions the Offeror has taken to the requirements of the RFP, the contract (Atch A) or any other attachments? And if not, does the Executive Summary so state?		
4.4.2.3	Does the technical response include a Gantt Chart for each audit cycle?		
4.4.2.4	Does Corp Exp & Capabilities info include a description of past experience in providing similar services, MD contract history, and 6 references?		
4.4.2.5	Did the Offeror submit subcontractor info, a staffing plan, resumes, a personnel summary including MBE and non-MBE subcontractors?		
4.4.2.6	Did the Offeror provide a listing of benefits that will accrue to the State of Maryland?		
4.4.2.7	Did the Offeror complete and submit a Conflict of Interest Affidavit with the technical proposal including any subcontractors proposed?		
4.4.2.8,9,10	Did the Offeror provide copies of the last 2 statements of year end P&L and Balance sheets, Living Wage and Bid/Proposal Affidavits, and Insurance Certificates?		