



**STATE OF MARYLAND  
MARYLAND DEPARTMENT OF TRANSPORTATION  
MARYLAND TRANSIT ADMINISTRATION (MDOT MTA)**

**REQUEST FOR PROPOSALS (RFP)**

**COMMUNICATIONS AND MARKETING SERVICES  
RFP NUMBER AGY-20-007-SR**

**ISSUE DATE: JANUARY 22, 2021**

**NOTICE**

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

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

**VENDOR FEEDBACK FORM**

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

**Title: Communications and Marketing Services**  
**Solicitation No: AGY-20-007-SR**

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

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

REMARKS:

\_\_\_\_\_  
\_\_\_\_\_

Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND**  
**MARYLAND DEPARTMENT OF TRANSPORTATION**  
**MARYLAND TRANSIT ADMINISTRATION (MDOT MTA)**  
**KEY INFORMATION SUMMARY SHEET**

<b>Request for Proposals</b>	Services – Communications and Marketing Services
<b>Solicitation Number:</b>	AGY-20-007-SR
<b>RFP Issue Date:</b>	January 22, 2021
<b>RFP Issuing Office:</b>	Maryland Department of Transportation Maryland Transit Administration (MDOT MTA)
<b>Procurement Officer:</b>  <b>e-mail:</b> <b>Office Phone:</b>	Heather Martin 6 St. Paul Street, 7 <sup>th</sup> Floor Baltimore, MD 21202 hmartin@mdot.maryland.gov 410-767-3835
<b>Technical Proposals:</b>	Submit Via eMMA. Upload all of your documents as required and described in RFP Sections 4.5, 5.2, and 5.3.
<b>Financials Proposals are to be sent to:</b>	Procurement Department at 6 St. Paul Street, 7 <sup>th</sup> Floor, Baltimore, MD 21202 Attention: Heather Martin Refer to RFP Sections 4.5, 5.2, and 5.3
<b>Pre-Proposal Conference:</b>	February 3, 2021 at 11:00am Local Time Will be a Conference Meeting on MS Teams See <b>Attachment A</b> for directions and instructions.
<b>Questions Due Date and Time</b>	at 11:59pm Local Time
<b>Proposal Due (Closing) Date and Time:</b>	March 3, 2021 at 2:00pm Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see <b>page iv</b> ).
<b>DBE Subcontracting Goal:</b>	7% with no subgoals.
<b>VSBE Subcontracting Goal:</b>	0%
<b>Contract Type:</b>	Indefinite Quantity with Firm Fixed Prices
<b>Contract Duration:</b>	Five years
<b>SBR Designation:</b>	No
<b>Federal Funding:</b>	Yes

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## 1 Minimum Qualifications

### 1.1 Offeror Minimum Qualifications

As part of the determination to be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that, within the last five years, the following Minimum Qualifications have been met:

- 1.1.1** The Offeror shall have five years of experience as a full-service marketing, communications, and related service firm.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal three or more references from the past five years that collectively able to attest to the Offeror's required years of experience in providing full-service marketing, communications and related services.

- 1.1.2** The Offeror shall have three years of experience in transportation related marketing or communications.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal three or more references from the past five years that collectively able to attest to the Offeror's required years of experience in providing full-service marketing, communications and related services.

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## 2 Contractor Requirements: Scope of Work

### 2.1 Summary Statement

- 2.1.1** The Maryland Department of Transportation (MDOT MTA) is issuing this Request for Proposals (RFP) in order to obtain services for transportation related communications and marketing services.
- 2.1.2** It is the State's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror and the State.
- 2.1.3** The MDOT MTA intends to make a single award as a result of this RFP. See **RFP Section 4.9 Award Basis** for more Contract award information.
- 2.1.4** An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5** Maryland State and local entities as defined in Finance and Procurement 13-110(a)(5)(i) and not-for-profit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or not-for-profit entities:
- A. Shall constitute Contracts between the Contractor and that government, agency or not-for-profit entity;
  - B. Shall not constitute purchases by the State or State agencies under the Contract;
  - C. Shall not be binding or enforceable against the State; and
  - D. May be subject to other terms and conditions agreed to by the Contractor and the purchaser.
- 2.1.6** All Contract prices, terms, and conditions must be provided to any Maryland local government or not-for-profit entity requesting services under the Contract. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

### 2.2 Background, Purpose and Goals

The Maryland Department of Transportation Maryland Transit Administration (MDOT MTA), a statewide public transportation agency, is Maryland's primary public transit provider. Comprised of over 3,200 employees, the MDOT MTA operates and supports safe, efficient, and reliable Local Bus, Commuter Bus, Metro Subway, Light Rail, MARC Train, and Mobility/Paratransit services. In FY 2019, MDOT MTA provided 94,026,948 passenger trips with an average weekday ridership totaling 257,608 passengers.

MDOT MTA's services are concentrated in the Baltimore metropolitan area, but also extend to Southern Maryland, Cecil County, Eastern Shore, and Western Maryland regions. In addition to direct and contractually provided services, the MDOT MTA offers operation and financial assistance to Maryland's twenty-six (26) Locally Operated Transit Systems.

The MDOT MTA's communications and marketing strategies seek to increase ridership, provide transit educational resources, strengthen agency brand identity, expand communication platforms, enhance the public's image of the MDOT MTA, and to collect data that can be used to help direct improvements in MDOT MTA's operations.

### **2.2.1 Project Goals**

The MDOT MTA seeks Offeror to assist the MDOT MTA Office of Communications and Marketing in providing all services normally associated with marketing, advertising, digital and social media, email marketing, customer engagement, audio and visual production, cartography and public relations support, website design, and web application development for MDOT MTA's statewide public transportation system.

- A. The MDOT MTA's marketing programs and campaigns seek to increase ridership, enhance the public's image of the MDOT MTA, to develop customer educational materials related to maps and system usage, and to collect data that can be used to help direct improvements in customer outreach, employee education, morale, and transit operations.
- B. The MDOT MTA Office of Communications and Marketing is responsible for advising the public of pertinent MDOT MTA activities and programs.

### **2.2.2 General Requirements**

- A. Full-service Firm- The Contractor shall be a full-service firm experienced in providing advertising (print, radio, TV, out of home, digital and social media), communications, public relations, and graphic design. At a minimum, in-house services shall include an account services department, creative department, broadcast and print production department, and media department. If any services are to be subcontracted, this information shall be specified.
- B. Account Team- The Contractor shall assign an Account Supervisor and Account Executive dedicated to the MDOT MTA and shall be available on demand to the MDOT MTA. The individuals assigned to the MDOT MTA account shall be responsible for the coordination of all communications and related activities and projects for MDOT MTA.

The Contractor shall assign, as required, a creative team consisting of a creative director, art director, graphic designer, copywriter, and internet/website design and content management team; a public relations coordinator; and a media team consisting of a separate director, media planner, and one or more media buyers.

- C. Advertising- The Contractor shall adhere to MDOT MTA and local jurisdictional policies and restrictions regarding advertising standards and subject matter and shall comply with MDOT MTA's advertising standards.

MDOT MTA must pre-approve all communication and marketing materials, including creative design, prior to placement. All material designed, regardless of format (broadcast, print, digital, etc.) may not include the following prohibited categories:

- (1) Alcohol, tobacco, cannabis, or related products
- (2) False, misleading or deceptive statements

- (3) Sexually explicit or obscene
- (4) Construed harmful to minors
- (5) Holds individuals or groups of people to public ridicule, derision or embarrassment
- (6) Depictions of violence, illegal activity, or anti-social behavior
- (7) Profanity

D. Upon written notification from the MDOT MTA, the Contractor shall remove any advertisement deemed objectionable by the MDOT MTA from any medium within twenty-four (24) hours. If such an ad was placed without the MDOT MTA's approval, this removal will be at the Contractor's expense. The MDOT MTA will remove advertising not removed by the Contractor at the MDOT MTA's request and bill the Contractor for the associated costs.

## 2.3 Detailed Requirements

The Contractor shall be prepared to provide all services necessary to provide communication and marketing outreach services to the Office of Communications and Marketing to satisfy the purposes of this RFP, including but not limited to the following:

### 2.3.1 Basic Research

Become knowledgeable about the basic subject matter, current research in the area, and the demographics of the target audience.

### 2.3.2 Strategic Planning

Assist the Office of Communications and Marketing in developing a comprehensive strategy to ensure that the audience is reached with the message in the most cost-efficient manner and that all communications, marketing efforts, advertising and public relations campaigns are well coordinated.

### 2.3.3 Creative Efforts

Upon specific request from the MDOT MTA, design advertising and publications, create and write print and electronic media copy, design and develop social media content, develop and maintain websites, design ad concepts and logos, prepare slogans or themes, specialty items, promotional campaigns, musical jingles, illustrations and original artwork. This includes concept development, PSA's, scripts, rough layout and storyboards to final production. All material, including campaign strategies, advertising concepts, budgets, on-air talent, ad copy and scripts must be submitted for review by the Office of Communications and Marketing staff and management. The MDOT MTA reserves final editing and approval rights for any concept, spots and/or copy.

The MDOT MTA reserves ownership rights to all design concepts and advertising, developed for the various campaigns and the RFP process, including all design components for the MDOT MTA. Files must be provided to MDOT MTA upon request. Everything produced, created and developed for the Agency will be considered work for hire.

### 2.3.4 Production of Mechanicals

Create, design, prepare audiovisuals, and submit finished artwork, graphics, desktop publishing and camera-ready mechanicals.

### **2.3.5 Media Placements**

Purchase appropriate traditional and/or social/digital media from local, regional, national or international media sources, as needed.

### **2.3.6 Market Research**

Conduct pre and post testing of advertisements, focus groups, stewardship reports and market research studies e.g. customer satisfaction surveys and quantitative market surveys.

### **2.3.7 Utilization of Services**

When services are requested, the Contractor shall utilize, but not limited to the following:

- A. Production of brochures and other collateral materials
- B. Media planning, buying and analysis (radio, television, digital, social, print, etc.)
- C. Development, production, and implementation of transit service campaigns and/or messages
- D. Promotional materials and items
- E. Posters and point of purchase displays
- F. Audiovisual presentations
- G. Multimedia presentations
- H. Interactive video
- I. Telemarketing
- J. Exhibit design and fabrication
- K. Graphic design and printing
- L. Broadcast production services
- M. Photography services, including framing
- N. Direct mail and fulfillment services
- O. Copywriting
- P. Publications
- Q. Evaluation of advertising results
- R. Research, including methodology, development, implementation and analysis
- S. Public relations services, including community outreach, public hearings, community meetings, conferences, trade shows, and special events
- T. Event planning and implementation
- U. Website hosting, design, development, maintenance and content management
- V. Social media services
- W. Cartography services
- X. Focus groups
- Y. Reporting and analysis services

### **2.3.8 Hours of Operations**

- A. Some departments have special office hours during the year e.g. holidays and summer. If applicable, the Contractor should include their special operating hours throughout the year. The proposal should include how they propose to provide services to MDOT MTA that conducts business throughout the year.

- B. Emergency Services- The Contractor must agree to provide a quick turnaround job quotation for each required project and meet deadlines as required by MDOT MTA. The Contractor shall be available during normal business hours (Monday through Friday 8:00am to 5:30pm) as well as off hours. The Contractor shall provide delivery to MDOT MTA's Communications/Marketing department, or if needed, to various MDOT MTA locations. Please provide a plan to address emergency needs.

### 2.3.9 Maintenance and Materials

The Contractor shall provide for appropriate storage and maintenance of all documents and materials produced for MDOT MTA. The Contractor shall ensure that the MDOT MTA's property is maintained at proper temperature, humidity, and in good condition. The Contractor shall maintain a current inventory listing categorized by description, quantity, storage date, and location of all documents and materials. All materials including broadcast outtakes, and unproduced footage concepts as well as print, radio, and collateral jobs are the sole property of MDOT MTA, and shall be surrendered upon request. At the end of the contract, all documents and materials shall be returned to the MDOT MTA or transferred to a repository designated by the MDOT MTA.

## 2.4 Basis of Compensation

- 2.4.1 The basis of compensation for services performed under the contract as a result of this RFP shall consist of fully loaded labor rates except for reimbursement of under Section 2.4.3 and Section 3.3.4 on an hourly basis for each of the labor categories as quoted in the Financial Proposal Form (**Attachment B**).
- 2.4.2 Fully Loaded Labor Rates- the inclusion in labor category billing rates of all profit, direct labor related costs, and indirect costs associated with performing services listed in the RFP. The indirect costs shall include all costs normally considered General and Administrative Costs including routine traveling costs.
- 2.4.3 2.4.3 Direct Cost Allowance- This allowance is to cover direct costs such as printing, advertising, media buy, etc. Copies of the invoices for these costs shall be included with the invoice to MDOT MTA.

## 2.5 Sample Work Submission

A sample work submission must be included with the Technical Proposal. The following scenario represents an example of responsibilities which could be authorized under this Contract. The responses will be used, in part, by the MDOT MTA to evaluate the Offeror's approach and methodology for the services contemplated in this contract.

### 2.5.1 Scenario: Promote adoption and regular use of transit.

#### 2.5.2 Background

There's an inherent limitation in the prospects for growth in ridership among those who must use MDOT MTA transit services to get around. In the state of Maryland, only eight percent commute via public transportation. That means more than nine out of ten rely on their own vehicles. In Baltimore City, about 18% in a population of 600,000 use public transit. However, with a population about 4.5 times that in the greater Baltimore area (2.75 million), there is an

opportunity to raise awareness of the value of transit to a much larger population.

In June 2018, MDOT MTA launched real-time tracking on its local bus fleet via the Transit app. In 2019, the real-time tracking extended to Commuter Bus. In 2020, MDOT MTA plans to expand real-time tracking to Light Rail, MARC Train, and Metro Subway.

MDOT MTA has made significant increases in local bus on-time performance (OTP) and in 2019 set new agency records with 7 of 12 months achieving an OTP of 70% or higher. In December the agency achieved the monthly high OTP of 74%.

In September 2018, MDOT MTA launched CharmPass, a mobile ticketing app designed to offer riders a more technology-current fare payment option. CharmPass is available for fare payment on Local Bus, Metro SubwayLink, Light RailLink, MARC Train, and Commuter Bus.

### 2.5.3 Scope

Offerors are asked to develop and present the strategy and tactics of a realistic comprehensive communications and marketing campaign to encourage the trial and regular use of transit as a primary mode of transportation. Spec work is encouraged, but not required. **Response to the work order should be limited to twenty (20) typewritten pages. The Offeror shall not include any financial information such as labor costs, proposed fess, direct costs, etc. in these responses.**

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## 3 Contractor Requirements: General

### 3.1 Contract Initiation Requirements

The Contractor shall schedule and hold a kickoff meeting within 10 Business Days of NTP Date. At the kickoff, the Contractor shall furnish a current and complete staffing plan.

### 3.2 End of Contract Transition

**3.2.1** The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to 30 days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:

- A. Provide additional services and support as requested to successfully complete the transition;
- B. Maintain the services called for by the Contract at the required level of proficiency;

**3.2.2** The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:

- A. The Contractor shall provide a draft Transition-Out Plan 60 Business Days in advance of Contract end date.
- B. The Transition-Out Plan shall address at a minimum the following areas:
  - 1) Any staffing concerns/issues related to the closeout of the Contract;
  - 2) Communications and reporting process between the Contractor, the MDOT MTA and the Contract Monitor;
  - 3) Security and system access review and closeout;
  - 4) Plans to complete tasks and any unfinished work items (including open change requests); and
  - 5) Any risk factors with the timing and the Transition-Out schedule and transition process. The Contractor shall document any risk factors and suggested solutions.

### 3.3 Invoicing

#### 3.3.1 General

- A. The Contractor shall e-mail the original of each invoice and signed authorization to invoice to the Contract Monitor and MTA Accounts Payable at e-mail address: [vbattisti@mdot.maryland.gov](mailto:vbattisti@mdot.maryland.gov) and [MTAAccountsPayable@mdot.maryland.gov](mailto:MTAAccountsPayable@mdot.maryland.gov).
- B. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
- C. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
  - 1) Contractor name and address;
  - 2) Remittance address;

- 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
  - 4) Invoice period (i.e. time period during which services covered by invoice were performed);
  - 5) Invoice date;
  - 6) Invoice number;
  - 7) State assigned Contract number;
  - 8) State assigned (Blanket) Purchase Order number(s);
  - 9) Goods or services provided;
  - 10) Amount due; and
  - 11) Any additional documentation required by regulation or the Contract.
- D. Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.
- E. The MDOT MTA reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the MDOT MTA with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- F. Any action on the part of the MDOT MTA, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- G. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- H. Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

### 3.3.2 Invoice Submission Schedule

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

- A. For items of work for which there is one-time pricing (see **Attachment B** – Financial Proposal Form) those items shall be billed in the month following the acceptance of the work by the MDOT MTA.
- B. For items of work for which there is annual pricing, see **Attachment B**– Financial Proposal Form, those items shall be billed in equal monthly installments for the applicable Contract year in the month following the performance of the services.

### 3.3.3 Deliverable Invoicing

- A. Deliverable invoices shall be accompanied by notice(s) of acceptance issued by the State for all invoices submitted for payment. Payment of invoices will be withheld if a signed DPAF is not submitted (see online example at [http://doit.maryland.gov/contracts/Documents/\\_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf](http://doit.maryland.gov/contracts/Documents/_procurementForms/DeliverableProductAcceptanceForm-DPAFsample.pdf)).



- B. Payment for deliverables will only be made upon completion and acceptance of the deliverables as defined in **Section 2.4**.
- C. For the purposes of the Contract an amount will not be deemed due and payable if:
- D. The amount invoiced is inconsistent with the Contract;
- E. The proper invoice has not been received by the party or office specified in the Contract;
- F. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- G. The item or services have not been accepted;
- H. The quantity of items delivered is less than the quantity ordered;
- I. The items or services do not meet the quality requirements of the Contract;
- J. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- K. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
- L. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

#### **3.3.4 Travel Reimbursement**

- A. There shall be no reimbursement for Routine Travel. Contractor shall not be reimbursed for Non-Routine Travel without prior Contract Monitor approval.
- B. Routine Travel is defined as travel within a 50-mile radius of the MDOT MTA's base location or the Contractor's facility, whichever is closer to the consulting site. For the purposes of this RFP, the MDOT MTA base location is 6 St. Paul Street, Baltimore, MD 21202. There will be no payment for labor hours for travel time or reimbursement for any travel expenses for work performed within these radiuses or at the Contractor's facility.
- C. Non-routine Travel is defined as travel beyond the 50-mile radius of MDOT MTA's base location, as identified in the RFP, or the Contractor's facility, whichever is closer to the consulting site. Non-routine travel will be reimbursed according to the State's travel regulations and reimbursement rates, which can be found at: [www.DBM.maryland.gov](http://www.DBM.maryland.gov) - search: Fleet Management. If non-routine travel is conducted by automobile, the first 50 miles of such travel will be treated as routine travel and as described in **Section 3.3.4.A** and will not be reimbursed. The Contractor may bill for labor hours expended in non-routine traveling beyond the identified 50-mile radius, only if so, specified in the RFP or Work Order.

### **3.4 Liquidated Damages**

#### **3.4.1 DBE Liquidated Damages**

DBE liquidated damages are identified in Attachment M.

#### **3.4.2 Liquidated Damages other than DBE**

This section is inapplicable to this RFP.

### 3.5 Disaster Recovery and Data

This section is inapplicable to this RFP.

### 3.6 Insurance Requirements

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

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

**Commercial General Liability Insurance** with minimum limits of \$5,000,000 per occurrence, written on an occurrence form. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to “drop down” to become primary in the event the primary limits are reduced or aggregate limits are exhausted.

The coverage shall include:

- Personal and Advertising Injury coverage,
- Products and Completed Operations coverage,
- Independent Contractors coverage,
- Terrorism coverage,
- XCU coverage (explosion, collapse, and underground hazards)
- Delete Contractual Liability exclusion (applicable to work to be performed within 50 feet of railroad tracks) must be removed.
- Additional Insured Endorsement naming Maryland Department of Transportation, MDOT Maryland Transit Administration and The State of Maryland.
- Waiver of subrogation rights in favor of Maryland Department of Transportation, MDOT Maryland Transit Administration and The State of Maryland.
- In addition to procuring and maintaining this insurance during the duration of the contract, the Contractor shall continue to procure and maintain products and completed operations liability insurance coverage through (a) the applicable statute of repose period or (b) 10 years, whichever period is longer.

**Workers' Compensation Insurance** meeting the statutory requirements of the jurisdiction where the work will be performed for employees and or volunteers, including Employer's Liability coverage with minimum limits of \$1,000,000 each accident or disease.

Longshore & Harbor Workers' Compensation Act Endorsement (work performed on or over navigable waterways) to cover contractor's employees for wages, transportation, maintenance and cure, in accordance with applicable laws.

Maritime Coverage Endorsement (Jones Act) for work upon navigable waterways and barges, tug boats, and all other vessels on the ocean and all intracoastal rivers and canals, covering drivers, divers, and underwater personnel, seamen, masters and members of a crew, providing remedy for damage or injury, in accordance with applicable laws.

Waiver of subrogation rights in favor of Maryland Department of Transportation, MDOT Maryland Transit Administration and The State of Maryland.

**Commercial Automobile Liability Insurance** with minimum limits of \$1,000,000 per occurrence covering contractor against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. Maryland Department of

Transportation, MDOT Maryland Transit Administration and The State of Maryland shall be added as an additional insured on the policy.

[X] Waiver of subrogation rights in favor of Maryland Department of Transportation, MDOT Maryland Transit Administration and The State of Maryland.

[ ] MCS-90 Endorsement for work involving the transportation or disposal of any hazardous material or waste off of the jobsite. If the MCS-90 Endorsement is required, minimum auto liability limits of \$5,000,000 per occurrence are also required.

[ ] **Railroad Protective Liability Insurance** (hereinafter "RRPL") issued to MDOT Maryland Transit Administration as the Named Insured with minimum limits of \$2,000,000 per occurrence, \$6,000,000 in the aggregate and covering the liability of all Permitted Parties or The Contractor. Coverage is for work to be performed within fifty (50) feet (on, above, adjacent to or underneath) of MTA's railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Permitted Party or The Contractor resulting from performance of the work which is the subject of this Permit / Contract.

This insurance is available through MTA with a separate application through MTA's Blanket Rail Road Protective Liability Insurance Program. This program is not an Owner Controlled Insurance Program coverage. If the Contractor chooses to purchase this insurance through the standard insurance market, a copy of the original policy must be forwarded to MTA for review prior to construction.

[ ] **Professional Liability (Errors and Omissions) Insurance** appropriate to the Consultant's profession with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate to cover liability resulting from any error or omission in the performance of professional services under this contract. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

[ ] **Contractor's Pollution Liability Insurance** with minimum limits of \$5,000,000 per occurrence for work involving environmentally regulated substances or hazardous material exposures, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including cleanup costs and defense. This insurance may be supplied by the subcontractor performing the work if the Contractor is not performing any of the relevant work and providing that MTA and the Contractor are named as additional insureds on the subcontractor's policy. In the event the Contractor or its subcontractor transports hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the MCS-90 Endorsements shall be attached to the Contractor's (or subcontractor's) auto liability policy.

[ ] **All Builder's Risk Insurance:** To include fire, extended coverage, vandalism, and malicious mischief, flood, and earthquake. This policy is to be written to completed value plus ten (10) percent of the contract price. The policy shall include the Administration as a name insured as their interest may appear.

[ ] **Pollution Legal Liability Insurance** (Non-Owned Disposal Site Coverage) with minimum limits of \$5,000,000 per occurrence. Coverage may be maintained in one of the following ways:

- A standalone policy;
- Non-Owned Disposal Site Endorsement on Contractor's Pollution Liability policy naming MTA as an additional insured; or

- Contractor may designate the disposal site and provide a COI from the disposal facility naming Contractor and MTA as additional insureds.

[ ] **Property Insurance (including flood and earthquake, if warranted) for all-risk coverage including terrorism, physical destruction and theft for any MTA machinery or equipment in the Contractor's / Vendor's care, custody or control with limits not less than the full replacement cost of the damaged or stolen property.**

[ ] **Inland Marine Insurance** with minimum limits to cover full property values of property in transit for the purposes of the MTA Metro Rail Car Purchase Agreement and Maintenance and Installation of ATC Systems. This insurance shall be all risk coverage written on replacement basis to remain in force until such time MTA accepts railcar purchase as final and ATC project is fully complete. Coverage is to include property in transit and property in the custody of Contractor/Vendor.

#### Primary Coverage Clarification

All parties to this contract hereby agree that the contractor's coverage will be primary in the event of a loss.

Umbrella/ Excess Liability shall be form following, Primary and Non-Contributory, and excess above the Commercial General Liability, Auto, and Employers Liability.

#### Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to MTA Procurement Office. Any failure to comply with this provision will not affect the insurance coverage provided to MDOT Maryland Transit Administration. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

### **3.4.2 Insurance Company Qualifications**

3.4.2.1 The insurance required in this Article of this contract must be issued by companies that are:

- A. Acceptable to the MTA
- B. Licensed to do business in the State of Maryland.

### **3.4.3 Policy Requirements**

3.4.3.1 The recommended Contractor awardee shall deliver to the MTA representative within 10 days of notification of proposed contract award an accurate and true Certificates of Insurance that show that:

3.4.3.2 The Contractor has procured coverage stated in this Article of this contract.

3.4.3.3 The Maryland Department of Transportation, the State of Maryland and the MTA has been named as an additional insured.

3.4.3.4 The policies will not be canceled, terminated or modified without 30 days prior written notice to the Administration. Certificates of Insurance are acceptable in lieu of true copies of the

policies if the policy writer notes on the Certificate, or through attachment to the Certificate, all policy exclusions.

3.4.3.5 The Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.7 Security Requirements**

The following requirements are applicable to the Contract:

#### **3.7.1 Employee Identification**

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- C. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

#### **3.7.2 Security Clearance / Criminal Background Check**

- A. A criminal background check for any Contractor Personnel providing any services shall be completed prior to each Contractor Personnel providing any services under the Contract.
- B. The Contractor shall obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
- C. The Contractor shall provide certification to the MDOT MTA that the Contractor has completed the required criminal background check described in this RFP for each required Contractor Personnel prior to assignment, and that the Contractor Personnel have successfully passed this check.
- D. The CJIS criminal record check of each Contractor Personnel who will work on State premises shall be reviewed by the Contractor for convictions of any of the following crimes described in the Annotated Code of Maryland, Criminal Law Article:
  - 1) §§ 6-101 through 6-104, 6-201 through 6-205, 6-409 (various crimes against property);
  - 2) any crime within Title 7, Subtitle 1 (various crimes involving theft);
  - 3) §§ 7-301 through 7-303, 7-313 through 7-317 (various crimes involving telecommunications and electronics);
  - 4) §§ 8-201 through 8-302, 8-501 through 8-523 (various crimes involving fraud);

- 5) §§9-101 through 9-417, 9-601 through 9-604, 9-701 through 9-706.1 (various crimes against public administration); or
- 6) a crime of violence as defined in CL § 14-101(a).

### **3.7.3 On-Site Security Requirement(s)**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

## **3.8 Problem Escalation Procedure**

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

**3.8.2** The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.

**3.8.3** The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- A. The process for establishing the existence of a problem;
- B. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- C. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- D. Expedited escalation procedures and any circumstances that would trigger expediting them;
- E. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
- G. A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

## **3.9 SOC 2 Type 2 Audit Report**

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

## **3.10 Experience and Personnel**

### **3.10.1 Preferred Offeror Experience**

The following experience is expected and will be evaluated as part of the Technical Proposal (see the Offeror experience, capability and references evaluation factor from **Section 6.2**):

- A. Demonstrated at least five years of experience in full-service marketing, communications and related service work. The Offeror shall provide with its Technical Proposal a written description of at least three applicable projects. The description should include the following for each project:
  - 1) Name and type of project
  - 2) Brief description of how the project is relevant to this scope of work
  - 3) Total cost of the project
  - 4) The name, address, telephone number, and email address of a person knowledgeable of the firm's work on the project. The references must be current, as not being able to be reached will result in no reference.
- B. Prior experience in conducting campaigns in multiple languages.
- C. Demonstrated experience with marketing or communications campaigns with transportation or related type of agency.
- D. The Offeror shall demonstrate financial stability and responsible business practices for all organizations proposed as part of this proposal (including their own organization). The Offeror shall provide:
  - 1) Identify the business name, address, telephone number, and type of ownership.
  - 2) How many years has each of the organizations that make up the proposed team been in business?
  - 3) Does the Offeror have a minimum capitalized billing of \$1,000,000.00 within the past two years?
  - 4) Have any organizations on the proposed team, or any officer or partner thereof, failed to complete a contract according to the original contract within the past five years? If so, provide the details.
  - 5) Have any organizations in the proposed team had a claim made against a performance bond? If so, provide the details.
- E. Corporate Experience in Communications and Marketing Strategies
  - 1) Technical experience demonstrated in providing marketing outreach as indicated in the Statement of Work
    - a) Experience working with public agencies
    - b) Strength and stability of firm and subcontractors
    - c) Demonstrated results on past projects
    - d) Demonstrates capable, effective, and efficient past performance
    - e) Committed to customer satisfaction
    - f) Demonstrates sufficient breadth and depth of experience
  - 2) Technical Approach
    - a) Understanding of Work
    - b) Performance Expectations
    - c) Appropriateness of Approach

- d) Innovative Solutions and Proven Effectiveness
- e) Measurement techniques (how to quantify results)
- 3) Management Approach
  - a) Demonstrated understanding of the requirements of the Statement of Work
  - b) Management Philosophy
  - c) Corporate Resources
    - i) Resumes including
      - (1) Similar projects worked on and year performed
      - (2) Education
      - (3) Availability for this Project
- 4) Master Integrated Marketing Programs

### 3.10.2 Number of Personnel to Propose

As part of the Proposal evaluation, Offerors shall propose personnel who are expected to be available as of the start date specified in the Notice to Proceed (NTP Date). Offerors shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the MDOT MTA. Offerors may generally describe planned positions in a Staffing Plan. Such planned positions may not be used as evidence of fulfilling personnel minimum qualifications.

### 3.10.3 Key Personnel Identified

For the Contract, the following positions to be identified in the Technical Proposal will be considered Key Personnel and shall be required to meet the qualifications stated in **Section 3.10**.

- A. Account Supervisor- This Position requires a bachelor's degree in Advertising or related field and at least seven years of experience in account supervision. The Account Supervisor develops and manages the client relationship and leads the development and presentation of strategic marketing recommendations.
- B. Account Executive- This position requires a bachelor's degree in Advertising or related field and at least five years of experience in account management. The Account Executive serves as the liaison between the Contractor, subcontractors (if any), and the MDOT MTA. They also manage the day-to-day needs of the MDOT MTA.
- C. Creative Director- This position requires a bachelor's degree in marketing, advertising, or related field and at least ten years of experience consulting with clients at the highest level. The Creative Director supervises the marketing agency's creative team and leads the development of advertising and marketing campaigns for MDOT MTA.
- D. Art Director- This position requires a bachelor's degree in advertising, graphic design, or a related field and at least five years of experience in this field. The Art Director is responsible for visually conveying the overall aspects of an advertising or media campaign and may coordinate the work of the other design staff.
- E. Copywriter- This position requires a bachelor's degree in Advertising or a related field and at least seven years of experience in this field. The Copywriter is responsible for generating original copy ideas that translate a client's core messages and grab the attention of the target audience. This can include creating slogans, body copy, scripts, and jingles.



- F. Graphic Designer- This position requires a bachelor's degree in graphic design or a related field and at least five years of experience in this field. The Graphic Designer is responsible for creating the visual versions of brands, messages, and communications.
- G. Website Designer- This position requires a bachelors' degree in Computer Science, Graphic Design, or a related field and at least five years' experience in web design. The Website designer is responsible for creating the design, layout, and coding of the website which incorporates copy, pictures, graphics, and video.
- H. Website Content Manager- This position requires a bachelor's degree in computer science, marketing, or a related field and at least five years of writing experience and three years of website content management experience. The Website Content Manager is responsible for the overall content of the website in addition to managing corresponding analytics.

#### 3.10.4 Labor Categories

- A. The Labor Categories are identified and described below. To be responsive to this RFP, Offerors must be capable of providing personnel meeting the minimum requirements for all the labor categories listed. Offerors shall submit a Financial Proposal Form (**Attachment B**) that provides labor rates for all labor categories for all Contract years (initial term and any option periods). Actual resumes shall be provided only for Key Personnel as described in **Section 3.10.4**. Resumes for resources provided later shall be coordinated by the Contract Monitor per the Technical Proposal and, if requested in a Work Order, shall be governed by the Work Order process.
- B. Each Labor Category includes Titles, Position Description, Education and Experience (General and Specialized).
- C. Education and experience described below in the Labor Category constitute the minimum requirements for candidates performing work under this RFP. All experience required must have occurred within the most recent ten (10) years.
- D. Other Labor Categories and requirements are as follows:
  - 1) Media Director- This position requires a bachelor's degree in advertising or a related field and has at least seven years of experience in this role. This position can manage a media department and develops plans for media buying, ad placement, and budget management.
  - 2) Media Planner/Buyer- This position requires a bachelor's degree in advertising or related field and at least five years of experience in this field. This position identifies the most suitable media platforms to advertise and achieve objectives of marketing campaigns.
  - 3) Marketing Specialist- This position requires a bachelor's degree in marketing, advertising or related field and at least five years of experience in this field. The Marketing Specialist works with the account team to develop and execute strategies and helps develop the overall marketing plan.
  - 4) Account Coordinator- this position requires a bachelor's degree in Advertising, marketing, or a related field and at least two years of experience in this field. The Account Coordinator provides administrative support to the account team and assists to ensure the completion of projects and campaigns.
  - 5) Agency Principle- This position requires a bachelor's degree in advertising, marketing, communications, or a related field and at least seven years of experience.

The Agency Principle is responsible for leading the entire agency and its day to day operations.

- 6) Market Researcher- This position requires a bachelor's degree in marketing, statistics, or a related field and at least three years of experience in this field. This position may provide both qualitative research and quantitative research, facilitate workshops, conduct/compile surveys, etc.
- 7) Public Relations Coordinator- this position requires a bachelor's degree in journalism, public relations, English or a related field and at least two years of experience in this field. This position develops strategies and campaigns to support MDOT MTA's public image as well as monitor media coverage through communications channels and media platforms.
- 8) Broadcast Production Manager/Producer- This position requires a bachelor's degree in advertising or a related field and at least seven years of experience in this field. This position manages the development of broadcast media from pre- to post-production.
- 9) Production Supervisor- This position requires a bachelor's degree in advertising or a related field and at least five years of experience in this field. This position works with the account team to coordinate and ensure the flow of projects from job initiation to completion.

### **3.10.5 Contractor Personnel Experience Equivalency (including Key Personnel submitted in response to this RFP)**

- A. A Substitution of Education for Experience: A Master's Degree may be substituted for two years of the general and specialized experience for those labor categories requiring a bachelor's degree. Substitution shall be reviewed and approved by the State at its discretion.
- B. Substitution of Experience for Education: Substitution of experience for education may be permitted at the discretion of the State.

## **3.11 Substitution of Personnel**

### **3.11.1 Continuous Performance of Key Personnel**

When Key Personnel are identified for the Contract, the following apply:

- A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Monitor or specified in the Contract, Key Personnel shall be assigned to the State of Maryland as a dedicated resource.
- B. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under the Contract without the prior written approval of the Contract Monitor.
- C. The provisions of this section apply to Key Personnel identified in any Task Order proposal and agreement, if issued, and any Work Order Request and Work Order, if issued.

### **3.11.2 Definitions**

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

- A. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole

discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.

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

### 3.11.3 Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in **Section 3.11.4**.

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

### 3.11.4 Replacement Circumstances

- A. Directed Personnel Replacement
- 1) The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, MDOT MTA policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.4.A.2**.
  - 2) If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

- 3) Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
- 4) Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) If the Contract Monitor determines to direct substitution under **3.11.4.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.
- 6) In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.11.4.A.1** of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

**B. Key Personnel Replacement**

- 1) To replace any Key Personnel in a circumstance other than as described in **3.11.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.11.3** to the Contract Monitor at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
- 2) **Key Personnel Replacement Due to Sudden Vacancy**
  - a) The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1**.
  - b) Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.3** within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) **Key Personnel Replacement Due to an Indeterminate Absence**
  - a) If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under **Section 3.11.3**.
  - b) However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the

replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

### 3.11.5 Substitution Prior to and Within 30 Days After Contract Execution

Prior to Contract execution or within thirty (30) days after Contract execution, the Offeror may not substitute proposed Key Personnel except under the following circumstances (a) for actual full-time personnel employed directly by the Offeror: the vacancy occurs due to the sudden termination, resignation, or approved leave of absence due to an Extraordinary Personal Event, or the death of such personnel; and (b) for any temporary staff, subcontractors or 1099 contractors: the vacancy occurs due to an Incapacitating event or the death of such personnel. To qualify for such substitution, the Offeror must demonstrate to the State's satisfaction the event necessitating substitution. Proposed substitutions shall be of equal caliber or higher, in the State's sole discretion. Proposed substitutes deemed by the State to be less qualified than the originally proposed individual may be grounds for pre-award disqualification or post-award termination.

### 3.12 Disadvantaged Business Enterprise (DBE) Reports

If this solicitation includes an DBE Goal (see **Section 4.26**), the Contractor shall:

- A. Submit the following reports by the 10th of each month to the Contract Monitor and the MDOT MTA's DBE Liaison Officer:
  - 1) A Prime Contractor Paid/Unpaid DBE Invoice Report (Attachment MDOT Form F) listing any unpaid invoices, over 45 days old, received from any certified DBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - 2) (If Applicable) An DBE Prime Contractor Report (Attachment MDOT Form G) identifying an DBE prime's self-performing work to be counted towards the DBE participation goals.
- B. Include in its agreements with its certified DBE subcontractors a requirement that those subcontractors submit an DBE Subcontractor Paid/Unpaid Invoice Report (**Attachment MDOT Form H**) by the 10th of each month to the Contract Monitor and the MDOT MTA's DBE Liaison Officer that identifies the Contract and lists all payments to the DBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- C. Maintain such records as are necessary to confirm compliance with its DBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all DBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the DBE participation obligations. Contractor must retain all records concerning DBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from DBE subcontractors.

### 3.13 Veteran Small Business Enterprise (VSBE) Reports

There is no VSBE goal for this contract.

### 3.14 Work Orders

- A. Additional services and resources will be provided via a Work Order process. Work shall not begin in advance of a fully executed Work Order. A Work Order may be issued for either fixed price or time and materials (T&M) pricing. T&M Work Orders will be issued in accordance with pre-approved Labor Categories with the fully loaded rates proposed in **Attachment B**.
- B. Work Order Requests for the provision of services or resources that are within the scope of this RFP will be issued to the Contractor. The Work Order Request will include:
  - 1) Technical requirements and description of the service or resources needed;
  - 2) Performance objectives and/or deliverables, as applicable;
  - 3) Due date and time for submitting a response to the request; and
- C. The Contractor shall e-mail a response to the Contract Monitor within the specified time and include at a minimum:
  - 1) A response that details the Contractor's understanding of the work;
  - 2) A price to complete the Work Order Request.
  - 3) A description of proposed resources required to perform the requested tasks, with labor categories listed in accordance with **Attachment B**.
  - 4) An explanation of how tasks shall be completed. This description shall include proposed subcontractors and related tasks.
  - 5) Contractor's expectations for State-furnished information, work site, and/or access to equipment, facilities, or personnel
  - 6) The proposed personnel resources, including any subcontractor personnel, to complete the task.
- D. For a T&M Work Order, the Contract Monitor will review the response and will confirm the proposed labor rates are consistent with this RFP. For a fixed price Work Order, the Contract Monitor will review the response and will confirm the proposed prices are acceptable.
- E. The Contract Monitor may contact the Contractor to obtain additional information, clarification or revision to the Work Order, and will provide the Work Order to the Procurement Officer for a determination of compliance with the Contract and a determination whether a change order is appropriate. Written Procurement Officer approval is required before Work Order execution by the State.
- F. Proposed personnel on any type of Work Order shall be subject to MDOT MTA approval. The Contractor shall furnish resumes of proposed personnel specifying the labor category(ies) proposed. The Contract Monitor shall have the option to interview the proposed personnel and, in the event of an interview or not, shall notify the Contractor of acceptance or denial of the personnel.
- G. Performance of services under a Work Order shall commence consistent with an NTP issued by the Contract Monitor for such Work Order.

### 3.15 Additional Clauses

#### 3.15.1 The State of Maryland's Commitment to Purchasing Environmentally Preferred Products and Services (EPPs)

[Maryland's State Finance & Procurement Article §14-410](#) defines environmentally preferable purchasing as “the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose.” Accordingly, Bidders are strongly encouraged to offer EPPs to fulfill this contract, to the greatest extent practicable.

#### 3.15.2 No-Cost Extensions

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

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## 4 Procurement Instructions

### 4.1 Pre-Proposal Conference

- 4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.
- 4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an DBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.
- 4.1.3 It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference to ensure that all parties understand the requirements of the contract and the DBE Goal.
- 4.1.4 DBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.
- 4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 eMMA**).
- 4.1.6 Those wishing to attend the web conference may request a meeting invitation by emailing Heather Martin at [hmartin@mdot.maryland.gov](mailto:hmartin@mdot.maryland.gov) no later than 2:00 PM on February 1, 2021 at 11:59pm. An invitation e-mail is required for registration, and therefore attendance. Upon receipt of the email, the Procurement Officer will reply with a registration email with a link that may be used to register for the conference. Registration must be completed by 2:00 PM February 2, 2021.

### 4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to [emma.maryland.gov](http://emma.maryland.gov), click on "New Vendor? Register Now" to begin the process, and then follow the prompts.

### 4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable DBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (AGY-20-007-SR, Communications and Marketing Services), and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.



- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMMA.
- 4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the MDOT MTA unless it issues an amendment in writing.

#### 4.4 Procurement Method

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

#### 4.5 Proposal Due (Closing) Date and Time

- 4.5.1 Technical Proposals shall be submitted as attachments to your Bid on eMMA (eMMA does not refer to submittals as Proposals). Please allow enough time to upload all of the Technical Proposal documents before the due date and time. eMMA automatically stops accepting any responses at the due date and time. Only submit Technical Proposals and Attachments as described in Section 5 and 6 of this RFP. **DO NOT SUBMIT FINANCIAL PROPOSALS ON eMMA.**
- 4.5.2 Financial Proposals shall be submitted in paper form to the Procurement Officer at:

MDOT MTA Procurement Department  
6 St. Paul Street, 7<sup>th</sup> Floor  
Baltimore, MD 21202  
Attention: Heather Martin

Clearly label the outside of the sealed Documents: “**SEALED FINANCIAL PROPOSAL FOR AGY-21-007-SR**”. Inside of the sealed envelope, there will be the SEALED Financial Proposal which will consist of:

- a) One original Financial Proposal Form
- b) One original “wet” signature Signature Page (Attachment B-1) and two envelopes containing two Flash Drives each, one flash drive envelope containing the entire Technical Proposal, and so labeled with the Offeror’s name and the other flash drive containing a Redacted Technical Proposal that has all confidential information removed, so labeled with the Offeror’s name. The second flash drive envelope shall contain two flash drives of the Financial Proposal, one complete Financial Proposal so labeled with the Offeror’s name and the other with the redacted Financial Proposal labeled with the Offeror’s name.

Financial Proposals and the four FLASH Drives are due at the date and time that the Proposals are Due. Send the Financial Proposal Packages so that it arrives by the due date and time required. With the carriers having reduced

deliveries, take that into account. It is best to send these packages/envelopes with a proof of delivery.

- 4.5.3 Requests for extension of this date or time shall not be granted.
- 4.5.4 Proposals may be modified or withdrawn in eMMA up until the date and time of “Bid Due”. If the Financial Proposal has already been submitted, it may be withdrawn or amended by emailed written notice received by the Procurement Officer before the date and time set forth in the Key Information Summary Sheet for receipt of Proposals and the eMMA “Bid Due Date and time.” If the Financial Proposal is modified, the so label “Modified Financial Proposal” envelope must be received by the date and time of the Bid Due Date.
- 4.5.5 Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.
- 4.5.6 Potential Offerors not responding to this solicitation are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

#### 4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

#### 4.7 Economy of Preparation

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

#### 4.8 Public Information Act Notice

- 4.8.1 The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP **Section 5.3.2.B** “Claim of Confidentiality”). This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.
- 4.8.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

#### 4.9 Award Basis

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

#### 4.10 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Oral presentations are considered part of the Technical Proposal. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal. The Procurement Officer will notify Offerors of the time and place of oral presentations.

#### 4.11 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 180 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

#### 4.12 Revisions to the RFP

- 4.12.1 If the RFP is revised before the due date for Proposals, the MDOT MTA shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.
- 4.12.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal.
- 4.12.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4.12.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.
- 4.12.5 Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

#### 4.13 Cancellations

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

- 4.13.4** If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

#### **4.14 Incurred Expenses**

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

#### **4.15 Protest/Disputes**

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

#### **4.16 Offeror Responsibilities**

- 4.16.1** Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.
- 4.16.2** All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established DBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see **Section 4.26** "Minority Participation Goal" and **Section 4.27** "VSBE Goal").
- 4.16.3** If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.16.4** A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

#### 4.17 Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror's Proposal. The MDOT MTA reserves the right to accept or reject any exceptions.**

#### 4.18 Proposal Affidavit

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

#### 4.19 Contract Affidavit

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

#### 4.20 Compliance with Laws/Arrearages

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

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

#### 4.21 Verification of Registration and Tax Payment

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

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

#### 4.22 False Statements

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

**4.22.1** In connection with a procurement contract a person may not willfully:

- A. Falsify, conceal, or suppress a material fact by any scheme or device.
- B. Make a false or fraudulent statement or representation of a material fact.

- C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- 4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.
  - 4.22.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

#### 4.23 Payments by Electronic Funds Transfer

By submitting a Proposal in response to this solicitation, the Offeror, if selected for award:

- 4.23.1 Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.
- 4.23.2 Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:  
[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf).

#### 4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Pay Requirements" (see **Attachment M**). Additional information is available on GOSBA's website at:  
<http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

#### 4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the MDOT MTA may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.

**4.25.3** “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.

**4.25.4** In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

- A. The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:
  - 1) The RFP;
  - 2) Any amendments and requests for best and final offers;
  - 3) Pre-Proposal conference documents;
  - 4) Questions and responses;
  - 5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
  - 6) Notices of award selection or non-selection; and
  - 7) The Procurement Officer’s decision on any Proposal protest or Contract claim.
- B. The Offeror or potential Offeror may use eMMA or e-mail to:
  - 1) Ask questions regarding the solicitation;
  - 2) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;
  - 3) Submit a "No Proposal Response" to the RFP.
- C. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail or other electronic means if authorized by the Procurement Officer or Contract Monitor.

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

- A. Filing of Contract claims;
- B. Submission of documents determined by the MDOT MTA to require original signatures (e.g., Contract execution, Contract modifications); or
- C. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

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

## 4.26 DBE Participation Goal

### 4.26.1 Establishment of Goal and Subgoals

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

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

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

**A Bidder that does not commit to meeting the entire DBE participation goal outlined in this Section 4.26 must submit a request for waiver with its bid submission that is supported by good faith efforts documentation to meet the DBE goal made prior to submission of its Bid as outlined in Attachment MDOT DBE Form E, Good Faiths Guidance and Documentation. Failure of a Bidder to properly complete, sign, and submit Attachment MDOT DBE Form E at the time it submits its Bid(s) to the IFB will result in the State's rejection of the Bidder's Bid for the applicable Service Category. This failure is not curable.**

### 4.26.2 Attachments.

- A. MDOT DBE Forms A - H – The following Minority Business Enterprise participation instructions, and forms are provided to assist Bidders:
1. Attachment MDOT DBE Form A- DBE Utilization and Fair Solicitation Affidavit (must be submitted with Bid)
  2. Attachment MDOT DBE Form B- DBE Participation Schedule (must be submitted with Bid)
  3. Attachment MDOT DBE Form C- Outreach Efforts Compliance Statement
  4. Attachment MDOT DBE Form D- DBE Subcontractor Project Participation Affidavit
  5. Attachment MDOT DBE/DBE Form E- Good Faiths Guidance and Documentation
  6. Attachment MDOT Form F- Prime Contractor Paid/Unpaid DBE Invoice Report
  7. Attachment MDOT Form G- DBE Prime Contractor Report



8. Attachment MDOT Form H- Subcontractor Paid/Unpaid DBE Invoice Report
- B. The Bidder shall include with its Bid a completed DBE Utilization and Fair Solicitation Affidavit (**Attachment MDOT DBE Form A**) whereby:
1. The Bidder acknowledges the certified DBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that DBE subcontractors were treated fairly in the solicitation process; and
  2. The Bidder responds to the expected degree of DBE participation, as stated in the solicitation, by identifying the specific commitment of certified DBEs at the time of Bid submission. The Bidder shall specify the percentage of total contract value associated with each DBE subcontractor identified on the DBE participation schedule, including any work performed by the DBE prime (including a prime participating as a joint venture) to be counted towards meeting the DBE participation goals.
  3. The Bidder requesting a waiver should review **Attachment MDOT DBE Form E** (Good Faiths Guidance and Documentation) prior to submitting its request.

*If the Bidder fails to submit a completed Attachments MDOT DBE Forms A and B with the Bid as required, the Procurement Officer shall determine that the Bid is not reasonably susceptible of being selected for award.*

**4.26.3** Bidders are responsible for verifying that each DBE (including any DBE prime and DBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment MDOT DBE Form B** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

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

- A. Outreach Efforts Compliance Statement (**Attachment MDOT DBE Form C**);
- B. DBE Subcontractor/Prime Project Participation Certification (**Attachment MDOT DBE Form D**); and
- C. Any other documentation required by the Procurement Officer to ascertain Bidder responsibility in connection with the certified DBE subcontractor participation goal or any applicable subgoals.
- D. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall DBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully documented waiver request that complies with COMAR 21.11.03.11.

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

- 4.26.5** A current directory of certified DBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://DBE.mdot.maryland.gov/directory/>. The most current and up-to-date information on DBEs is available via this website. **Only MDOT-certified DBEs may be used to meet the DBE subcontracting goals.**
- 4.26.6** The Bidder that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment MDOT DBE/DBE Form E**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 4.26.7** All documents, including the DBE Utilization and Fair Solicitation Affidavit (**Attachment MDOT DBE Form A**) and DBE Participation Schedule (**Attachment MDOT DBE Form B**), completed and submitted by the Bidder in connection with its certified DBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid for order of precedence purposes (see Contract – **Attachment M, Section 2.1**).
- 4.26.8** The Bidder is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the DBE program and pertinent Contract provisions. (See Contract – **Attachment M, Liquidated Damages for DBE, section 39**).
- 4.26.9** As set forth in COMAR 21.11.03.12-1(D), when a certified DBE firm participates on a contract as a prime contractor (including a joint-venture where the DBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified DBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the DBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the DBE participation subgoals, if any, established for the contract.
- In order to receive credit for self-performance, an DBE prime must list its firm in Section 4A of the DBE Participation Schedule (**Attachment MDOT DBE Form B**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the subgoals, the DBE prime must also identify other certified DBE subcontractors [see Section 4B of the DBE Participation Schedule (**Attachment MDOT DBE Form B**)] used to meet those goals. If dually certified, the DBE prime can be designated as only one of the DBE subgoal classifications but can self-perform up to 100% of the stated subgoal.
- As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified DBE firm, including an DBE prime, can only be counted towards the DBE participation goal(s) if the DBE firm is performing a commercially useful function on the Contract. Refer to DBE forms (**Attachment MDOT DBE Form D**) for additional information.

#### 4.27 VSBE Goal

There is no VSBE participation goal for this procurement.

#### 4.28 Living Wage Requirements

Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.

- A. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dlir.state.md.us/labor/prev/livingwage.shtml>.
- B. Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- C. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
  - 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier 1 Contract.
  - 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
  - 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
  - 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.

- D. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- E. The Offeror shall identify in the Proposal the location from which services will be provided.
- F. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage.

#### 4.29 Federal Funding Acknowledgement

There are programmatic conditions that apply to the Contract due to federal funding (see **Attachment G and Appendix 5**). The Contract contains federal funds. The conditions that apply to all federal funds awarded by the MDOT MTA are contained in Federal Funds **Attachment G and Appendix 5**. Any additional conditions that apply to this particular federally funded contract are contained as supplements to Federal Funds **Attachment G and Appendix 5** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions, which are part of the Contract.

#### 4.30 Conflict of Interest Affidavit and Disclosure

- 4.30.1** The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal.
- 4.30.2** By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.
- 4.30.3** Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4** Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that "an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement." Any Offeror submitting a Proposal in violation of this provision shall be classified as "not responsible." See COMAR 21.05.03.03.

#### 4.31 Non-Disclosure Agreement

##### 4.31.1 Non-Disclosure Agreement (Offeror)

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

##### 4.31.2 Non-Disclosure Agreement (Contractor)

All Offerors are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment I**. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite

processing, it is suggested that this document be completed and submitted with the Proposal.

#### **4.32 HIPAA - Business Associate Agreement**

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

#### **4.33 Nonvisual Access**

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

#### **4.34 Mercury and Products That Contain Mercury**

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

#### **4.35 Location of the Performance of Services Disclosure**

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

#### **4.36 Department of Human Services (DHS) Hiring Agreement**

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

#### **4.37 Small Business Reserve (SBR) Procurement**

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

#### **4.38 Bonds**

##### **4.38.1 Proposal Bond**

Each Offeror must submit with its Proposal a Proposal Bond or other suitable security, as summarized in **4.38.3**, in the amount of five percent (5%) of the Total Evaluated Price, guaranteeing the availability of the goods and services at the offered price for 180 days after the due date for receipt of Proposals.

The bond shall be in the form provided in **Appendix 3**.

The Offeror may request a release of the bond after the date of the award in return for a release signed by the Contractor and accepted by the MDOT MTA.

The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

##### **4.38.2 Performance Bond**

- A. The successful Offeror shall deliver a Performance Bond, or other suitable security, to the State after notification of recommended award.

- B. The successful Offeror must submit a Performance Bond, or other suitable security in the amount of \$1,000,000.00, guaranteeing that the Contractor shall well and truly perform the Contract.
- C. The Performance Bond shall be in the form provided in **Appendix 4** and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the State, or other acceptable security for bond as described in COMAR 21.06.07, as summarized in **4.38.3**.
- D. The Performance Bond shall be maintained throughout the term of the Contract, and renewal option period(s), if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the State.
- E. The Performance Bond may be renewable annually. The Contractor shall provide to the State, 30 days before the annual expiration of the bond, confirmation from the surety that the bond will be renewed for the following year. Failure to timely provide this notice shall constitute an event of default under the Contract. Such a default may be remedied if the Contractor obtains a replacement bond that conforms to the requirements of the Contract and provides that replacement bond to the State prior to the expiration of the existing Performance Bond.
- F. The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.
- G. After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the MDOT MTA's sole discretion. If any reduction is granted, the MDOT MTA's shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the MDOT MTA's sole discretion.

#### **4.38.3 Acceptable security**

Acceptable security shall be as described below, identified within and excerpted from COMAR 21.06.07:

- A. Acceptable security for Proposal, performance, and payment bonds is limited to:
  - 1) A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;
  - 2) A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
  - 3) Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;
  - 4) An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer.

#### **4.38.4 Surety Bond Assistance Program**

Assistance in obtaining bid, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDF). MSBDF can directly issue bid, performance or

payment bonds up to \$750,000. MSBDFA may also guarantee up to 90% of a surety's losses as a result of a Contractor's breach of Contract; MSBDFA exposure on any bond guaranteed may not, however, exceed \$900,000. Bonds issued directly by the program will remain in effect for the duration of the Contract, and those surety bonds that are guaranteed by the program will remain in effect for the duration of the surety's exposure under the Contract. To be eligible for bonding assistance, a business must first be denied bonding by at least one surety on both the standard and specialty markets within 90 days of submitting a bonding application to MSBDFA. The applicant must employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75 percent of the work, and the business or its principals must have a reputation of good moral character and financial responsibility. Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of the state's tax base. Applicants are required to work through their respective bonding agents in applying for assistance under the program. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Commerce  
Maryland Small Business Development Financing Authority  
MMG Ventures  
826 E. Baltimore Street  
Baltimore, Maryland 21202  
Phone: (410) 333-4270  
Fax: (410) 333-2552

#### **4.39 Maryland Healthy Working Families Act Requirements**

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

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## 5 Proposal Format

### 5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes (or envelopes):

- Volume I – Technical Proposal
- Volume II – Financial Proposal

### 5.2 Proposal Delivery and Packaging

- 5.2.1** Volume I- Technical Proposals, including all required documentation, shall be submitted as attachments to the Offeror’s response in eMMA.
- 5.2.2** Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.
- 5.2.3** Proposals may only be submitted by the date and time listed on eMMA. The platform does not accept any changes or additions to the Technical Proposals after that time, as it is closed. Offerors are encouraged to allow enough time to respond with all required documents by the date and time.
- 5.2.4** Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer or eMMA after the due date will be considered.
- 5.2.5** Volume II- Financial Proposal whose package includes all items listed in RFP § 4.5.2, Flash Drives of the Technical Proposal and redacted Technical and Financial Proposals shall be submitted via mail or delivered to:

MDOT MTA Procurement  
6 St. Paul Street, 7<sup>th</sup> Floor  
Baltimore, MD 21202  
Attn: Heather Martin

- a) The outside of the package/envelope shall be clearly labeled: “Sealed Financial Proposal AGY-20-007-SR”. it is strongly recommended that you send this package via a means with proof of delivery as we experience delivery problems during the COVID pandemic.
  - b) The paper Financial Proposal shall be labeled and sealed separately from the Flash Drives. One flash drive envelope shall be labeled “Technical Proposal” and contain the full Technical Proposal labeled as such with the Offeror’s name and a redacted flash drive as such with the Offeror’s name. The other flash drive envelope shall be labeled “Financial Proposal” and shall contain one flash drive of the full Financial Proposal labeled as such with the Offeror’s name and a redacted flash drive labeled as such with the Offeror’s name.
- 5.2.6** Technical Proposal consisting of:
- 1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater,
  - 2) Technical Proposal in searchable Adobe PDF format,



- 3) a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.8**), and
- B. Financial Proposal consisting of:
- Financial Proposal and all supporting material in Protected Excel format and Microsoft Office or searchable Adobe PDF format. The redacted Financial Proposal shall be in a searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.8**).

### 5.3 Volume I - Technical Proposal

NOTE: Omit all **pricing information** from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

- 5.3.1** In addition to the instructions below, responses in the Offeror's Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., "Section 2.2.1 Response . . ."; "Section 2.2.2 Response . . ."). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").
- 5.3.2** The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:
  - A. Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.
  - B. Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 "Public Information Act Notice"**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.
  - C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)

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

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary."

In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 "Offeror Responsibilities"**).

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

E. Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.2.I**.

F. Offeror Technical Response to RFP Requirements, Sample Submission, and Proposed Work Plan (Submit under TAB E)

- 1) The Offeror shall address each RFP requirement (**RFP Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order and shall contain a cross reference to the requirement.
- 2) Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
- 3) The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in **RFP Section 2**, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- 4) Sample Submission- Offeror shall provide the response to the sample work order as outlined in **Section 2.5**.
- 5) Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal.
- 6) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.8**.
- 7) Non-Compete Clause Prohibition:

The MDOT MTA seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this

objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.

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

As part of the evaluation of the Proposal for this RFP, Offerors shall propose exactly three (3) key resources and shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the MDOT MTA. All other planned positions shall be described generally in the Staffing Plan and may not be used as evidence of fulfilling company or personnel minimum qualifications.

The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in **Section 3.10.2**. Specifically, the Offeror shall:

- 1) Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
- 2) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.
- 3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Offerors should be aware of restrictions on substitution of Key Personnel prior to RFP award (see Substitution Prior to and Within 30 Days After Contract Execution in Section 3.11.5).
- 4) Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
- 5) If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.

H. Offeror Qualifications and Capabilities (Submit under TAB G)

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in **Section 3.10.1**. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- 1) The number of years the Offeror has provided the similar goods and services;
- 2) The number of clients/customers and geographic locations that the Offeror currently serves;

- 3) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under the Contract;
- 4) The Offeror's process for resolving billing errors; and
- 5) An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

I. References (Submit under TAB H)

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP **Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:

- 1) Name of client organization;
- 2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- 3) Value, type, duration, and description of goods and services provided.
- 4) Although not required, Letters of Recommendations can be included here.

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

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

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

- 1) The State contracting entity;
- 2) A brief description of the goods and services provided;
- 3) The dollar value of the contract;
- 4) The term of the contract;
- 5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- 6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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

K. Financial Capability (Submit under TAB J)

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

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

- 1) Dun & Bradstreet Rating;
- 2) Standard and Poor's Rating;
- 3) Lines of credit;
- 4) Evidence of a successful financial track record; and
- 5) Evidence of adequate working capital.

L. Certificate of Insurance (Submit under TAB K)

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

M. Subcontractors (Submit under TAB L)

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the DBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established DBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.

N. Legal Action Summary (Submit under TAB M)

This summary shall include:

- 1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- 2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- 3) A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and
- 4) In instances where litigation is ongoing and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

O. Economic Benefit Factors (Submit under TAB N)

- 1) The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. The economic benefit offered should be consistent with the Offeror's Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3).
- 2) Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
- 3) Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

- 4) As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.
- 5) In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:
  - a) generic statements that the State will benefit from the Offeror's superior performance under the Contract;
  - b) descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
  - c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
- 6) Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.
- 7) Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:
  - a) The 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. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**
  - b) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;
  - c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
  - d) Subcontract dollars committed to Maryland small businesses and DBEs; and
  - e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)

- 1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.
- 2) Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror's services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.
- 3) For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.
- 4) A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
  - A. Third-party POC name and alternate for verification
  - B. Third-party POC mailing address
  - C. Third-party POC telephone number
  - D. Third-party POC email address
  - E. If available, a Re-Seller Identifier

#### 5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in **Attachment B and the separate MS Excel Financial Proposal Form available on eMMA**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the MDOT MTA.

The Financial Proposal shall be one complete copy (consisting of the MS Excel spreadsheet Financial Proposal Form, the signature sheet which is Attachment B-1, and the Bid/Proposal Affidavit which is Attachment C), mailed in a Sealed envelope as part of a Submittal Package, including the flash drives (must be flash drives, no other electronic media will be accepted) of the full Technical Proposal and redacted Technical Proposal in another sealed envelope, and the flash drives of the full Financial Proposal and the redacted the Financial Proposal in the third sealed envelope.) See Section 5.2 for full details on submittals.

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## 6 Evaluation and Selection Process

### 6.1 Evaluation Committee

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

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

### 6.2 Technical Proposal Evaluation Criteria

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

#### 6.2.1 Offeror's Technical Response to Requirements, Sample Submission, and Work Plan (See RFP § 5.3.2.F)

The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

#### 6.2.2 Experience and Qualifications of Proposed Staff (See RFP § 5.3.2.G)

#### 6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.H)

### 1) Economic Benefit to State of Maryland (See RFP § 5.3.2.O) Financial Proposal Evaluation Criteria

All Qualified Offerors (see Section 6.5.2.D) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

### 2) Reciprocal Preference

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

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
- C. The other state gives a preference to its resident businesses through law, policy, or practice; and



- D. The preference does not conflict with a federal law or grant affecting the procurement Contract.
  - b) The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

### 3) Selection Procedures

#### a) General

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

#### b) Selection Process Sequence

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

#### c) Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the

State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

**4) Documents Required upon Notice of Recommendation for Contract Award**

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

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## 7 RFP ATTACHMENTS AND APPENDICES

### Instructions Page

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

For documents required as part of the Proposal:

4. For e-mail submissions, submit one (1) copy of each with signatures.
5. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

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

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

**Table 1: RFP ATTACHMENTS AND APPENDICES**

Applies?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
Y	With Proposal	D	MDOT DBE Forms A and B <b>IMPORTANT:</b> If this RFP contains different Functional Areas or Service Categories. A separate Attachments MDOT DBE Forms A and B is to be submitted for each Functional Area or Service Category where there is a DBE goal.
Y	10 Business Days after recommended award	D	MDOT DBE Forms C and D <b>Important:</b> Attachment MDOT DBE/DBE Form E, if a waiver has been requested, is also required within 10 days of recommended award.
Y	As directed in forms	D	MDOT DBE/DBE Forms F, G, and H
N	With Proposal	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at

Applies?	When to Submit	Label	Attachment Name
			<a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> <b>IMPORTANT:</b> If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.
N	5 Business Days after recommended award	E	VSBE Forms E-1B, E-2, E-3 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf</a> ) <b>Important:</b> Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.
Y	With Proposal	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )
Y	With Proposal	G	Federal Funds Attachments (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf</a> )
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )
Y	5 Business Days after recommended award – However, suggested with Proposal	I	Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a> )
N	5 Business Days after recommended award – However, suggested with Proposal	J	HIPAA Business Associate Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf</a> )
N	With Proposal	K	Mercury Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf</a> )
Y	With Proposal	L	Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-">http://procurement.maryland.gov/wp-</a>

Applies?	When to Submit	Label	Attachment Name
			<a href="#">content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a>
Y	5 Business Days after recommended award	M	Sample Contract (included in this RFP)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf</a> )
Y	5 Business Days after recommended award	O	DHS Hiring Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf</a> )
<b>Appendices</b>			
Applies?	When to Submit	Label	Attachment Name
Y	n/a	1	Abbreviations and Definitions (included in this RFP)
Y	With Proposal	2	Offeror Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf</a> )
Y	5 Business Days after recommended award	3	Performance Bond (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-z-Performance-Bond.dotx">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-z-Performance-Bond.dotx</a> )
Y	With Proposal	4	Proposal Bond (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-y-Bid_Proposal-Bond.dotx">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-y-Bid_Proposal-Bond.dotx</a> )
		5	Federal Funding Clauses
<b>Additional Submissions</b>			
Applies?	When to Submit	Label	Document Name

Applies?	When to Submit	Label	Attachment Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy
Y	With Proposal Submission		Sample Submission

**Attachment A. Pre-Proposal Conference Response Form**

**Solicitation Number AGY-20-007-SR  
Communications & Marketing Services**

A Pre-Proposal conference will be held on February 3, 2021 at 11:00am via MS Teams conference call. Please return this form by 11:59pm on February 1, 2021, advising whether or not your firm plans to attend. The completed form should be returned via e-mail to the Procurement Officer at the contact information below in order to ensure necessary time to send the details of the MS Teams conference call:

Heather Martin  
MDOT MTA  
E-mail: [hmartin@mdot.maryland.gov](mailto:hmartin@mdot.maryland.gov)

Please indicate:

\_\_\_\_\_ Yes, the following representatives will be in attendance.

Attendees and their email addresses:

- 1.
- 2.
- 3.

\_\_\_\_\_ No, we will not be in attendance.

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

Offeror: \_\_\_\_\_  
*Offeror Name (please print or type)*

By: \_\_\_\_\_  
*Signature/Seal*

Printed Name: \_\_\_\_\_  
*Printed Name*

Title: \_\_\_\_\_  
*Title*

Date: \_\_\_\_\_  
*Date*

## Attachment B. Financial Proposal Instructions & Form

### B-1 Financial Proposal Instructions

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

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

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



**B-1 Financial Proposal Form**

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

See separate Excel Financial Proposal Form labeled AGY-20-007-SR Financial Proposal Form.xls.

Submitted by:

Offeror:

\_\_\_\_\_  
Offeror Name (please print or type)

By:

\_\_\_\_\_  
Signature of Authorized Representative

Printed Name:

\_\_\_\_\_  
Printed Name

Title:

\_\_\_\_\_  
Title

Date:

\_\_\_\_\_  
Date

Address:

\_\_\_\_\_  
Company Address

**Attachment C. Proposal Affidavit**

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf).

**Attachment D. Disadvantaged Business Enterprise (DBE) Forms**

This solicitation includes a Disadvantaged Business Enterprise (DBE) participation goal of 7% and no subgoals.

**ATTACHMENT 1 DISADVANTAGED BUSINESS ENTERPRISE FORMS**

**MDOT DBE FORM A  
FEDERALLY-FUNDED CONTRACTS  
CERTIFIED DBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

**PAGE 1 OF 2**

This affidavit must be included with the bid/ proposal. If the bidder/offeror fails to accurately complete and submit this affidavit as required, the bid shall be deemed not responsive or the proposal shall be deemed not susceptible of being selected for award.

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

**1. DBE Participation (PLEASE CHECK ONLY ONE)**

I have met the overall certified Disadvantaged Business Enterprise (DBE) participation goal of \_\_\_\_\_ percent ( \_\_\_\_\_ %). I agree that this percentage of the total dollar amount of the Contract for the DBE goal will be performed by certified DBE firms as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts).

**OR**

I conclude that I am unable to achieve the DBE participation goal. I hereby request a waiver, in whole or in part, of the goal. Within 10 business days of receiving notice that our firm is the apparent awardee or as requested by the Procurement Officer, I will submit a written waiver request and all required documentation in accordance with COMAR 21.11.03.11. For a partial waiver request, I agree that certified DBE firms will be used to accomplish the percentages of the total dollar amount of the Contract as set forth in the DBE Participation Schedule - Part 2 of the MDOT DBE Form B (Federally-Funded Contracts).

**2. Additional DBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 business days of receiving such notice:

- (a) Outreach Efforts Compliance Statement (MDOT DBE Form C - Federally-Funded Contracts);
- (b) Subcontractor Project Participation Statement (MDOT DBE Form D - Federally-Funded Contracts);
- (c) DBE Waiver Request documentation per COMAR 21.11.03.11 (if waiver was requested); and
- (d) Any other documentation required by the Procurement Officer to ascertain bidder's responsibility/ offeror's susceptibility of being selected for award in connection with the certified DBE participation goal.

I acknowledge that if I fail to return each completed document (in 2 (a) through (d)) within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award or not susceptible of being selected for award.

**MDOT DBE FORM A**  
**FEDERALLY-FUNDED CONTRACTS**  
**CERTIFIED DBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

**PAGE 2 OF 2**

**3. Information Provided to DBE firms**

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

**4. Products and Services Provided by DBE firms**

I hereby affirm that the DBEs are only providing those products and services for which they are MDOT certified.

I solemnly affirm under the penalties of perjury that the information in this affidavit is true to the best of my knowledge, information and belief.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**

**PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE**

PARTS 2 AND 3 MUST BE INCLUDED WITH THE BID/PROPOSAL. IF THE BIDDER/OFFEROR FAILS TO ACCURATELY COMPLETE AND SUBMIT PART 2 WITH THE BID/PROPOSAL AS REQUIRED, THE BID SHALL BE DEEMED NOT RESPONSIVE OR THE PROPOSAL SHALL BE DEEMED NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

PAGE 1 OF 2

\*\*\* STOP \*\*\*

**FORM INSTRUCTIONS**  
**PLEASE READ BEFORE COMPLETING THIS FORM**

1. Please refer to the Maryland Department of Transportation (MDOT) DBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified for the appropriate North American Industry Classification System (“NAICS”) Code and the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the DBE participation goal.
2. In order to be counted for purposes of achieving the DBE participation goal, the firm must be certified for that specific NAICS (“DBE” for Federally-funded projects designation after NAICS Code). **WARNING:** If the firm’s NAICS Code is in graduated status, such services/products will not be counted for purposes of achieving the DBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).
3. Examining the NAICS Code is the first step in determining whether a DBE firm is certified and eligible to receive DBE participation credit for the specific products/services to be supplied or performed under the contract. The second step is to determine whether a firm’s Products/Services Description in the DBE Directory includes the products to be supplied and/or services to be performed that are being used to achieve the DBE participation goal.
4. If you have any questions as to whether a firm is MDOT DBE certified, or if it is certified to perform specific services or provide specific products, please call MDOT’s Office of Disadvantaged Business Enterprise at 1-800-544-6056 or send an email to [MBE@mdot.state.md.us](mailto:MBE@mdot.state.md.us).
5. The Contractor’s subcontractors are considered second-tier subcontractors. Third-tier contracting used to meet a DBE goal is to be considered the exception and not the rule. The following two conditions must be met before MDOT, its Modal Administrations and the Maryland Transportation Authority may approve a third-tier contracting agreement: (a) the bidder/offeror must request in writing approval of each third-tier contract arrangement, and (b) the request must contain specifics as to why a third-tier contracting arrangement should be approved. These documents must be submitted with the bid/proposal in Part 2 of this DBE Participation Schedule.
6. For each DBE firm that is being used as supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the amount of the subcontract for purposes of achieving the DBE participation goal
  - A. Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item C. If the answer is NO, please continue to Item B.
  - B. Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item D. If the answer is NO, continue to Item C only if the DBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220 and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then no DBE participation credit will be given for the supply of these products.
  - C. For purposes of achieving the DBE participation goal, you may count only the amount of any reasonable fee that the DBE firm will receive for the provision of such products/supplies - not the total subcontract amount or the value (or a percentage thereof) of such products and/or supplies. For Column 3 of the DBE Participation Schedule, please divide the amount of any reasonable fee that the DBE firm will receive for the provision of such products/services by the total Contract value and insert the percentage in Line 3.1.

**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**

**PART 1 – INSTRUCTIONS FOR DBE PARTICIPATION SCHEDULE**

PAGE 2 OF 2

- D. Is the firm certified as a manufacturer (refer to the firm's NAICS Code and specific description of products/services) of the products/supplies to be provided? If the answer is NO, please continue to Item E. If the answer is YES, for purposes of achieving the DBE participation goal, you may count the total amount of the subcontract. For Column 3 of the DBE Participation Schedule, please divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.
- E. Is the firm certified as a supplier, wholesaler and/or regular dealer? If the answer is YES and the DBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total Contract value and insert the percentage in Line 3.1. If the answer is YES and the DBE firm is only being used as a supplier, wholesaler and/or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the DBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total Contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.

7. For each DBE firm that **is not** being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the **amount of the subcontract for purposes of achieving the DBE participation goal**, divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.

**Example:** \$ 2,500 (Total Subcontract Amount) ÷ \$10,000 (Total Contract Value) x 100 = 25%

8. Please note that for USDOT-funded projects, a DBE prime may count towards its DBE participation goal work performed by its own forces. Include information about the DBE prime in Part 2.
9. **WARNING:** The percentage of DBE participation, computed using the dollar amounts in Column 3 for all of the DBE firms listed in Part 2, **MUST** at least equal the DBE participation goal as set forth in MDOT DBE Form A – Federally-Funded Contracts for this solicitation. If the bidder/offeror is unable to achieve the DBE participation goals, then the bidder/offeror must request a waiver in Form A or the bid will be deemed not responsive, or the proposal not susceptible of being selected for award. You may wish to use the Goal Worksheet shown below to assist you in calculating the percentage and confirming that you have met the applicable DBE participation goal.

GOAL WORKSHEET	
Total DBE Firm Participation (Add percentages in Column 3 for all DBE firms listed in DBE Participation Schedule)	(A) _____%
The percentage amount in Box A above should be equal to the percentage amount in Box E below.	
Add <i>Countable</i> Subcontract Amounts (see 6 through 8 of Instructions) for all DBE firms listed in DBE Participation Schedule, and insert in Box B	(B) \$ _____
Insert the Total Contract Amount in Box C	(C) \$ _____
Divide Box B by Box C and Insert in Box D	(D) = _____

Multiply Box D by 100 and insert in Box E

(E) = \_\_\_\_\_%



**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**

**PART 2 – DBE PARTICIPATION SCHEDULE**

PARTS 2 AND 3 MUST BE INCLUDED WITH THE BID/PROPOSAL. IF THE BIDDER/OFFEROR FAILS TO ACCURATELY COMPLETE AND SUBMIT PART 2 WITH THE BID/PROPOSAL AS REQUIRED, THE BID SHALL BE DEEMED NOT RESPONSIVE OR THE PROPOSAL SHALL BE DEEMED NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD.

PAGE \_\_\_ OF \_\_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>
		Unless the bidder/offeror requested a waiver in MDOT DBE Form A – Federally Funded Contracts for this solicitation, the cumulative DBE participation for all DBE firms listed herein must equal at least the DBE participation goal set forth in Form A.
<b>NAME OF DBE SUBCONTRACTOR AND TIER</b>	<b>CERTIFICATION NO. AND DBE CLASSIFICATION</b>	FOR PURPOSES OF ACHIEVING THE DBE PARTICIPATION GOAL, refer to sections 6, 7 and 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the DBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the DBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule.
<input type="checkbox"/> Please check if DBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 5 of Part 1 - Instructions	<b>Certification Number:</b> <hr/> <b>(If dually certified, check only one box.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other DBE Classification <hr/>	<b>3.1. TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS).</b>  _____ % <b>(Percentage for purposes of calculating achievement of DBE Participation goal)</b>  <b>3.2 TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE DBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER) (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 6(E) IN PART 1 - INSTRUCTIONS).</b>  _____ % Total percentage of Supplies/Products  x _____ <b>60% (60% Rule)</b>  _____ % <b>(Percentage for purposes of calculating achievement of DBE Participation goal)</b>

Please check if Continuation Sheets are attached.

**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**  
**CONTINUATION SHEET**

PAGE \_\_\_ OF \_\_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SECTION 1 - SOLICITATION NUMBER</b>

**LIST INFORMATION FOR EACH CERTIFIED DBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE DBE PARTICIPATION GOAL.**

<b>COLUMN 1</b>	<b>COLUMN 2</b>	<b>COLUMN 3</b>
		Unless the bidder/offeror requested a waiver in MDOT DBE Form A – Federally Funded Contracts for this solicitation, the cumulative DBE participation for all DBE firms listed herein must equal at least the DBE participation goal set forth in Form A.
<b>NAME OF DBE SUBCONTRACTOR AND TIER</b>	<b>CERTIFICATION NO. AND DBE CLASSIFICATION</b>	FOR PURPOSES OF ACHIEVING THE DBE PARTICIPATION GOAL, refer to sections 6, 7 and 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the DBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the DBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule.
<input type="checkbox"/> Please check if DBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 5 of Part 1 - Instructions	<b>Certification Number:</b> <hr/> <b>(If dually certified, check only one box.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other DBE Classification <hr/>	<b>3.1. TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS).</b>  _____ % <b>(Percentage for purposes of calculating achievement of DBE Participation goal)</b>  <b>3.2 TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE DBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER) (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 6(E) IN PART 1 - INSTRUCTIONS).</b>  _____ % Total percentage of Supplies/Products  <b>x _____ 60% (60% Rule)</b>  _____ % <b>(Percentage for purposes of calculating achievement of DBE Participation goal)</b>

Please check if Continuation Sheets are attached.

**MDOT DBE FORM B**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE PARTICIPATION SCHEDULE**

**PART 3 – CERTIFICATION FOR DBE PARTICIPATION SCHEDULE**

**PARTS 2 AND 3 MUST BE INCLUDED WITH THE BID/PROPOSAL AS DIRECTED IN THE SOLICITATION.**

I hereby affirm that I have reviewed the Products and Services Description (specific product that a firm is certified to provide or areas of work that a firm is certified to perform) set forth in the MDOT DBE Directory for each of the DBE firms listed in Part 2 of this DBE Form B for purposes of achieving the DBE participation goal that was identified in the DBE Form A that I submitted with this solicitation, and that the DBE firms listed are only performing those products/services/areas of work for which they are certified. I also hereby affirm that I have read and understand the form instructions set forth in Part 1 of this DBE Form B.

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

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

I solemnly affirm under the penalties of perjury that the contents of Parts 2 and 3 of MDOT DBE Form B are true to the best of my knowledge, information and belief.

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Signature of Representative**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Printed Name and Title**

\_\_\_\_\_  
**City, State and Zip Code**

\_\_\_\_\_  
**Date**

**MDOT DBE FORM C**  
**FEDERALLY-FUNDED CONTRACTS**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

In conjunction with the offer/proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

1. Bidder/Offeror took the following efforts to identify subcontracting opportunities in these specific work categories:

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

3. Bidder/Offeror made the following attempts to personally contact the solicited DBE firms:

**4. Please Check One:**

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

**5. Please Check One:**

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**MDOT DBE FORM D**  
**FEDERALLY-FUNDED CONTRACTS**  
**DBE SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT**

**IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD OR THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD. SUBMIT ONE FORM FOR EACH CERTIFIED DBE FIRM LISTED IN THE DBE PARTICIPATION SCHEDULE. BIDDERS/ OFFERORS ARE HIGHLY ENCOURAGED TO SUBMIT FORM D PRIOR TO THE TEN (10) DAY DEADLINE.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the Contract in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor will enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name) committing to participation by the DBE firm \_\_\_\_\_ (DBE Name) with MDOT Certification Number \_\_\_\_\_ (if subcontractor previously listed is also the DBE firm, please restate name and provide DBE Certification Number) which will receive at least \$\_\_\_\_\_ (Total Subcontract Amount), which is \_\_\_\_\_% (Percent) of the Total Contract Value, for performing the following products/services for the Contract:

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

I solemnly affirm under the penalties of perjury that the information provided in this DBE Subcontractor Project Participation Affidavit is true to the best of my knowledge, information and belief. I acknowledge that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes.

PRIME CONTRACTOR	SUBCONTRACTOR (SECOND-TIER)	SUBCONTRACTOR (THIRD-TIER)
Signature of Representative: _____	Signature of Representative: _____	Signature of Representative: _____
-	-	-
Printed Name and Title: _____	Printed Name and Title: _____	Printed Name and Title: _____
_____	_____	_____
-	-	-
Firm's Name: _____	Firm's Name: _____	Firm's Name: _____
Federal Identification Number: _____	Federal Identification Number: _____	Federal Identification Number: _____
Address: _____	Address: _____	Address: _____
_____	_____	_____
-	-	-
Telephone: _____	Telephone: _____	Telephone: _____

Date: _____	Date: _____	Date: _____
-------------	-------------	-------------

**IF DBE FIRM IS A THIRD-TIER SUB**

**CONTRACTOR, THIS FORM MUST  
ALSO BE EXECUTED BY THE SECOND-TIER SUBCONTRACTOR THAT HAS THE SUBCONTRACT AGREEMENT WITH THE DBE  
FIRM.**

## ATTACHMENT 2 - D-5

This form is to be completed monthly by the prime

### Maryland Department of Information Technology Disadvantaged Business Enterprise Participation Prime Contractor Paid/Unpaid DBE Invoice Report

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

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	FAX:	Email:																																					
Subcontractor Name:		Contact Person:																																					
Phone:	FAX:																																						
Subcontractor Services Provided:																																							
<b>List all payments made to DBE subcontractor named above during this reporting period:</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%; text-align: center;"><u>Invoice#</u></th> <th style="width: 25%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Paid: \$</b>		_____	<b>List dates and amounts of any outstanding invoices:</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid:</b></td> <td><b>\$</b> _____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Unpaid:</b>		<b>\$</b> _____
	<u>Invoice#</u>	<u>Amount</u>																																					
1.																																							
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2.																																							
3.																																							
4.																																							
<b>Total Dollars Unpaid:</b>		<b>\$</b> _____																																					

\*\*If more than one DBE subcontractor is used for this contract, you must use separate D-5 forms.

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

	AGENCY INFORMATION (Name, Address, email, Phone etc.)
--	---





This form must be completed by MBE subcontractor

### ATTACHMENT 2 - D-6 Disadvantaged Business Enterprise Participation Subcontractor Paid/Unpaid DBE Invoice Report

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

DBE Subcontractor Name: _____																																
MDOT Certification #: _____																																
Contact Person: _____	Email: _____																															
Address: _____																																
City: Baltimore	State: _____	ZIP: _____																														
Phone: _____	FAX: _____																															
<b>Subcontractor Services Provided:</b>																																
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td> </td><td> </td></tr> <tr><td>2.</td><td> </td><td> </td></tr> <tr><td>3.</td><td> </td><td> </td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b> _____</td> <td> </td> </tr> </tbody> </table>			<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Paid: \$</b> _____			<b>List dates and amounts of any unpaid invoices over 30 days old.</b>  <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width: 15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td> </td><td> </td></tr> <tr><td>2.</td><td> </td><td> </td></tr> <tr><td>3.</td><td> </td><td> </td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid: \$</b> _____</td> <td> </td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			<b>Total Dollars Unpaid: \$</b> _____		
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2.																																
3.																																
<b>Total Dollars Unpaid: \$</b> _____																																
Prime Contractor: _____	Contact Person: _____																															

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

	AGENCY INFORMATION (Name, Address, email, Phone etc.)
--	---

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

# **MDOT MBE/DBE FORM E**

## **GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

### **PART 1 – GUIDANCE FOR DEMONSTRATING GOOD FAITH EFFORTS TO MEET MBE/DBE PARTICIPATION GOALS**

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

#### **I. Definitions**

**MBE/DBE Goal(s)** – “MBE/DBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s) on a State-funded procurement and the DBE participation goal on a federally-funded procurement.

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

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

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

**MBE/DBE Firms** – For State-funded contracts, “MBE/DBE Firms” refers to certified **MBE** Firms. Certified MBE Firms can participate in the State's MBE Program. For federally-funded contracts, “MBE/DBE Firms” refers to certified **DBE** Firms. Certified DBE Firms can participate in the federal DBE Program.

#### **II. Types of Actions MDOT will Consider**

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

**A. Identify Bid Items as Work for MBE/DBE Firms**

1. Identified Items of Work in Procurements

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

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

2. Identified Items of Work by Bidders/Offerors

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

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

**B. Identify MBE Firms or DBE Firms to Solicit**

1. DBE Firms Identified in Procurements

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

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

2. MBE/DBE Firms Identified by Bidders/Offerors

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

(b) Any MBE/DBE Firms identified as available by the bidder/offeror should be certified in the appropriate program (MBE for State-funded procurements or DBE for federally-funded procurements)

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

**C. Solicit MBE/DBEs**

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

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

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

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

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

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

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

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

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

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

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

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

(c) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the procurement, to provide assistance in the recruitment and placement of MBE/DBE Firms.

#### **D. Negotiate With Interested MBE/DBE Firms**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The "average of the other subcontractors' quotes received by the" bidder/offeror refers to the average of the quotes received from all subcontractors, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a MBE/DBE and one quote from a Non-MBE/DBE.

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

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

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

## **E. Assisting Interested MBE/DBE Firms**

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

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

## **III. Other Considerations**

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

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

## **IV. Documenting Good Faith Efforts**

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

### **A. Items of Work (Complete Good Faith Efforts Documentation Form E, Part 2)**

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

### **B. Outreach/Solicitation/Negotiation**

1. The record of the bidder's/offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a) through (e) and 49 C.F.R. Part 26, Appendix A. **(Complete Outreach Efforts Compliance Statement)**

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

(a) the names, addresses, and telephone numbers of the MBE/DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Form E, Part 3, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

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

### **C. Rejected MBE/DBE Firms (Complete Good Faith Efforts Form E, Part 4)**

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

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

3. A list of MBE/DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE/DBE contractor or a statement from the bidder/offeror that the MBE/DBE contractor refused to sign the Minority Contractor Unavailability Certificate.

**D. Other Documentation**

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

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



**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 2 – CERTIFICATION REGARDING GOOD FAITH EFFORTS DOCUMENTATION**

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	SOLICITATION NUMBER

**PARTS 3, 4, AND 5 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.**

I hereby request a waiver of (1) the Minority Business Enterprise (MBE) participation goal and/or subgoal(s), (2) the Disadvantaged Business Enterprise (DBE) participation goal, or (3) a portion of the pertinent MBE/DBE participation goal and/or MBE subgoal(s) for this procurement.<sup>1</sup> I affirm that I have reviewed the Good Faith Efforts Guidance MBE/DBE Form E. I further affirm under penalties of perjury that the contents of Parts 3, 4, and 5 of MDOT MBE/DBE Form E are true to the best of my knowledge, information and belief.

\_\_\_\_\_  
**Company Name**

\_\_\_\_\_  
**Signature of Representative**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Printed Name and Title**

\_\_\_\_\_  
**City, State and Zip Code**

\_\_\_\_\_  
**Date**

<sup>1</sup> MBE participation goals and subgoals apply to State-funded procurements. DBE participation goals apply to federally-funded procurements. Federally-funded contracts do not have subgoals.

**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 3 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO  
 MBE/DBE FIRMS**  
 PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

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

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

Please check if Additional Sheets are attached.

# MDOT MBE/DBE FORM E

## GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION

### PART 4 – IDENTIFIED MBE/DBE FIRMS AND RECORD OF SOLICITATIONS

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify the MBE/DBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE/DBE participation. Include the name of the MBE/DBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE/DBE provided a quote, and whether the MBE/DBE is being used to meet the MBE/DBE participation goal. MBE/DBE Firms used to meet the participation goal must be included on the MBE/DBE Participation Schedule, Form B. Note: If the procurement includes a list of the MBE/DBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE/DBE Firms or explain why a specific MBE/DBE was not solicited. If the bidder/offeror identifies additional MBE/DBE Firms who may be available to perform Identified Items of Work, those additional MBE/DBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE/DBE Firms must be attached to this form. If the bidder/offeror used a Non-MBE/DBE or is self-performing the identified items of work, Part 4 must be completed.

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

Please check if Additional Sheets are attached.

**MDOT MBE/DBE FORM E**  
**GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION**

**PART 5 – ADDITIONAL INFORMATION REGARDING REJECTED MBE/DBE QUOTES**

PAGE \_\_\_ OF \_\_\_

<b>Prime Contractor</b>	<b>Project Description</b>	<b>SOLICITATION NUMBER</b>

This form must be completed if Part 3 indicates that a MBE/DBE quote was rejected because the bidder/offeror is using a Non-MBE/DBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE/DBE, and if applicable, state the name of the Non-MBE/DBE. Also include the names of all MBE/DBE and Non-MBE/DBE Firms that provided a quote and the amount of each quote.

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

Please check if Additional Sheets are attached.

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

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

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

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

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

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



**Attachment G. Federal Funds Attachments**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf>.

**Attachment H. Conflict of Interest Affidavit and Disclosure**

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>

**Attachment I. Non-Disclosure Agreement (Contractor)**

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

**Attachment J. HIPAA Business Associate Agreement**

This solicitation does not require a HIPAA Business Associate Agreement.

**Attachment K. Mercury Affidavit**

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

**Attachment L. Location of the Performance of Services Disclosure**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

**Attachment M. Contract**

Maryland Department of Transportation Maryland Transit Administration  
Communications and Marketing Services  
AGY-20-007-SR

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND DEPARTMENT OF TRANSPORTATION MARYLAND TRANSIT ADMINISTRATION (MDOT MTA).

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

**1. Definitions**

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.3 “Financial Proposal” means the Contractor’s [pick one: Financial Proposal or Best and Final Offer (BAFO)] dated \_\_\_\_\_ (Financial Proposal date or BAFO date).
- 1.4 “Minority Business Enterprise” (DBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for Communications and Marketing Services, Solicitation # AGY-20-007-SR, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. \_\_\_\_\_ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

**2. Scope of Contract**

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

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

Exhibit B – The RFP

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

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

### **3. Period of Performance**

- 3.1 The term of this Contract begins on the date the Contract is signed by the MDOT MTA following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue for five years ("Initial Term").
- 3.2 The Contractor's performance under the Contract shall commence as of the date provided in a written Notice to Proceed ("NTP").
- 3.3 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

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

The Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the Not to Exceed ("NTE") Amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult and work in good faith with the MDOT MTA to establish a plan of action to assure that every reasonable effort is undertaken by the Contractor to complete State-defined critical work in progress prior to the date the NTE Amount will be reached; and (b) when applicable secure databases, systems, platforms, and applications on



which the Contractor is working in an industry standard manner so as to prevent damage or vulnerabilities to any of the same due to the existence of any such unfinished work.

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

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

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

The State is not liable for interest:

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

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

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

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

## 5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights,

title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## 6. Exclusive Use

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

## 7. Patents, Copyrights, and Intellectual Property

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the MDOT MTA or licensed by the MDOT MTA from third parties, including all information provided by the MDOT MTA to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the MDOT MTA will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of

- such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 7.4 Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to the MDOT MTA, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the MDOT MTA's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the MDOT MTA shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

**8. Confidential or Proprietary Information and Documentation**

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

#### **9. Loss of Data**

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information.

#### **10. Indemnification and Notification of Legal Requests**

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim

or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.

- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

#### **11. Non-Hiring of Employees**

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

#### **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

#### **13. Maryland Law Prevails**

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

#### **14. Nondiscrimination in Employment**

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

subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**15. Contingent Fee Prohibition**

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

**16. Non-Availability of Funding**

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

**17. Termination for Default**

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

**18. Termination for Convenience**

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

**19. Delays and Extensions of Time**

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

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

**21. Pre-Existing Regulations**

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

**22. Financial Disclosure**

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

**23. Political Contribution Disclosure**

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

**24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The

Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent, and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

## **25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The MDOT MTA may conduct these audits with any or all of its own internal resources or by securing the services of a third-party accounting or audit firm, solely at the MDOT MTA's election. The MDOT MTA may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the MDOT MTA has the right to audit such subcontractor(s).

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

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

## **27. Cost and Price Certification**

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

## **28. Subcontracting; Assignment**



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

## 29. Limitations of Liability

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 "Patents, Copyrights, Intellectual Property"** of this Contract;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
  - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 6 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

## 30. Commercial Nondiscrimination

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of

- this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the MDOT MTA, in all subcontracts.

### 31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MDOT MTA, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
  - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
  - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MDOT MTA concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the MDOT MTA and the Contractor in any other proceeding; or
  - (c) Result in liability against or prejudice the rights of the MDOT MTA.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the DBE program.

- 31.5 To ensure compliance with certified DBE subcontract participation goals, the MDOT MTA may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified DBEs listed in the DBE participation schedule actually are performing work and receiving compensation as set forth in the DBE participation schedule. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.Verification shall include a review of:
    - i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified DBE subcontractors and the reason for nonpayment; and
    - ii. The monthly report of each certified DBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - (b) If the MDOT MTA determines that the Contractor is not in compliance with certified DBE participation goals, then the MDOT MTA 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 DBE for work performed as set forth in the DBE participation schedule.
  - (c) If the MDOT MTA determines that the Contractor is in material noncompliance with DBE Contract provisions and refuses or fails to take the corrective action that the MDOT MTA requires, then the MDOT MTA may:
    - i. Terminate the Contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
  - (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, DBE subcontractors.

### **32. Living Wage**

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

### **33. Use of Estimated Quantities**

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

**34. Risk of Loss; Transfer of Title**

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

**35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to “intellectual property,” and the subject matter of this Contract, including services, is and shall be deemed to be “embodiments of intellectual property” for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code (“Code”) (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State’s rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State’s possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

**36. Miscellaneous**

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

**37. Contract Monitor and Procurement Officer**

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

**38. Notices**

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

If to the State:

Heather Martin  
MDOT MTA  
6 St. Paul Street, 7<sup>th</sup> Floor  
Baltimore, MD 21202  
E-Mail: hmartin@mdot.maryland.gov

If to the Contractor:

(Contractor's Name)  
(Contractor's primary address)  
Attn: \_\_\_\_\_

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

Parent Company Guarantor

Contact: \_\_\_\_\_  
Attn: \_\_\_\_\_

### **39. Liquidated Damages for DBE**

- 39.1 The Contract requires the Contractor to comply in good faith with the DBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the DBE Program and DBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified DBE Program requirements or DBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$23.00 per day until the monthly report is submitted as required.
  - (b) Failure to include in its agreements with DBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$82.00 per DBE subcontractor.
  - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an DBE subcontractor and amendment of the DBE participation schedule: the difference between the dollar value of the DBE participation commitment on the DBE participation schedule for that specific DBE firm and the dollar value of the work performed by that DBE firm for the Contract.
  - (d) Failure to meet the Contractor's total DBE participation goal and sub goal commitments: the difference between the dollar value of the total DBE participation

commitment on the DBE participation schedule and the DBE participation actually achieved.

- (e) Failure to promptly pay all undisputed amounts to an DBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$90.00 per day until the undisputed amount due to the DBE subcontractor is paid.

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

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

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

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

**<<41.>> Hiring Agreement**

<<41.>>1 The Contractor agrees to execute and comply with the enclosed Maryland Department of Human Services (DHS) Hiring Agreement (Attachment O). The Hiring Agreement is to be executed by the Offeror and delivered to the Procurement Officer within ten (10) Business Days following receipt of notice by the Offeror that it is being recommended for Contract award. The Hiring Agreement will become effective concurrently with the award of the Contract.

<<41.>>2 The Hiring Agreement provides that the Contractor and DHS will work cooperatively to promote hiring by the Contractor of qualified individuals for job openings resulting from this procurement, in accordance with Md. Code Ann., State Finance and Procurement Article §13-224.

**<<42.>> Limited English Proficiency**

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

**<<43.>> Maryland's Green Purchasing Reporting Requirements**

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

This information will enable Maryland State agencies to comply with Article §14-405 of the Annotated Code of Maryland and COMAR 21.13.01.14, effective October 1, 2014, which requires

Maryland state agencies to report to the Department of General Services on their procurement of environmentally preferable products and services.

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

SIGNATURES ON NEXT PAGE

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

Contractor

State of Maryland  
Maryland Department of Transportation  
Maryland Transit Administration

By:

By: William L. Parham, Jr., Director of  
Procurement

Date

PARENT COMPANY (GUARANTOR) (if  
applicable)

By:

\_\_\_\_\_

\_\_\_\_\_

By:

Date

\_\_\_\_\_

Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_

(Date)

(BPW Item #)



**Attachment N. Contract Affidavit**

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

**Attachment O. DHS Hiring Agreement**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf>.

## Appendix 1. – Abbreviations and Definitions

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

- A. Acceptable Use Policy (AUP) - A written policy documenting constraints and practices that a user must agree to in order to access a private network or the Internet.
- B. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
- C. Application Program Interface (API) – Code that allows two software programs to communicate with each other.
- D. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- E. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- F. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
- G. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring DBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The MDOT MTA may change the Contract Monitor at any time by written notice to the Contractor.
- H. Contractor – The selected Offeror that is awarded a Contract by the State.
- I. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
- J. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- K. Maryland Department of Transportation Maryland Transit Administration- “MDOT MTA” or Agency.
- L. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
- M. Enterprise License Agreement (ELA) – An agreement to license the entire population of an entity (employees, on-site contractors, off-site contractors) accessing a software or service for a specified period of time for a specified value.
- N. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
- O. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
- P. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Sections 3.10**.

- Q. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- R. Minority Business Enterprise (DBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- S. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
- T. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- U. NTP Date – The date specified in an NTP for work on Contract, project, Task Order or Work Order to begin.
- V. Offeror – An entity that submits a Proposal in response to this RFP.
- W. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- X. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**) and is the only State representative who can authorize changes to the Contract. The MDOT MTA may change the Procurement Officer at any time by written notice to the Contractor.
- Y. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
- Z. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- AA. Request for Proposals (RFP) – This Request for Proposals issued by the MDOT MTA, with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- BB. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
- CC. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- DD. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law §

14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.

- EE. Software - The object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. Software also includes any upgrades, updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.
- FF. Software as a Service (SaaS) - A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of this RFP, the terms SaaS and PaaS are considered synonymous and the term SaaS will be used throughout this document.
- GG. State – The State of Maryland.
- HH. Source Code – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.
- II. System Availability – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.
- JJ. System Documentation – Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:
- 1) Source Code: This includes source code created by the Contractor or subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract;
  - 2) All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;
  - 3) All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;
  - 4) All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer's notes and other documentation;
  - 5) A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software);
  - 6) All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides; and
  - 7) Operating procedures.

- KK. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.
- LL. Third Party Software – Software and supporting documentation that:
- 1) are owned by a third party, not by the State, the Contractor, or a subcontractor;
  - 2) are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and
  - 3) are specifically identified and listed as Third-Party Software in the Proposal.
- MM. Total Proposal Price - The Offeror's total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.
- NN. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
- OO. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- PP. Work Order– A subset of work authorized by the Contract Monitor performed under the general scope of this RFP, which is defined in advance of Contractor fulfillment, and which may not require a Contract Modification. Except as otherwise provided, any reference to the Contract shall be deemed to include reference to a Work Order.

## Appendix 2. Offeror Information Sheet

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder\\_OfferorInformationSheet.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf).

### Appendix 3. Performance Bond

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-z-Performance-Bond.dotx>



## Appendix 4. Proposal Bond

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-y-Bid\\_Proposal-Bond.dotx](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-y-Bid_Proposal-Bond.dotx)

## Appendix 5. Federal Funding Clauses

### 1. No Federal Government Obligations to Third Parties

The MTA and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the Solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the MTA, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

### 2. False Statements or Claims, Civil and Criminal Fraud

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC §§ 3801 *et seq.* and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a Contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC § 5307, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

### 3. Access to Third Party Contract Records

For State contracts:

In accordance with 49 C.F.R. 633.17, the Contractor agrees to provide the MTA, the FTA Administrator or his authorized representatives, including any Project Management Oversight (PMO) Contractor, access to the Contractor's records and construction sites pertaining to a major capital project which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

Requirements for all contracts:

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the MTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

#### 4. Changes to Federal Requirements

The preceding provisions include, in part, certain standard terms and conditions required by the Department of Transportation, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F or its successors are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The Contractor shall not perform any act, fail to perform any act or refuse to comply with any MTA requests that would cause the MTA to be in violation of the FTA terms and conditions.

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the MTA and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

#### 5. Termination

**a. Termination for Convenience (General Provision)** The MTA may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the MTA to be paid the Contractor. If the Contractor has any property in its possession belonging to the MTA the Contractor will account for the same, and dispose of it in the manner the MTA directs.

**b. Termination for Default [Breach or Cause] (General Provision)** If the Contractor does not deliver material in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the MTA may terminate this contract for default. Termination shall be affected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for material delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the MTA that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the MTA, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

**c. Opportunity to Cure (General Provision)** The MTA in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the MTA's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by the Contractor of written notice from the MTA setting forth the nature of said breach or default, the MTA shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the MTA from also pursuing all available remedies against the Contractor and its sureties for said breach or default.

**d. Waiver of Remedies for any Breach** In the event that the MTA elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by the MTA shall not limit the MTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

**e. Termination for Convenience** The MTA, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the MTA shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

**f. Termination for Default** If the Contractor fails to deliver material or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the MTA may terminate this contract for default. The MTA shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for material delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the MTA.

## **6. Disadvantaged Business Enterprises (DBE)**

- a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 30%. **A separate contract goal of 7% DBE participation has been established for this procurement.**
- b. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the MTA deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b))
- c. Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following concurrent with and accompanying sealed bid:
  1. The names and addresses of DBE firms that will participate in this contract;
  2. A description of the work each DBE will perform;
  3. The dollar amount of the participation of each DBE firm participating;
  4. Written documentation of the bidder/offeror's commitment to use a DBE Subcontractor whose participation it submits to meet the contract goal;
  5. Written confirmation from the DBE that it is participating in the contract as provided in the prime Contractor's commitment; and
  6. If the contract goal is not met, evidence of good faith efforts to do so. Offeror must present the information required above as a matter of responsiveness (*see* 49 CFR 26.53(3)).
- d. The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the MTA. In addition, is required to return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the MTA and Contractor's receipt of the partial retainage payment related to the Subcontractor's work.
- e. The Contractor must promptly notify the MTA, whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work.

The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the MTA.

#### **7. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MTA requests which would cause the MTA to be in violation of the FTA terms and conditions.

#### **8. Suspension and Debarment**

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C, and must include the requirement to comply with 49 CFR 29, Subpart C, in any lower tier covered transaction it enters into.

By signing and submitting its Bid or Proposal, the Bidder or Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the MTA. If it is later determined that the Bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the MTA, the Federal government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C, while this Bid or Proposal is valid and throughout the period of any Contract that may arise from this Bid or Proposal. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### **9. Resolution of Disputes, Breaches and Other Litigation**

The FTA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various FTA Third Party Contracts:

**Disputes** - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the MTA's [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision

of the Contract Monitor shall be binding upon the Contractor and the Contractor shall abide by the decision.

**Performance During Dispute** - Unless otherwise directed by the MTA, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

**Claims for Damages** - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

**Remedies** - Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction.

**Rights and Remedies** - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the MTA, (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

## 10. Lobbying

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the MTA.

### CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

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

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Members of Congress, an officer or employee of Congress, or an employee of a Members of Congress in connection with the awarding of any Federal contract, the making of

any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Members of Congress, an officer or employee of Congress, or an employee of a Members of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96).

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including Subcontracts, Subgrants, and Contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352©(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

## 11. Clean Air

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §§ 7401 *et seq.* The Contractor agrees to report each violation to the MTA and understands and agrees that the MTA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.



## 12. Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 *et seq.* The Contractor agrees to report each violation to the MTA and understands and agrees that the MTA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the FTA.

## 13. Patent Rights and Rights in Data and Copyright Requirements

Contracts involving experimental, developmental, or research work.

**A. Rights in Data** - The following requirements apply to each Contract involving experimental, developmental or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Attachment has been added:

(a) Except for its own internal use, the MTA or the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the MTA or the Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that Contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by the MTA or the Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is the FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless the FTA determines otherwise, the MTA and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this provision is added agrees to permit the FTA to make available to the public, either the FTA's license in the copyright to any subject data developed in the course of that Contract, or a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying Contract, is not completed for any reason whatsoever, all data developed under that Contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the MTA or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by the FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the MTA and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the MTA or the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that Contract. Neither the MTA nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the MTA or the Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying Contract to which this provision has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the MTA or Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless the FTA determines otherwise, the Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state

instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the MTA and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) The Contractor also agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

**B. Patent Rights** - The following requirements apply to each Contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this provision has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the MTA and the Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until the FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the MTA and the Contractor agree to take the necessary actions to provide, through the FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

#### **14. Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **15. Recycled Products**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **16. ADA Access**

The Contractor and any of its Subcontractors under this Contract agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; 49 USC § 5301(d); and the following regulations and any amendments thereto:

- A. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR Part 27;
- C. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "American With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38;
- D. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- E. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 CFR Subpart 101-19;
- G. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- H. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR Part 64, Subpart F; and
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.
- J. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR Part 1194; and
- K. Any implementing requirements FTA may issue.

## **17. Notification of Federal Participation for States**

Notice is hereby given that this program is funded in part by the Federal government. The Federal Transit Administration (FTA) is or will be the Federal agency providing the Federal funds for the Program.

## **18. Veterans Employment Preference**

The contractor to give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

## Appendix 6. Limited English Proficiency Regulations

### Md. Code Ann., State Gov't § 10, Subtitle 11 (Supp. 2017)

#### Equal Access to Public Services for Individuals with Limited English Proficiency

##### § 10-1101.

The General Assembly finds that the inability to speak, understand, or read the English language is a barrier that prevents access to public services provided by State departments, agencies, and programs, and that the public services available through these entities are essential to the welfare of Maryland residents. It is the policy of the State that State departments, agencies, and programs shall provide equal access to public services for individuals with limited English proficiency.

##### § 10-1102.

(a) In this subtitle the following words have the meanings indicated.

(b) "Equal access" means to be informed of, participate in, and benefit from public services offered by a State department, agency, or program, at a level equal to English proficient individuals.

(c) "Limited English proficiency" means the inability to adequately understand or express oneself in the spoken or written English language.

(d) "Oral language services" includes various methods to provide verbal information and interpretation such as staff interpreters, bilingual staff, telephone interpreter programs, and private interpreter programs.

(e) "Program" means all of the operations of a State department, State agency, or any other instrumentality of the State.

(f) (1) "Vital documents" means all applications, or informational materials, notices, and complaint forms offered by State departments, agencies, and programs.

(2) "Vital documents" does not include applications and examinations related to the licensure, certification, or registration under the Health Occupations Article, Financial Institutions Article, Business Occupations and Professions Article, and Business Regulation Article within the jurisdiction of the Department of Health and Mental Hygiene or the Department of Labor, Licensing, and Regulation.

##### § 10-1103.

(a) Each State department, agency, or program listed or identified under subsection (c) of this section shall take reasonable steps to provide equal access to public services for individuals with limited English proficiency.

(b) Reasonable steps to provide equal access to public services include:

(1) the provision of oral language services for individuals with limited English proficiency, which must be through face-to-face, in-house oral language services if contact between the agency and individuals with limited English proficiency is on a weekly or more frequent basis;

(2) (i) the translation of vital documents ordinarily provided to the public into any language spoken by any limited English proficient population that constitutes 3% of the overall population within the geographic area served by a local office of a State program as measured by the United States Census; and

(ii) the provision of vital documents translated under item (i) of this paragraph on a statewide basis to any local office as necessary; and

(3) any additional methods or means necessary to achieve equal access to public services.

(c) The provisions of this subtitle shall be fully implemented according to the following schedule:

(i) on or before July 1, 2003, full implementation by:

1. the Department of Human Resources;
2. the Department of Labor, Licensing, and Regulation;
3. the Department of Health and Mental Hygiene;
4. the Department of Juvenile Justice; and
5. the Workers' Compensation Commission;

(ii) on or before July 1, 2004, full implementation by:

1. the Department of Aging;
2. the Department of Public Safety and Correctional Services;
3. the Department of Transportation, not including the Maryland Transit Administration;
4. the Maryland Human Relations Commission;
5. the Department of State Police; and
6. five independent agencies, boards, or commissions, to be determined by the Secretary of the Department of Human Resources, in consultation with the Office of the Attorney General;

(iii) on or before July 1, 2005, full implementation by:

1. the Comptroller of Maryland;
2. the Department of Housing and Community Development;
3. the Maryland Transit Administration;
4. the Department of Natural Resources;
5. the Maryland State Department of Education;
6. the Office of the Attorney General; and
7. five independent agencies, boards, or commissions to be determined by the Secretary of the Department of Human Resources, in consultation with the Office of the Attorney General; and

(iv) on or before July 1, 2006, full implementation by:

1. the Department of Agriculture;
2. the Department of Business and Economic Development;
3. the Department of Veterans Affairs;
4. the Department of the Environment; and

5. five independent agencies, boards, or commissions to be determined by the Secretary of the Department of Human Resources, in consultation with the Office of the Attorney General.

**§ 10-1104.**

Each State department, agency, or program not listed or identified under § 10-1103(c) of this subtitle shall monitor its operations to determine if the State department, agency, or program should take reasonable steps to achieve equal access to public services for individuals with limited English proficiency.

**§ 10-1105.**

The Department of Human Resources, in consultation with the Office of the Attorney General, shall provide central coordination and technical assistance to State departments, agencies, and programs to aid compliance with this subtitle.