



MARYLAND ENERGY ADMINISTRATION

## **REQUEST FOR PROPOSALS (RFP)**

SOLICITATION NO. DEXR7400002

**Issue Date: August 10, 2017**

### **Energy Programs Technical Support Provider For the Maryland Energy Administration**

#### **NOTICE**

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

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

**STATE OF MARYLAND  
NOTICE TO OFFERORS**

In order to help us improve the quality of State proposals solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this Contract, please fax this completed form to: 410-537-4096 to the attention of the Procurement Officer.

Title: **Energy Programs Technical Services Provider**

**Project No: DEXR7400002**

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

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

Other: \_\_\_\_\_

2. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

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

Offeror Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

**STATE OF MARYLAND  
MARYLAND ENERGY ADMINISTRATION  
RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:**                      **SERVICES: Energy Programs Technical Services  
Provider for the Maryland Energy Administration**

**Solicitation Number:**                      **DEXR740002**

**RFP Issue Date:**                              **August 10, 2017**

**RFP Issuing Office:**                        **Maryland Energy Administration**

**Procurement Officer:**                      **Ralph Scherini  
Office Phone: (410) 537-4082  
Fax: (410) 537-4096  
E-mail: [ralph.scherini@maryland.gov](mailto:ralph.scherini@maryland.gov)**

**Contract Manager:**                        **Jenn Gallicchio  
Maryland Energy Administration  
1800 Washington Blvd, Suite 755  
Baltimore, MD 21230  
Phone Number: 410-537-4069  
Email: [jenn.gallicchio@maryland.gov](mailto:jenn.gallicchio@maryland.gov)**

**Proposals are to be sent to:**              **Maryland Energy Administration  
1800 Washington Blvd, Suite 755  
Baltimore, MD 21230  
Attention: Ralph Scherini**

**Pre-Proposal Conference:**                **August 21, 2017 – 10:00 AM Local Time  
Maryland Energy Administration  
1800 Washington Blvd, Suite 755  
Baltimore, MD 21230<sup>1</sup>**

**Proposal Due (Closing) Date and Time:    **September 14, 2017– 3:00 PM Local  
Time****

**MBE SUBCONTRACTING GOAL:                      29 %**

**VSBE SUBCONTRACTING GOAL:                      NONE**

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<sup>1</sup> MEA is co-located with the Maryland Department of the Environment (MDE). Check-in for the pre-proposal conference will occur at the MDE reception area on the first floor of 1800 Washington Blvd.

**Contract Type:** Indefinite quantity with fixed hourly rate; cost contract for certain materials, supplies and equipment as specified in a task order.

**Contract Duration:** Initial three (3) year term with up to two (2) additional one (1) year option periods. Approximate go-live date is anticipated to be in January 2018.

**SBR Designation:** No

**Federal Funding:** No

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## **SECTION 1 – MINIMUM QUALIFICATIONS**

### **1 Offeror Minimum Qualifications**

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

- 1.1.1** The Offeror shall have at least three (3) years providing energy technical services in the Subject Matter Area(s), as described further in Section 2 of this RFP, for which a Proposal is being submitted. As proof of meeting this requirement, the Offeror shall provide with its Proposal references that collectively attest to the Offeror's required years of experience.

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## SECTION 2 – CONTRACTOR REQUIREMENTS: SCOPE OF WORK

### 2.1 Summary Statement

- 2.1.1** The Maryland Energy Administration (MEA) is issuing this Request for Proposals (RFP) to provide technical energy program support services to support the development and implementation of energy programs within the State of Maryland, as well as to potentially provide a limited amount of energy policy support.
- 2.1.2** It is the State’s intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of services to be provided under this Contract is three (3) years with up to two (2) one (1) year options for a potential total of five (5) years.
- 2.1.3** The MEA intends to make up to two (2) awards, as a result of this RFP. MEA intends to make a single contract award for each of the following two (2) Subject Matter Areas (See RFP Section 4.9 for more Contract award information):
- Residential Energy Programs
  - Commercial, Industrial, Institutional, and Government Energy Programs
- 2.1.4** An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

### 2.2 Background and Purpose

#### 2.2.1 Purpose

MEA desires to enter into Contract(s) with up to two (2) qualified Contractors to provide technical energy program support services to support the development and implementation of energy programs within the State of Maryland, as well as to potentially provide a limited amount of energy policy support.

The Contractor(s) shall work with MEA to help design and implement energy programs using energy industry best practices. Possible tasks include, but are not limited to, assisting MEA to estimate the potential energy benefits of proposed energy projects being considered for funding, reviewing energy projects selected for funding post project completion, providing input to energy program guidelines and documents, and organizing and tracking project applications. As part of these efforts, the Contractor(s) may be required to communicate directly with MEA program participants to collect and share project-specific information.

#### 2.2.2 Background - MEA History and Mission

MEA was created in 1991 and is the State energy office for the State of Maryland. The mission of the Maryland Energy Administration (MEA) is to promote affordable, reliable, and cleaner energy for the benefit of all Marylanders. MEA’s programs and policies help lower energy bills, fuel the creation of green collar jobs, address environmental and climate concerns, and promote energy independence. MEA advises the Governor on matters related to energy policy. MEA administers a number of energy grant and loan programs to encourage clean energy technologies in all sectors of Maryland’s economy. The efforts of MEA help positively contribute to a number of State goals, including but not limited to, Maryland’s Greenhouse Gas Reduction Act and the Renewable Portfolio Standard, while also supporting economic development and jobs.

MEA energy programs are funded through a number of State special funding sources; including, but not limited, to the Strategic Energy Investment Fund funded through the proceeds of the Regional Greenhouse Gas Initiative and energy-related settlement agreements, as well as a few federal sources of funding. MEA does not currently receive any State general funds. MEA energy program budgets, and accompanying need for energy technical services, will vary based on fluctuations in funding levels from these sources.

### **2.2.3 Overview of Existing MEA Energy Programs**

MEA currently offers energy programs focused on energy efficiency, renewable energy, clean transportation, and grid resiliency. Examples of energy programs being offered by MEA in fiscal year 2018 that have or may leverage technical assistance include, but are not limited to, the following:

- The Clean Energy Communities Low-to-Moderate Income grant program is focused on energy efficiency projects that benefit low-to-moderate income Maryland residents. Grants are awarded on a competitive basis to eligible non-profits and local governments who implement energy efficiency projects benefitting low-to-moderate income residents. While a large portion of projects funded through this program focus on residential upgrades in single family homes and multifamily residences, some applications occasionally focus on non-residential facilities (e.g., a senior center) that can be shown by the applicant to predominantly serve low-to-moderate income Maryland residents. More information on the program, including a list of previous awardees, can be found on MEA's website at <http://energy.maryland.gov/business/Pages/incentives/empowermdcigp.aspx>.
- The Commercial and Industrial grant program has historically focused on energy efficiency projects that result in electricity reductions of at least 15%. More information on the program can be found on MEA's website at <http://energy.maryland.gov/business/Pages/incentives/empowermdcigp.aspx>.
- The Data Center Energy Efficiency Program is designed to help Maryland data centers reduce overall energy usage through cost-effective energy efficiency measures. More information can be found at <http://energy.maryland.gov/business/Pages/incentives/DCEEG.aspx>.
- The Kathleen A.P. Mathias Agricultural energy program focuses on energy efficiency projects in the agriculture sector. More information on the program can be found on MEA's website at <http://energy.maryland.gov/business/Pages/incentives/MathiasAg.aspx>.
- The Jane E. Lawton Conservation loan program enables qualifying businesses, non-profits, and local governments to access a low-interest loan to finance energy efficiency improvements. More information on the program can be found on MEA's website at <http://energy.maryland.gov/Govt/pages/janeelawton.aspx>.
- The State Agency Loan Program (SALP) provides loans to State agencies for cost-effective energy efficiency improvements in state facilities. Since its inception, SALP has been used to upgrade lighting, controls, boilers, chillers, and other energy equipment in State buildings and facilities. More information can be found at <http://energy.maryland.gov/govt/Pages/stateloan.aspx>.
- As part of the Maryland Smart Energy Communities (MSEC) program, Maryland counties and incorporated local governments voluntarily adopt at least two of three energy policies focused on energy efficiency, renewable energy, and/or petroleum-reducing transportation projects. In return, the MSEC-participating community becomes eligible for grant funding to implement

eligible energy projects within community facilities. Additional program information can be found at <http://energy.maryland.gov/govt/Pages/smartenergycommunities.aspx>.

- Through the Net Zero Energy School program, MEA will provide grants to local education agencies to facilitate the design and construction of three net zero energy schools through a combination of energy efficiency coupled with renewable energy generation. As part of this effort, MEA is also responsible for collecting data to verify that each of the three schools has successfully achieved net zero status, once constructed and in operation. In addition, MEA will need to create brief case studies for each net zero school, documenting unique design elements and building performance.

In addition to the programs outlined above, MEA also offers several other additional energy programs. More information about additional MEA programs can be found on the MEA website at [www.energy.maryland.gov](http://www.energy.maryland.gov). The list of energy programs shown above should not be construed as a guaranteed list of programs requiring energy technical assistance in the future.

#### **2.2.4 Future Energy Programs**

Energy program offerings may change in future fiscal years, based on funding sources, the needs and priorities of the State, and changes to the overall energy landscape. As an example, the advent of community solar and microgrid deployments may, but is not guaranteed, to result in possible additional needs for technical assistance.

#### **2.2.5 Subject Matter Areas**

As a result of this RFP, MEA intends to make a single contract award for each of the following two (2) Subject Matter Areas:

- Residential Energy Programs
- Commercial, Industrial, Institutional, and Government Energy Programs

An offeror may submit proposal(s) for one or both of the Subject Matter Areas and may receive a contract award for one or both Subject Matter Areas. MEA may make contract awards to up to two (2) Contractors.

The following sections describe MEA's technical support needs related to Residential energy programs as well as Commercial Industrial, Government and Institutional energy programs. The Contractor(s) shall deliver all requirements.

The Scope of Work is divided into the following Sections:

Section 2.3- Services Required: All Contractors

Section 2.4- Services Required: Subject Matter Area I: Residential Energy Programs

Section 2.5- Services Required: Subject Matter Area II: Commercial, Industrial, Institutional, and Government Energy Programs

After commencement of Contract, MEA may also desire additional consulting services that are not specified herein but will be within the scope of energy-related services. All consulting work by the Contractor will be defined and initiated through the same task order process as specified in the RFP.

Some energy programs or energy initiatives may potentially be able to fall into more than one subject matter area. In this situation, the decision to assign an energy program or energy initiative to a particular Subject Matter Area is solely at the discretion of MEA.

**In response to Section 2.3 below, an Offeror must provide in its proposal a statement of intent to comply with the terms, conditions, and requirements of those specifications.**

**In response to Section 2.4 and 2.5 below, an Offeror must provide in its proposal a statement of intent to comply with the terms, conditions, and requirements of those specifications contained in the Sections for the specific Subject Matter Areas covered by the Offeror's proposal.**

## **2.3 Services Required: All Contractors**

### **2.3.1 Task Order Process**

2.3.1.1 All work related to this Contract shall be performed utilizing a task order process.

2.3.1.2 The Task Order Process will be initiated by the MEA through the issuance of a written Task Order to the Contractor, typically aligned with an individual energy program or energy initiative. The written Task Order (TO) will be issued via e-mail by the MEA Contract Manager to the Contractor's Project Manager. The Task Order will include specific task detail and information as follows:

2.3.1.3 All energy related services and consulting work shall be provided via a task order process using the contracted, fully-loaded labor rates as specified in Attachment F, Price Proposal Form. All equipment, marketing materials, and supplies shall be provided via a task order using a cost contract.

2.3.1.4 The MEA Contract Manager will e-mail a request to the Contractor's Project Manager to provide services. On occasion, the Contract Manager may contact the Contractor's Project Manager by telephone to orally convey the contents of a task order request and then follow-up with an e-mail confirming the conversation. The request shall include at a minimum:

- a) The due date and time for submitting a response to the request;
- b) Technical requirements and description of the services needed;
- c) Specific information to be provided by the Contractor in the TO response, such as:
  - i. A proposed work plan for the required services;
  - ii. Any maximum timeframe to complete the services required; and,
  - iii. Any information, work site, and access to equipment that the Contractor believes must be furnished by the State.
- d) Requirements for meeting and reports.

2.3.1.5 The Contractor's Project Manager shall e-mail a response to the Contract Manager within the specified time and shall include at a minimum:

- a) A response to the description of the service that details the Contractor's understanding of the work;
- b) A description of the proposed work plan including time schedules, in narrative (including, if specifically required/requested, a GANTT chart) to accomplish the requisite task order. This description shall include a schedule of resources and related activities, including an explanation of how the task order will be completed. As part of the work

plan submitted to MEA, the Contractor shall clearly identify the labor category (or categories) proposed to complete each activity on the task order.

c) Identification of those activities or phases that can be completed independently or simultaneously versus those that must be completed before another activity or phase can commence.

d) The personnel resources, including those of subcontractor(s), and estimated hours to complete the overall task order by labor category.

e) The personnel resources, including those of subcontractor(s), and estimated hours by labor category to complete the individual activity or sub-task.

e) A detailed written description of any work to be subcontracted, and the name and address of the subcontractor(s).

f) Proposed approach to satisfying the requirements of the task order and development of task order deliverables.

g) A detailed price estimate, using projected hours for each labor category.

h) Identify each person by labor category that will be assigned to the project.

i) A detailed estimate of any equipment, marketing material, supply, and/or non-standard travel costs required to complete the task order.

2.3.1.6 The Contract Manager will review the response and will either approve the work and provide a notice to proceed (NTP) or contact the Contractor's Project Manager to obtain additional information, clarification or revision to the work. When satisfied, the Contract Manager will then provide the NTP via a task order approval memo.

## **2.3.2 Contractor-Provided Specifications and Recommendations**

2.3.2.1 Specifications and recommendations provided by Contractor shall meet all local and state codes.

2.3.2.2 The specifications and recommendations shall be provided according to energy best practice, including but not limited to the proper sizing and installation of cooling equipment, appropriate illumination levels for lighting projects, etc.

## **2.3.3 Customer Focus**

2.3.3.1 In order to provide MEA with the greatest value, the Contractor will staff each task order with team members from the lowest cost labor category qualified to produce the desired work product.

2.3.3.2 Contractor shall leverage project management best practice techniques to ensure that all requested work is delivered on time and within budget.

### **2.3.4 Collaborative Environment**

- 2.3.4.1 If and when directed by MEA, Contractor will communicate, cooperate, and collaborate with MEA, other MEA contractors, MEA project partners, and other Maryland state agencies in order to achieve program goals.
- 2.3.4.2 As directed by MEA, Contractor shall cooperate with MEA's Evaluation, Measurement and Verification Contractor on program evaluation activities.

### **2.3.5 Record Keeping**

- 2.3.5.1 The Contractor will develop and organize methodical systems of maintaining records related to energy technical assistance activities, by individual task order.
- 2.3.5.2 For all hours worked, the Contractor and all Subcontractors shall maintain timekeeping records by task order documenting the hours worked by individual by date, as well as a brief description of tasks performed. Time keeping records shall be made available to MEA, upon request.

### **2.3.6 Accessibility**

- 2.3.6.1 The Contractor will be accessible to MEA via email and phone during normal business hours throughout the duration of the contract.
- 2.3.6.2 Whenever key project staff working on active task orders will be unavailable for planned absences exceeding more than three businesses days, MEA should be notified of the upcoming absence via email and/or phone. If appropriate, based on the length of the planned absence, a back-up point of contact should be provided to MEA by the Contractor.

### **2.3.7 File Sharing**

Contractor will be responsible for providing a secure method for sharing all necessary project files between MEA, the Contractor, and any applicable subcontractors.

## **2.4 Services Required: Subject Matter Area I- Residential Energy Programs**

### **2.4.1 Overview of Subject Matter Area I- Residential Energy**

The Contractor shall, as directed by MEA, provide energy technical support services on residentially-focused energy programs. MEA offers several energy programs that benefit Maryland residents. Examples of some residentially-focused energy programs can be found in RFP section 2.1. MEA could also potentially develop other residential energy programs in the future which may require additional energy technical support from the selected Contractor.

Within this Subject Matter Area, it is expected that the selected Offeror will be asked to primarily provide technical assistance support on energy efficiency and renewable projects and initiatives. Residential energy programs containing elements of alternative transportation technologies, as well as grid and energy resiliency, may arise in the future that require technical assistance.

## **2.4.2 Technical Requirements for Subject Matter Area I**

- 2.4.2.1 MEA is primarily looking for engineering-type support to independently assess the energy benefits of proposed projects during the application phase, as well as to calculate energy savings after project installations are complete. Some onsite energy auditing and post-installation site visits may be required.
- 2.4.2.2 Organizational support associated with the processing of grant applications as well as program implementation support is also likely to be requested. Program implementation support may include outreach and education about new energy initiatives.
- 2.4.2.3 Should MEA develop a new program within this Subject Matter Area, a limited amount of program design support may also be requested from the selected Offeror.
- 2.4.2.4 If deemed necessary by MEA, the Contractor may be asked to provide a limited amount of energy policy analysis related to residential energy programs.

## **2.4.3 Additional Personnel Requirements for Subject Matter Area I**

2.4.3.1 The labor categories in RFP Section 2.4.3.2, below, have been established for this RFP and the resulting Subject Matter Area I contract. In addition, the proposed team of personnel should include one or more members who have knowledge of the following:

- Best practices in energy efficiency in the residential and multifamily sectors
- Energy assessments/audits in the residential and multifamily sectors
- Energy-efficient construction
- Current and forthcoming local and national energy policy (local and national)
- Familiarity with the Maryland energy landscape
- Building Performance Institute (BPI) standards
- Home Performance with ENERGY STAR
- Northeast Energy Efficiency Partnership (NEEP) Mid-Atlantic Technical Reference Manual (TRM)
- Energy efficiency modeling software
- Community solar
- Credit enhancements, as a tool for financing energy projects
- PVWatts
- Equipment sizing and installation procedures
- Administering grant and loan programs
- Residential-scale renewable energy technologies
- The integration of energy efficiency and renewable energy technologies
- Electric vehicles and electric vehicle charging
- Energy and grid resiliency technologies (e.g., battery storage)
- Energy program outreach strategies
- International Performance Measurement and Verification Protocol (IPMVP) for EM&V
- Natural gas
- Energy Codes
- Community outreach

2.4.3.2 Labor Categories:

### **1. Project Manager**

Duties: The project manager position oversees the management of the Contract for the Contractor, working closely with the MEA Contract Manager and any applicable MEA program managers who may manage individual energy programs. The Project Manager is responsible for assigning Contractor and sub-contractor staff resources, overseeing task budgets to ensure activities are completed on time and within budget, and resolving any issues that may arise to ensure deliverables are provided as outlined in the individual task orders. The Project Manager is also responsible for ensuring all monthly task order reports, MBE documentation and invoices are submitted to MEA in an accurate and timely manner, and that all contract requirements are met. The project manager directs the individual task orders, providing advice to programmatic staff in support of customer priorities.

Limitation: There shall only be one individual assigned to the Project Manager role per Contract at a time. Should an Offeror submit a proposal and receive an award for both Subject Matter Areas from MEA, one Project Manager may be assigned per Subject Matter Area.

Education: Master's degree in energy policy, science, engineering, business, technical or other relevant disciplines recommended; or equivalent combination of education and experience subject to review and concurrence by MEA. Project Management Professional (PMP) certification preferred.

Experience: Five years of demonstrable, relevant energy experience with subject areas encompassed in Section 2.4.3.1 in this RFP and three years of experience with government-client focused, task-order driven project management, or equivalent combination that together total at least eight years of combined energy and project management experience. Skilled in client negotiation, managing and overseeing projects and staff, and financial planning. Must be highly organized and have good interpersonal, conflict resolution, communication, and teaming skills.

## 2. Senior Program Analyst

Duties: Applies broad and in-depth knowledge of energy to lead energy analysis activities and to provide input and support to energy program implementation and design. Provides input on energy policy, best practice and case study development. Conducts outreach on behalf of MEA to help market select energy programs or initiatives. Supervises work of junior program analysts assigned to tasks, as appropriate.

Education: An advanced degree in energy policy, economics, science, or other relevant field recommended; or equivalent combination of education and relevant experience.

Experience: At least three years of experience with the subject areas outlined in section 2.3 of this RFP. Experience working on programs of moderate complexity. Experience identifying cost effective energy measures. Must have excellent interpersonal and communication (oral and written) skills.

## 3. Junior Program Analyst

Duties: Worker-contributor supporting basic science, energy, policy, market, environment and/or technology analysis. Executes organizational, administrative, and routine assignments necessary for energy program implementation and energy program outreach. Performs work under supervision of project manager or senior program analyst.



Education: Bachelor's degree in energy policy, economics, science, engineering, or other relevant field, or equivalent relevant experience.

Experience: Fundamental knowledge of energy policy, market and/or technology analysis practices, procedures, and concepts and demonstrated understanding of the relevant field. Must have strong written communication skills, as well as teamwork and interpersonal skills. Must be familiar with, and be able to manipulate data using, basic computer software programs related to the position.

#### 4. Senior Energy Engineer

Duties: Reviews initial energy savings estimates submitted with program applications for accuracy and reasonableness. Aids MEA in the calculation of project cost effectiveness for moderate and complex projects. Calculates post-installation energy benefits and savings, using commonly accepted best practices, models and standards for moderate and complex projects. May conduct onsite energy audits and quantification of energy opportunities.

Education: Possesses appropriate degrees in engineering, certifications, and/or licenses to perform analysis and provide energy recommendations, including but not limited to the Building Performance Institute (BPI) Building Analyst certification or equivalent residential energy efficiency certification, subject to review and concurrence by MEA.

Experience: Intermediate to senior energy professional with at least three years of experience completing energy calculations and auditing. Familiar with energy modeling software. Must have excellent communication skills with a strong technical writing background. Computer skills appropriate to the position.

#### 5. Junior Energy Engineer

Duties: Calculates initial energy savings estimates, as well as post-installation energy benefits and savings, using commonly accepted best practices and standards for simple, routine energy projects under supervision of the Project Manager or a Senior Energy Engineer.

Education: Possesses appropriate degrees in engineering, certifications, and/or licenses to perform basic engineering analysis.

Experience: Entry to intermediate level engineering professional with experience completing basic energy calculations. Must have excellent communication skills with a strong technical writing background. Computer skills appropriate to the position.

## **2.5 Services Required: Subject Matter Area II- Commercial, Industrial, Institutional and Government Energy Programs**

### **2.5.1 Overview of Subject Matter Area II- Commercial, Industrial, Institutional, and Government Energy Programs**

The Contractor shall, as directed by MEA, provide energy technical support services on commercial, industrial, institutional, and government energy programs. MEA offers several energy programs that benefit Maryland commercial, industrial, institutional, and government entities. Examples of some

commercial, industrial, institutional and government-focused energy programs can be found in RFP section 2.2. MEA could also potentially develop other programs in the future which may require additional energy technical support from the selected Contractor.

Within this Subject Matter Area, it is expected that the selected Offeror will be asked to primarily provide technical assistance support on energy efficiency projects and, to a lesser degree, renewable energy projects. Commercial, industrial, institutional, and government focused energy programs involving alternative transportation technologies, as well as energy and grid resiliency, may arise in the future.

### **2.5.2 Technical Requirements for Subject Matter Area II**

- 2.5.2.1 MEA is primarily looking for engineering-type support to independently assess the potential energy benefits of proposed energy projects during the grant application phase, as well as to calculate energy savings after project installations are complete. Some onsite energy auditing and post-installation site visits may be required.
- 2.5.2.2 Organizational support associated with the processing of grant applications as well program implementation support is also likely to be requested. Program implementation support may include outreach and education about new energy initiatives.
- 2.5.2.3 Loan programs may require a limited amount of support developing repayment schedules, in addition to energy measure evaluation.
- 2.5.2.4 For the Net Zero Energy Schools program, the selected Offeror will likely need to provide technical support in the development of case studies highlighting project successes and challenges.
- 2.5.2.5 Should MEA develop a new program within this Subject Matter Area, a limited amount of program design support may also be requested from the selected Offeror.
- 2.5.2.6 If deemed necessary by MEA, the Contractor may be asked to provide a limited amount of energy policy analysis related to commercial, industrial, institutional, and government energy programs.

### **2.5.3 Additional Personnel Requirements for Subject Matter Area II**

- 2.5.3.1 The labor categories in RFP Section 2.5.3.2, below, have been established for this RFP and the resulting contract. In addition, the Contractor's proposed team of personnel should include one or more members in these labor categories who have knowledge of the following:
  - Best practices in energy efficiency in the commercial, industrial, institutional, and government sector
  - Energy assessments/audits in the commercial, industrial, institutional, and government sector to include ASHRAE level 1 and level 2 audits
  - Energy-efficient construction
  - Energy efficiency modeling software
  - Net zero energy buildings
  - Energy and grid resiliency technologies (e.g., battery storage)
  - Microgrid modeling techniques and software (such as the HOMER software previously developed by DOE's National Renewable Energy Laboratory (NREL), or similar software)
  - The integration of energy efficiency and renewable energy technologies

- Equipment sizing and installation procedures
- Agricultural-focused energy measures
- Administering grant and loan programs
- Energy program outreach strategies
- Commercial-scale renewable energy technologies
- Northeast Energy Efficiency Partnership (NEEP) Mid-Atlantic Technical Reference Manual (TRM)
- Combined heat and power (CHP)
- PVWatts
- Electric vehicles and electric vehicle charging, as well as other forms of alternative transportation technology
- International Performance Measurement and Verification Protocol (IPMVP) for EM&V
- Natural gas

### 2.5.3.2 Labor Categories:

#### 1. Project Manager

**Duties:** The project manager position oversees the management of the Contract for the Contractor, working closely with the MEA Contract Manager and any applicable MEA program managers who may manage individual energy programs. The Project Manager is responsible for assigning Contractor and sub-contractor staff resources, overseeing task budgets to ensure activities are completed on time and within budget, and resolving any issues that may arise to ensure deliverables are provided as outlined in the individual task orders. The Project Manager is also responsible for ensuring all monthly task order reports and invoices are submitted to MEA in an accurate and timely manner, and that all contract requirements are met. The project manager directs the individual task orders, providing advice to programmatic staff in support of customer priorities.

**Limitation:** There shall only be one individual assigned to the Project Manager role per Contract at a time. Should an Offeror submit a proposal and receive an award for both Subject Matter Areas from MEA, one Project Manager may be assigned per Subject Matter Area.

**Education:** Master's degree in energy policy, science, engineering, business, technical or other relevant disciplines recommended; or equivalent combination of education and experience. Project Management Professional certification preferred.

**Experience:** Five years of demonstrable, relevant energy experience with subject areas encompassed in Section 2.5.3.1 of this RFP and three years of experience with government-client focused, task-order driven project management, or equivalent combination that together total at least eight years of combined energy and project management experience. Skilled in client negotiation, managing and overseeing projects and staff, and financial planning. Must be highly organized and have good interpersonal, conflict resolution, communication, and teaming skills.

#### 2. Senior Program Analyst

**Duties:** Applies broad and in-depth knowledge of energy to lead energy analysis activities and to provide input and support to energy program implementation and design. Provides input on energy policy, best practice and case study development. Conducts outreach on behalf of MEA to help market select energy programs and initiatives. Supervises work of junior program analysts assigned to tasks, as appropriate.

Education: An advanced degree in energy policy, economics, science, or other relevant field recommended; or equivalent combination of education and relevant experience.

Experience: At least three years of experience with one or more subject areas requested in Section 2.5.3.1 of this RFP. Experience working on programs of moderate complexity. Experience identifying cost effective energy measures. Must have excellent interpersonal and communication (oral and written) skills.

### 3. Junior Program Analyst

Duties: Worker-contributor supporting basic science, energy, policy, market, environment and/or technology analysis. Executes organizational, administrative, and routine assignments necessary for energy program implementation, as well as energy program outreach. Performs work under supervision of project manager or senior program analyst.

Education: Bachelor's degree in energy policy, economics, science, engineering, or other relevant field, or equivalent relevant experience.

Experience: Fundamental knowledge of energy policy, market and/or technology analysis practices, procedures, and concepts and demonstrated understanding of the relevant field. Must have strong written communication skills, as well as teamwork and interpersonal skills. Must be familiar with, and be able to manipulate data using, basic computer software programs related to the position.

### 4. Senior Energy Engineer

Duties: Reviews initial energy savings estimates submitted with applications for accuracy and reasonableness. Aids MEA in the calculation of project cost effectiveness for moderate and complex projects. Calculates post-installation energy benefits and savings, using commonly accepted best practices and standards for moderate and complex projects. May conduct onsite energy audits and quantification of energy opportunities.

Education- Possesses appropriate degrees in engineering, certifications, and/or licenses to perform engineering analysis and provide energy efficiency recommendations. Certified Energy Manager (CEM) and Professional Engineering (PE) license preferred.

Experience: Intermediate to senior energy professional with at three years of experience completing energy calculation and auditing. Must have excellent communication skills with a strong technical writing background. Computer skills appropriate to the position.

### 5. Junior Energy Engineer

Duties: Calculates post-installation energy benefits and savings, using commonly accepted best practices and standards for simple, routine energy projects under supervision of the Project Manager or a Senior Energy Engineer.

Education: Possesses appropriate degrees in engineering, certifications, and/or licenses to perform basic engineering analysis.

Experience: Entry to intermediate level engineering professional with experience completing basic energy calculations. Must have excellent communication skills with a strong technical writing background. Computer skills appropriate to the position.

## **SECTION 3 – CONTRACTOR REQUIREMENTS: GENERAL REQUIREMENTS**

### **3.1 Insurance Requirements**

- 3.1.1** The Contractor shall maintain Commercial General Liability Insurance to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 3.1.2** The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$5,000,000 per claim and annual aggregate; to include Cyber Liability.
- 3.1.3** The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.1.4** The Contractor shall maintain Crime Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and minimum single loss retention not to exceed \$10,000. The Crime Insurance policy shall be endorsed to cover Third Party Fidelity. In addition, the State of Maryland and the MEA shall be added as a Loss payee.
- 3.1.5** Within five (5) Business Days of recommendation for Contract award, and before any work begins, the Contractor shall provide the Procurement Officer with current certificates of insurance, and update such certificates periodically, but no less than annually in multi-year contracts, as directed by the Contract Manager. Such copy of the Contractor’s current certificate of insurance shall contain at minimum the following:
- a. Workers’ Compensation – The Contractor shall maintain such insurance as necessary and/or required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
  - b. Commercial General Liability as required in Section 3.1.1.
  - c. Errors and Omissions/Professional Liability as required in Section 3.1.2.
  - d. Automobile and/or Commercial Truck Insurance as required in Section 3.1.3.
  - e. Crime Insurance as required in Section 3.1.4.
- 3.1.6** The State of Maryland shall be listed as an additional insured on any Commercial General Liability, Auto Liability, Professional/Cyber Liability, and excess liability or umbrella policies with the exception of Workers’ Compensation Insurance, which is currently handled by the Chesapeake Employer’s Insurance Company (formerly Injured Workers’ Insurance Fund). This means the faces of the certificates of insurance for these policies must state, “The State of Maryland is an Additional Insured.” All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 30 days’ advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 15 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and provide such policies.
- 3.1.7** The Contractor shall require that any subcontractors providing primary services (as opposed to non-critical, ancillary services) under this Contract obtain and maintain the same levels of

insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

## **3.2 Security Requirements**

### **3.2.1 Employee Identification**

3.2.1.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent may be provided additional photo identification.

3.2.1.2 At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visible location at all times.

### **3.2.2 Information Technology**

3.2.2.1 For purposes of this solicitation and the resulting Contract:

- (1) "Sensitive Data" means information that is protected against unwarranted disclosure, to include Personally Identifiable Information (PII), Protected Health Information (PHI) or other private/confidential data, as specifically determined by the State. Sensitive Data includes 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; (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information; (3) falls within the definition of "personal information" under Md. Code Ann., General Provisions § 14-3501(d); or (4) falls within the definition of "personal information" under Md. Code Ann., St. Govt. § 10-1301(c).
- (2) "Relevant subcontractor" includes any subcontractor that assists the Contractor in the critical functions of the Contract, handles Sensitive Data, and/or assists with any related implemented system, excluding subcontractors that provide secondary services that are not pertinent to assisting the Contractor in the critical functions of the Contract, handling Sensitive Data, and/or assisting with any related implemented system.
- (3) The Contractor, including any relevant subcontractor(s), shall implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry standards for information security such as those listed below, and ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of this solicitation and resulting Contract.
- (4) The Contractor, including any and all subcontractor(s), agrees to abide by all applicable federal, State and local laws concerning information security.

3.2.2.2 Information Security Requirements - To ensure appropriate data protection safeguards are in place, the Contractor and any relevant subcontractor(s) shall at a minimum implement and maintain information technology controls that protect sensitive information at all times throughout the life of the Contract. This includes the use of encryption and other technologies necessary to ensure safeguards and to prevent improper release of such information.

### **3.3 Problem Escalation Procedure**

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

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

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

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

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

### **3.4 Invoicing**

#### **3.4.1 General**

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

- (1) Contractor name and address;

- (2) Remittance information for electronic transmission of payment;
- (3) Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- (4) Invoice period (i.e. time period during which services covered by invoice were performed);
- (5) Invoice date;
- (6) Invoice number;
- (7) State assigned Contract number;
- (8) State assigned Task Order number(s);
- (9) Program Cost Account(s) (PCA) codes utilized in the assigned Task Order. MEA will provide Contractor with the list of applicable PCA codes.
- (10) Goods or services provided, including a summary of hours worked by individual and by labor category during the monthly billing period;
- (11) Amount due; and
- (12) Total aggregate amount authorized to all task orders as well as the total aggregate amount invoiced to MEA to date across all task orders.

3.4.1.2 Invoices submitted without the required information cannot be processed for payment until the Contractor provides the required information.

3.4.1.3 The Administration reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Administration with all required deliverables within the time frame specified in the Contract or otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Also see the "Living Wage" provision of the Contract, if applicable, which allows for withholding of payment under certain circumstances. Any action on the part of the Administration, 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.

**3.4.2 Invoice Submission Schedule** - The Contractor shall submit invoices in accordance with the following schedule:

3.4.2.1 All invoices shall be submitted to the Contract Manager monthly, no later than **forty-five (45)** calendar days following the month the service was provided. The invoice shall contain charges for all services completed by the Contractor and sub-contractor(s) during the reporting month. All work associated with the charges on the invoice shall be outlined in the required monthly report outlined in RFP Section 3.6 and submitted with the invoice.

3.4.2.2 Should charges for any services completed during the reporting month fail to be submitted to the Contract Manager on an invoice within ninety (90) calendar days of the end of the month where the labor hours were worked, MEA may deem the Contractor to not be in compliance with the terms of the Contract and the labor charges that are ninety or days overdue to be unbillable to MEA.

## 3.5 SOC 2 Type 2 Audit Report

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



### **3.6 Status/Monthly Progress Reports**

**3.6.1** The Contractor shall provide monthly written Status/Progress Reports (“Reports”) to the Contract Manager throughout the period of contract performance. The activities outlined in the Report should match the activities for which hours are being billed on the invoice being submitted to MEA at the same time. The report submitted to the Contract Manager shall be broken down on a task order by task order basis. The Report shall indicate the number of hours being billed for the month by individual, labor category, the contracted fully-loaded labor rate and if appropriate, travel costs detail and marketing material, supply, and equipment cost detail, on a task order basis. The report shall include a detailed description of the specific activities completed by each individual during the reporting month.

**3.6.2** Reports shall be submitted to the Contract Manager no later than **forty-five (45)** calendar days following the month the service was provided to MEA. For any task involving subcontractors, Contractor shall ensure that all subcontractor(s) submit invoices with sufficient time to ensure the subcontractor charges can be included on the appropriate monthly invoice. In no case should there be a delay of more than **forty-five (45)** days in reporting Contractor or sub-contractor activities.

### **3.7 MBE Reports**

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

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

### **3.8 VSBE Reports**

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

### **3.9 End of Contract Transition**

The Contractor shall cooperate in the orderly transition of services from the Contract awarded under this solicitation to any subsequent contract for similar services. The transition period shall begin ninety (90) days before the Contract end date, or the end date of any final exercised option or contract extension. The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Manager. The Contract Manager may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of Contract.

## **3.10 Substitution of Personnel**

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

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

**Extraordinary Personal Circumstance** – Any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

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

**Sudden** – When the Contractor has less than thirty (30) days' prior notice of a circumstance beyond its control that will require the replacement of any Key Personnel working under the Contract.

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

3.10.3.1 The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute Key Personnel have qualifications at least equal to those of the Key Personnel for whom the replacement is requested.

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

- A detailed explanation of the reason(s) for the substitution request;
- The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
- The official resume of the current personnel for comparison purposes; and
- Any evidence of any required credentials.

3.10.3.3 The Contract Manager may request additional information concerning the proposed substitution. In addition, the Contract Manager and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.

3.10.3.4 The Contract Manager will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested

substitution. The Contract Manager will not unreasonably withhold approval of a requested Key Personnel replacement.

### **3.10.4 Replacement Circumstances**

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

**3.10.4.2 Key Personnel Replacement Due to Vacancy.** The Contractor shall replace Key Personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section 3.10.4.1.).

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

**3.10.4.3 Key Personnel Replacement Due to an Indeterminate Absence.** If any Key Personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Manager as required under section 3.10.3.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

#### **3.10.4.4 Directed Personnel Replacement.**

3.10.4.4.1 The Contract Manager may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in section 3.10.4.4.2. If after such remediation the Contract Manager determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Manager deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract

Manager can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with section 3.10.3 of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

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

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

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

### **3.11 Ownership of Data and Intellectual Property**

All data and/or intellectual property developed under this Contract is the exclusive property of MEA. Contractor shall retain no rights to utilize, commercialize or transfer any data or work product of this Contract without express written consent of MEA.

### **3.12 Deliverables**

Deliverables will be defined within each task order.

### **3.13 Marketing Materials, Equipment, or Supplies**

On a limited basis, some task orders may require the purchase of related marketing materials, equipment or supplies. Marketing materials, equipment or supplies above and beyond what is required for normal business operations may be requested through the task order process. The Contractor shall include a detailed cost estimate for any marketing materials, equipment or supplies as a part of the task order. In addition to any labor charges incurred procuring the required marketing material, equipment, or supply, only the cost of the equipment, marketing material, or supply should be passed on to MEA. In no case should the Contractor apply a mark-up rate to the cost of the equipment, marketing material or supply. Prior to receiving reimbursement, the Contractor must provide a copy of its supplier's invoice to document the actual cost to the Contractor.

All non-expendable equipment procured with funds from this Contract shall be MEA property and shall be used primarily for work under this Contract. Non-expendable equipment is that which costs at least \$500, either as an individual piece, or a group of pieces intended to be used together. All non-expendable

equipment must be made available to MEA to allow a State property tag to be affixed in order to comply with the State's property management requirements. The prior written approval of MEA shall be required for use of the equipment, on a non-interference basis, for other work of the Contractor. The Contractor shall use all effort to care for and maintain the equipment. Upon termination of this Contract, MEA shall determine what disposition shall be made of the equipment and shall so notify the Contractor within thirty (30) days.

## **3.14 Travel**

While MEA anticipates that most task orders will be able to be completed remotely, some task orders may require Contractor staff to travel to locations throughout the State of Maryland. For any task orders requiring travel that is deemed to be non-routine, reimbursement of travel expenses may be requested through the task order process. The Contractor shall include a detailed estimate of the anticipated amount of non-routine travel costs required as part of the task order.

### **3.13.1 Routine Travel**

There will be no payment for labor hours associated with travel time or reimbursement for any travel expenses for work performed within routine travel radiuses or at the Contractor's facility. (See definition in RFP Appendix 1)

### **3.13.2 Non-routine Travel**

All non-routine travel expense estimates and travel must be approved in advance by the MEA Contract Manager. Allowable Non-routine travel will be identified within a task order response, if appropriate, and will be reimbursed according to the State's current travel regulations and reimbursement rates, which can be found at Maryland Department of Budget and Management Website:

<http://dbm.maryland.gov/agencies/Pages/FleetTravel.aspx>

If non-routine travel is conducted by automobile, the first 50 miles of such travel will be treated as routine travel and will not be reimbursed. The Contractor may bill for labor hours expended in non-routine travel beyond the identified 50-mile radius, and only if so specified in the TO response. Any Non-Routine Travel that has had prior written approval from the MEA Contract Manager and has actually been expended may be submitted to the MEA with a Contractor's monthly invoice. Appropriate backup for the Non-Routine Travel must be enclosed with the invoice. Appropriate backup would include the written confirmation from the applicable TO showing prior approval for the Non-Routine Travel as well as copies of all travel invoices. Any additional documentation required by the MEA Contract Manager must be provided upon request in order for the Non-Routine Travel to be approved. (See definition in RFP Appendix 1)

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## **SECTION 4 – PROCUREMENT INSTRUCTIONS**

### **4.1 Pre-Proposal Conference**

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

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

In order to assure adequate seating and other accommodations at the Conference, please e-mail or fax the Pre-Proposal Conference Response Form (**Attachment A**) to the attention of the Procurement Officer at least 2 (2) Business Days prior to the Pre-Proposal Conference date; no later than 3:00 PM on Thursday, August 17th, 2017. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer at the same time or earlier. MEA will make a reasonable effort to provide such special accommodation.

### **4.2 eMaryland Marketplace**

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

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

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

### **4.3 Questions**

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the Conference. If possible and appropriate, such questions will be answered at the Conference. (No substantive question will be answered prior to the Conference.) Questions to the Procurement Officer shall be submitted via e-mail to the Procurement Officer's e-mail address indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors attending the Conference. If possible and appropriate, these questions will be answered at the Conference.

Questions will also be accepted subsequent to the Conference and should be submitted to the Procurement Officer via email in a timely manner prior to the Proposal due date. Questions are requested to be submitted at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

#### **4.4 Procurement Method**

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

#### **4.5 Proposals Due (Closing) Date and Time**

Proposals, in the number and form set forth in RFP Section 5.2 “Proposals” must be received by the Procurement Officer at the Procurement Officer’s address no later than the Proposal Due date and time indicated on the RFP Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors) in order to be considered.

Requests for extension of this time or date will not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the RFP Key Information Summary Sheet will not be considered.

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the RFP Key Information Summary Sheet for receipt of Proposals.

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

**Please note that MEA is collocated with the Maryland Department of the Environment at 1800 Washington Blvd, Baltimore, MD 21230. If delivering a hardcopy version of the proposal, the individual delivering the proposal will need to check in at the Maryland Department of the Environment reception area located on the first floor of 1800 Washington Blvd, Baltimore, MD 21230 and contact 410-537-4000 to be escorted to MEA for delivery before 3:00 PM local time. Delivery must be made to MEA directly.**

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

#### **4.6 Multiple or Alternate Proposals**

Each Subject Matter Area will be evaluated independent of the other Subject Matter Area. Therefore a separate proposal package is required from offerors when making a proposal for both Subject Matter

Areas. However, for each of the two individual Subject Matter Areas, neither multiple nor alternate proposals will be accepted.

#### **4.7 Economy of Preparation**

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

#### **4.8 Public Information Act Notice**

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. (Also, see RFP Section 5.4.2.2 "Claim of Confidentiality"). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

#### **4.9 Award Basis**

A Contract shall be awarded to the responsible Offeror submitting the Proposal for each of the individual Subject Matter Areas that have been determined to be the most advantageous to the State, considering evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. Proposals for each Subject Matter Area will be evaluated and awarded independent of the other Subject Matter Area. See RFP Section 6 for further award information.

#### **4.10 Oral Presentation**

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

For planning purposes, MEA anticipates that oral presentations will occur approximately three weeks after the Proposal Due Date.

#### **4.11 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date for submission of Proposals or best and final offers (see Section 6.5.2.5) if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.



#### **4.12 Revisions to the RFP**

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

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

#### **4.13 Cancellations**

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

In the event, a government entity proposes and receives the recommendation for award for the Contract resulting from this RFP, the procurement may be cancelled and the award processed as a Memorandum of Understanding in accordance with COMAR 21.01.03.01.A(4).

#### **4.14 Incurred Expenses**

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

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

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

#### **4.16 Offeror Responsibilities**

The selected Offeror(s) shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE goal for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 "Minority Business Enterprise Goals").

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror shall submit with its Proposal an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience and/or qualifications of the parent under any evaluation criteria pertaining to the Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualification of the parent are transferred to and shared with the Offeror, the parent is directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

#### **4.17 Mandatory Contractual Terms**

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 5.4.2.4).**

#### **4.18 Proposal Affidavit**

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

#### **4.19 Contract Affidavit**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit, a copy which is included as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. The Contractor must also submit a Contract Affidavit with any Contract renewal, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

#### **4.20 Compliance with Laws/Arrearages**

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

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

#### **4.21 Verification of Registration and Tax Payment**

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

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

#### **4.22 False Statements**

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

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

#### **4.23 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: [http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/X-1020130407.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/X-1020130407.pdf).

## **4.24 Prompt Payment Policy**

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor’s Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract “Prompt Payment” clause (see **Attachment M**). Additional information is available on GOMA’s website at: <http://goma.maryland.gov/Documents/Legislation/PromptPaymentFAQs.pdf>

## **4.25 Electronic Procurements Authorized**

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

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

**4.25.3** “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bs/>), 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 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section 4.25.5 of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:

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

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

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

- (a) Ask questions regarding the solicitation;

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

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

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

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

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

## **4.26 Minority Business Enterprise Goals**

**4.26.1 Establishment of Goal and Subgoals.** An overall MBE subcontractor participation goal of 29% of the total contract dollar value, including all option years, if any, has been established for this procurement.

There are no MBE subcontractor participation subgoals for this procurement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4.26.11** As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a Contract as a Prime Contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) established for the contract.

In order to receive credit for self-performance, an MBE Prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal, the MBE Prime must also identify certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (**Attachment D-1A**)) used to meet those goals.

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

**4.26.12** With respect to Contract administration, the Contractor shall:

- (1) Submit to the Department’s designated representative by the 10th of the month following the reporting period:
  - a. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - b. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE Prime’s self-performing work to be counted towards the MBE participation goals.

- (2) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit to the Department's designated representative by the 10th of the month following the reporting period an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.
- (3) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (4) Consent to provide such documentation as reasonably requested and right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (5) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

#### **4.27 Veteran-Owned Small Business Enterprise Goal**

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

#### **4.28 Living Wage Requirements**

- 4.28.1** Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code, State Finance and Procurement, § 18-101 *et al.* The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- 4.28.2** If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. See the "Living Wage" clause in the Contract (**Attachment M**).
- 4.28.3** Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If an Offeror fails to complete and submit the required documentation, the State may determine the Offeror to be not responsible under State law.



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

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

- (1) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- (2) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- (3) If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located.

**The contract(s) resulting from this solicitation have been deemed to be Tier 1 Contract(s).**

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

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

## **4.29 Federal Funding Acknowledgement**

This Contract does not contain federal funds.

## **4.30 Conflict of Interest Affidavit and Disclosure**

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

#### **4.31 Non-Disclosure Agreement**

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

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

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

#### **4.33 Nonvisual Access**

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

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

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**

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

#### **4.36 Department of Human Resources (DHR) Hiring Agreement**

This solicitation does not require a DHR Hiring Agreement.

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

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

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## **SECTION 5 – PROPOSAL FORMAT**

### **5.1 Two Part Submission**

Offerors shall submit Proposals in separate volumes:

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

### **5.2 Proposals**

**5.2.1** Volume I – Technical Proposal, and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, email address, and telephone number of a contact person for the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain one (1) unbound original, so identified, and five (5) additional copies. The resulting package should be submitted with a label bearing:

- (1) RFP title and number,
- (2) Subject Matter Area for which the Proposal is being submitted,
- (3) Name and address of the Offeror, and
- (4) Closing date and time for receipt of Proposals

Submissions are to be made to the Procurement Officer (see RFP Key Information Summary Sheet) prior to the date and time for receipt of Proposals (see RFP Section 4.5 “Proposals Due (Closing) Date and Time”).

**If submitting for both Subject Matter Areas, two separate submission packages should be delivered to MEA, one for each Subject Matter Area.**

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

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

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

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

### 5.3 Delivery

Offerors may either mail or hand-deliver Proposals.

- 5.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the Department recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by the Department. It could take several days for an item sent by first class mail to make its way by normal internal mail delivery to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.
- 5.3.2 For delivery by commercial carrier (e.g., FedEx, UPS, DHL, etc.) acting as agent for the Offeror, an Offeror is advised to use a method that will result in a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. Proposals that have been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely.
- 5.3.3 For hand-delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. **Please note that MEA is collocated with the Maryland Department of the Environment at 1800 Washington Blvd, Baltimore, MD 21230. If hand-delivering a hardcopy version of the proposal, the individual delivering the proposal will need to check in at the Maryland Department of the Environment reception area located on the first floor of 1800 Washington Blvd, Baltimore, MD 21230 and contact 410-537-4000 to be escorted to MEA for delivery before 3:00 PM local time. Delivery must be made to MEA directly.**
- 5.3.4 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

### 5.4 Volume I – Technical Proposal

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

- 5.4.1 **Format of Technical Proposal.** Inside a sealed package described in Section 5.2 “Proposals,” the unbound original, five additional (5) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 5.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. **In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 2.2.1 Response . . . ;**

**“Section 2.2.2 Response . . .,” etc.).** This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 6.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

**5.4.2 The Technical Proposal** shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

**5.4.2.1 Title Page and Table of Contents (Submit under TAB A).** The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. The SMA for which a proposal is being submitted shall also be clearly indicated. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

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

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

- (1) Name and address of the Offeror;
- (2) Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- (3) Solicitation Title, Solicitation Number, and Subject Matter Area that the Proposal is in response to;
- (4) Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- (5) Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual’s Social Security Number (SSN);
- (6) Offeror’s eMM number;
- (7) Offeror’s MBE certification number (if applicable);
- (8) Acceptance of all State RFP and Contract terms and conditions (see Section 4.17); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 5.4.2.4); and
- (9) Acknowledgement of all addenda to this RFP.

**5.4.2.4 Executive Summary (Submit under TAB C).** The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.” The Summary shall identify the Subject Matter Area for which the Offeror is proposing to provide services. In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary.

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

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

**5.4.2.5 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, “Minimum Qualifications.”

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

**5.4.2.6.1** The Offeror shall address each Scope of Work requirement (RFP Section 2) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

**5.4.2.6.2** 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 services as outlined in RFP Section 2, 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.

**5.4.2.6.3 *Project Management Methodology*** - The Offeror’s approach to managing the overall project identified in this RFP. The overall Project Management approach should include the following items:

- i. Project Organization (including identification and role of sub-contractors);
- ii. Offeror Support Resources that will be available, including Personnel and Technology Resources;
- iii. Project Management Planning and Tracking System, to include how budget and task activity and deliverable completion will be monitored and managed by the Offeror and any subcontractors;
- iv. Project Reporting Methodologies;

- v. The personnel who will participate in periodic, scheduled conference calls or meetings with MEA personnel and the manner in which the Offeror will provide updates/progress reports; and,
- vi. The availability of the Offeror to perform this Contract, including the flexibility to dedicate staff to these efforts.

**5.4.2.6.4** The Offeror shall identify the location(s) from which it proposes to provide the services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP.

**5.4.2.6.5** The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Department's Contract Manager should problems arise under the Contract and 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 RFP Section 3.3.

**5.4.2.6.6** As part of the proposal, Offerors shall provide at least two examples of project-level energy efficiency technical evaluations that would be indicative of the quality and type of work that can be expected to be completed under this contract, if selected for award.

**5.4.2.7 Experience and Qualifications of Proposed Staff (Submit under TAB F).** The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract.

The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the 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. **Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.**

The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those included in the list of labor categories included in this RFP should provide a crosswalk reference document.

**5.4.2.8 Offeror Qualifications and Capabilities (Submit under TAB G).** The Offeror shall include information on past experience with similar energy programs and services as outlined in Sections 2.2.3 and 2.2.4 of this RFP, as applicable to the particular Subject Matter Area for which the Offeror is submitting a proposal. Offerors shall describe how experience with the similar energy programs and services qualify the Offeror for the performance of the work outlined in the RFP and shall include a general summary of the services offered in terms of:

- (1) The extent of similar services to those required under this RFP for the Subject Matter Area in which a proposal is being submitted by the Offeror;
- (2) The number of years the Offeror has provided these service;
- (3) The number of clients/customers and geographic locations that the Offeror currently serves;
- (4) The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- (5) The Offeror's process for resolving billing errors; and
- (6) An organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

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

- (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 services provided.

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

Note: In the event an Offeror is unable to produce three references, the Offeror shall explain the reasons why the three references with the supporting information under this bullet cannot be provided. Additionally, the Offeror shall produce other references that support its competency and qualifications to perform contract requirements.

**5.4.2.10 List of Current or Prior State Contracts (Submit under TAB I).** Provide a list of all contracts with any entity of the State of Maryland for which the Offeror, as well as any proposed subcontractor partner, is currently performing 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 services/goods 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 Department to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

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

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

- (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.

**5.4.2.12 Certificate of Insurance (Submit under TAB K).** The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.1. See Section 3.1 for the required insurance certificate submission for the recommended Offeror.

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

**5.4.2.14 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 case name, court case docket number, and what the final ruling or determination was from the court; and,
- (4) In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, the name of the judge and location of the court.

**5.4.2.15 Economic Benefit Factors (Submit under TAB N).** 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 this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. **Please estimate the economic benefit to Maryland per \$500,000 of contract value.**

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.

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.

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.

In responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- (1) Generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- (2) Descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; and
- (3) Tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

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 this Contract.

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:

- (1) 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;**
- (2) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- (3) 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;
- (4) Subcontract dollars committed to Maryland small businesses and MBEs; and
- (5) 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.

### **5.4.3 Additional Required Technical Submissions (Submit under TAB O).**

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

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

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

- (1) A Signed Statement from the Offeror's Parent Organization Guaranteeing Performance of the Offeror. **See Section 4.16;**
- (2) Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**). **See Section 4.26;**
- (3) Not Required: Completed Veteran-Owned Small Business Enterprise (VSBE) Utilization Affidavit and Prime/Subcontractor Participation Schedule.
- (4) Not Required: Federal Funds Attachment (**Attachment G**). **See Section 4.29;**
- (5) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**). **See Section 4.30;**
- (6) Not Required: Completed Mercury Affidavit (**Attachment K**). **See Section 4.34;**
- (7) Not Required: Completed Location of the Performance of Services Disclosure (**Attachment L**). **See Section 4.35.**

## **5.5 Volume II – Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format identified in Section 5.2 "Proposals," the Offeror shall submit an original unbound copy, an additional five (5) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself.

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## **SECTION 6 – EVALUATION AND SELECTION PROCESS**

### **6.1 Evaluation Committee**

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

### **6.2 Technical Proposal Evaluation Criteria**

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

- 6.2.1** Offeror's Technical Response to RFP Requirements and Work Plan (See RFP Section 5.4.2.6). The State prefers an Offeror's response to work requirements in the RFP that illustrates a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be done and managed. Any response deemed shallow or merely acknowledging a requirement will not earn as high a ranking as a response that shows depth and mastery of the subject matter.
- 6.2.2** Offeror Qualifications and Capabilities, including proposed Subcontractors (See RFP Section 5.4.2.8 through 5.4.2.11, as well as 5.4.2.13)
- 6.2.3** Experience and Qualifications of Proposed Staff (See RFP Section 5.4.2.7)
- 6.2.4** Economic Benefit to State of Maryland (See RFP Section 5.4.2.15)

### **6.3 Financial Proposal Evaluation Criteria**

All Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Composite Labor Rate proposed as submitted on **Attachment B - Financial Proposal Form**.

### **6.4 Reciprocal Preference**

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

- (1) The Maryland resident business is a responsible Offeror;

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

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

## **6.5 Selection Procedures**

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

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

### **6.5.2 Selection Process Sequence**

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

**6.5.2.2** Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and Offeror's ability to perform the services, as well as facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

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

**6.5.2.4** 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.

**6.5.2.5** When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

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

## **6.6 Documents Required upon Notice of Recommendation for Contract Award**

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

- (1) Contract (**Attachment M**),
- (2) Contract Affidavit (**Attachment N**),
- (3) MBE **Attachments D-2 and D-3A/B**, within ten (10) Business Days, if applicable; \*see **Section 4.26**,
- (4) MBE Waiver Justification within ten (10) Business Days (see **MBE Waiver Guidance and forms in Attachments D-1B and D-1C**), if a waiver has been requested (if applicable; \*see **Section 4.26**),
- (5) Not Required: VSBE **Attachment E-2**, if applicable \*see **Section 4.27**,
- (6) Non-Disclosure Agreement (**Attachment I**), if applicable; \*see **Section 4.31**,
- (7) Not Required: HIPAA Business Associate Agreement (**Attachment J**), if applicable; \*see **Section 4.32**,
- (8) Not Required: DHR Hiring Agreement, **Attachment O**, if applicable \*see **Section 4.36**, and
- (9) Copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 "Insurance Requirements," listing the State as an additional insured, if applicable; \*see **Section 3.1**

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

## **RFP ATTACHMENTS**

### **ATTACHMENT A – Pre-Proposal Conference Response Form**

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

### **ATTACHMENT B – Financial Proposal Instructions and Form**

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

### **ATTACHMENT C – Proposal Affidavit**

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

### **ATTACHMENTS D – Minority Business Enterprise Forms**

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

### **ATTACHMENTS E – Veteran-Owned Small Business Enterprise Forms (Not Required)**

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

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

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

### **ATTACHMENT G – Federal Funds Attachment (Not Required)**

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

### **ATTACHMENT H – Conflict of Interest Affidavit and Disclosure**

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

### **ATTACHMENT I – Non-Disclosure Agreement**

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

### **ATTACHMENT J – HIPAA Business Associate Agreement (Not Required)**

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

### **ATTACHMENT K – Mercury Affidavit (Not Required)**

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

**ATTACHMENT L – Location of the Performance of Services Disclosure**

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

**ATTACHMENT M – Contract**

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

**ATTACHMENT N – Contract Affidavit**

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award (see RFP section 4.19).

**ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement (Not Required)**

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



**ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

Solicitation Number **DEXR7400002**

**Energy Technical Services Provider**

A Pre-Proposal Conference will be held at 10:00 AM, on **August 21, 2017** at the Maryland Energy Administration, collocated with the Maryland Department of the Environment (MDE) at 1800 Washington Blvd, Baltimore, MD 21230 . Please return this form by **August 17, 2017 at 3:00 PM** advising whether or not you plan to attend.

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

Ralph Scherini  
Procurement Officer  
Maryland Energy Administration  
1800 Washington Blvd, Suite 755  
Baltimore, MD 21230  
Email: [ralph.scherini@maryland.gov](mailto:ralph.scherini@maryland.gov)  
Office Phone: 410-537-4000  
Fax # (410) 537-4096

Please indicate:

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

- 1.
- 2.

\_\_\_\_\_ No, we will not be in attendance but would like to receive future communications on this RFP.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Firm (please print)

## 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.

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. Failure to adhere to any of these instructions may result in the Proposal being determined 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 EVALUATED PRICE PROPOSED. 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 unit price the State shall pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e. 0.344 shall be 0.34 and 0.345 shall be 0.35.
- D) All 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 the Financial Proposal Form shall be filled in. **Any blanks may result in the bid being rejected.** Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
  - i. If Offeror is bidding on Subject Matter Area I only, Section I of Attachment G shall be fully completed by the Offeror.
  - ii. If Offeror is bidding on Subject Matter Area II only, Section II of Attachment G shall be fully completed by Offeror.
  - iii. If Offeror is bidding on both Subject Matter Area I and II, both Sections I and II of Attachment G shall be fully completed by the Offeror. Attachment G, Section I and Attachment G, Section II shall then be submitted as part of the Subject Matter Area I and Subject Area Matter Area II proposals being submitted separately by the Offeror.
- F) Except as instructed on the form, nothing shall be entered on the Financial Proposal Form that alters or proposes conditions or contingencies on the prices.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03E.

## B-2: FINANCIAL PROPOSAL FORM

### I. SUBJECT MATTER AREA I (SMA I)-RESIDENTIAL ENERGY PROGRAMS

By submitting a Technical Proposal and this Price Proposal, the undersigned hereby declares to have carefully examined all documents, attachments and reference materials described within this RFP and Contract document. The undersigned further proposes and agrees to furnish all services necessary for the performance of the above referenced Contract for the Maryland Energy Administration in accordance with the RFP and all other documents referenced by the RFP including all attachments and Addenda issued by MEA.

The Labor Rates (hourly rates) submitted by the Offeror via this Price Proposal shall be fully loaded, including all direct and indirect costs and firm for the full term of the Contract. **Routine travel expenses will not be reimbursed.**

Using the labor categories defined in the RFP, Section 2.4 for **Subject Matter Area I for Residential Energy programs**, provide the hourly rates in Column C. Multiply the Fully Loaded Hourly Labor Rate (Column C) by the State Evaluation Factor (Column D). Record the results in Column E, Evaluated Price. Add Column E and record the total on line 5. This is the total composite labor rate that will be used to establish the financial ranking of each offeror.

A	B	C	D	E
Item #	Title (SMA I)	Fully Loaded Hourly Labor Rate	State Evaluation Factor	Evaluated Price
1	Project Manager (SMA I)	\$	15%	\$
2	Senior Program Analyst (SMA I)	\$	20%	\$
3	Junior Program Analyst (SMA I)	\$	15%	\$
4	Senior Energy Engineer (SMA I)	\$	35%	\$
5	Junior Energy Engineer (SMA I)	\$	15%	\$
<b>5. TOTAL COMPOSITE LABOR RATE for SMA I (Add Column E)</b>				\$

Authorized Signature \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

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

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

Office Telephone: \_\_\_\_\_

Office Fax No.: \_\_\_\_\_

FEIN: \_\_\_\_\_

Email: \_\_\_\_\_

## B-2: FINANCIAL PROPOSAL FORM

### II. SUBJECT MATTER AREA II (SMA II)-COMMERCIAL, INDUSTRIAL, INSTITUTIONAL, AND GOVERNMENT FOCUSED ENERGY PROGRAMS

By submitting a Technical Proposal and this Price Proposal, the undersigned hereby declares to have carefully examined all documents, attachments and reference materials described within this RFP and Contract document. The undersigned further proposes and agrees to furnish all services necessary for the performance of the above referenced Contract for the Maryland Energy Administration in accordance with the RFP and all other documents referenced by the RFP including all attachments and Addenda issued by MEA.

The Labor Rates (hourly rates) submitted by the Offeror via this Price Proposal shall be fully loaded, including all direct and indirect costs and firm for the full term of the Contract. **Routine travel expenses will not be reimbursed.**

Using the labor categories defined in the RFP, Section 2.5 for **Subject Matter Area II for Commercial, Industrial, Institutional, and Government Energy programs**, provide the hourly rates in Column C. Multiply the Fully Loaded Hourly Labor Rate (Column C) by the State Evaluation Factor (Column D). Record the results in Column E, Evaluated Price. Add Column E and record the total on line 5. This is the total composite labor rate that will be used to establish the financial ranking of each offeror.

A	B	C	D	E
Item #	Title (SMA II)	Fully Loaded Hourly Labor Rate	State Evaluation Factor	Evaluated Price
1	Project Manager (SMA II)	\$	15%	\$
2	Senior Program Analyst (SMA II)	\$	20%	\$
3	Junior Program Analyst (SMA II)	\$	15%	\$
4	Senior Energy Engineer (SMA II)	\$	35%	\$
5	Junior Energy Engineer (SMA II)	\$	15%	\$
<b>5. TOTAL COMPOSITE LABOR RATE for SMA II (Add Column E)</b>				\$

Authorized Signature \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

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

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

Office Telephone: \_\_\_\_\_

Office Fax No.: \_\_\_\_\_

FEIN: \_\_\_\_\_

Email: \_\_\_\_\_

## ATTACHMENT C – PROPOSAL AFFIDAVIT

### **A. AUTHORITY**

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

### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

#### **B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES**

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

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

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

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

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

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

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
  - (a) A court:
    - (i) Made the finding; and

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

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

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

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

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

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

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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

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

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

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

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

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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Proposal that is being submitted; or

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Proposal price of the Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Proposal is submitted.

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

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

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

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

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

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

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

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

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

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

I FURTHER AFFIRM THAT:

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

**M. I FURTHER AFFIRM THAT:**

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

**N. ACKNOWLEDGEMENT**

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

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

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

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

## ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS

### MARYLAND ENERGY ADMINISTRATION

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

#### PLEASE READ BEFORE COMPLETING THIS DOCUMENT

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

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

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

- ✓ In order to receive credit for self-performance, an MBE Prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE Prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE Prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the Contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in **Attachment D1-B** Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances, where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA's website ([www.goma.maryland.gov](http://www.goma.maryland.gov)) for the MBE Prime Regulations Q&A for illustrative examples.
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own workforce towards fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
  7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
  8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.
  9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule MUST at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a Offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the Offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) or the Proposal will be determined to be not susceptible of being selected for award. You may wish to use the

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

**SUBGOALS**

This solicitation does not include MBE subgoals.

**OVERALL GOAL**

**TOTAL MBE PARTICIPATION (INCLUDE ALL CATEGORIES): \_\_\_\_\_ %**

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

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the Proposal. If the Offeror fails to accurately complete and submit this Affidavit and Schedule with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.**

In connection with the Proposal submitted in response to Solicitation No. DEXR7400002, I affirm the following:

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

I acknowledge and intend to meet IN FULL the overall certified Minority Business Enterprise (MBE) participation goal of **29 percent**.

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal, I must complete the MBE Participation Schedule (Item 4 below) in order to be considered for award.

**OR**

I conclude that I am unable to achieve the MBE participation goal. I hereby request a waiver, in whole or in part, of the overall goal. I acknowledge that by checking this box and requesting a partial waiver of the stated goal, I must complete the MBE Participation Schedule (Item 4 below) for the portion of the goal for which I am not seeking a waiver, in order to be considered for award.

**2. Additional MBE Documentation**

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

- 4 Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**)
- 5 Outreach Efforts Compliance Statement (**Attachment D-2**);
- 6 MBE Subcontractor/MBE Prime Project Participation Statement (**Attachments D-3A/B**);
- 7 Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer in connection with the certified MBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that my proposal is not is not susceptible of being selected for contract award. If the Contract has already been awarded, the award is voidable.

**3. Information Provided to MBE firms**

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

**4. MBE Participation Schedule**

Set forth below are the (i) certified MBEs I intend to use, (ii) percentage of the total Contract amount allocated to each MBE for this project and (iii) items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

Prime Contractor	Project Description	PROJECT/CONTRACT NUMBER

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____%</p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p>Description of the Work to be performed with MBE prime's own workforce: _____</p> <p>_____</p>
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**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
---	--



<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned    <input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned    <input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of Total Contract to be provided by this MBE: _____%</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>

(Continue on separate page if needed)

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

\_\_\_\_\_  
Offeror Name  
*(PLEASE PRINT OR TYPE)*

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**MBE ATTACHMENT D-1B**  
**WAIVER GUIDANCE**

**GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE  
PARTICIPATION GOALS**

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

**I. Definitions**

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

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

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the 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 Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

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

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

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

### **A. Identify Proposal Items as Work for MBE Firms**

1. Identified Items of Work in Procurements
  - (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
  - (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.
2. Identified Items of Work by Offerors
  - (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
  - (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a Prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

### **B. Identify MBE Firms to Solicit**

1. MBE Firms Identified in Procurements
  - (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
  - (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.
2. MBE Firms Identified by Offerors
  - (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
  - (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

### **C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:
  - (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;

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

**D. Negotiate With Interested MBE Firms**

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
  - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. An Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a Offeror’s failure to meet the contract MBE goal(s), as long as such

costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

- (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
  - (d) number of MBE firms that the Offeror solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the 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 Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
  6. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
  7. An Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
    - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
    - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

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

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

### **III. Other Considerations**

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

The decision-maker may take into account whether an 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 Offerors in meeting the contract. For example, when the apparent successful 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 Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

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

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

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

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

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

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
  - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and
  - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

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

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

##### **D. Other Documentation**

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



**MBE ATTACHMENT D-1B - Exhibit A**  
**MBE Subcontractor Unavailability Certificate**

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

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

\*\*\*\*\*  
\*\*\*\*\*

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

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

\_\_\_\_\_  
**Signature of Minority Firm's MBE Representative**      **Title**      **Date**

\_\_\_\_\_  
MDOT CERTIFICATION #      TELEPHONE #



3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
Signature of Prime Contractor      Title      Date

**MBE ATTACHMENT D-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER**  
**REQUEST**

PAGE \_\_ OF \_\_

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

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

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

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

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

\_\_\_\_\_  
 Address

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

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

\_\_\_\_\_  
 Date

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

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

PAGE \_\_ OF \_\_

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

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

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

Please check if Additional Sheets are attached.

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

**PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_ OF \_\_

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

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

<b>Name of Identified MBE Firm &amp; MBE Classification</b>	<b>Describe Item of Work Solicited</b>	<b>Initial Solicitation Date &amp; Method</b>	<b>Follow-up Solicitation Date &amp; Method</b>	<b>Details for Follow-up Calls</b>	<b>Quote Rec'd</b>	<b>Quote Used</b>	<b>Reason Quote Rejected</b>
<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 <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification</b> <b>(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 <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing

Please check if Additional Sheets are attached.

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

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE  
QUOTES**

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	SOLICITATION NUMBER

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

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

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

Please check if Additional Sheets are attached.

**MBE ATTACHMENT D-2**  
**OUTREACH EFFORTS COMPLIANCE STATEMENT**

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

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

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

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

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

---

---

---

4. **Please Check One:**

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

---

---

---

5. **Please Check One:**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date



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

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 BUSINESS DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR CONTRACT AWARD.**

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

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

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

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

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

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

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

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

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

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

**MBE ATTACHMENT D-4A**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Paid/Unpaid Invoice Report**

Report #: _____  Reporting Period (Month/Year): _____  <b>Prime Contractor: Report is due to the MBE Liaison 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: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____
--	--

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
<b>List all payments made to MBE 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: 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 Unpaid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Unpaid: \$</b>		_____
	<u>Invoice#</u>	<u>Amount</u>																																					
1.																																							
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<b>Total Dollars Paid: \$</b>		_____																																					
	<u>Invoice #</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
4.																																							
<b>Total Dollars Unpaid: \$</b>		_____																																					

- If more than one MBE subcontractor is used for this contract, you must use separate D-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment D-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Contract Monitor: _____ Contracting Unit and Address: _____ _____
---

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

**MBE ATTACHMENT D-4B**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

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

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

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

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

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

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

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

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

MBE Subcontractor Name:																																
MDOT Certification #:																																
Contact Person:		E-mail:																														
Address:																																
City:	State:	ZIP:																														
Phone:	Fax:																															
<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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1.																																
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3.																																
<b>Total Dollars Unpaid: \$</b> _____																																
Prime Contractor:		Contact Person:																														

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

Contract Monitor: _____ Contracting Unit and Address: _____ _____ _____ _____
---

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

**ATTACHMENTS E – VETERAN-OWNED SMALL BUSINESS  
ENTERPRISE**

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

---



## **ATTACHMENT F – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

### **Living Wage Requirements for Service Contracts**

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

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

**Maryland Living Wage Requirements Affidavit of Agreement**

(submit with Proposal)

Contract No. \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract Is Exempt from the Living Wage Law**

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

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

**If the Contract Is a Living Wage Contract**

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

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

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

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

Name of Authorized Representative: \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**ATTACHMENT G- FEDERAL FUNDS ATTACHMENT**

This solicitation does not include a Federal Funds Attachment.

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**ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND  
DISCLOSURE**

**Reference COMAR 21.05.08.08**

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

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

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

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

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

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

Date: \_\_\_\_\_ By: \_\_\_\_\_  
(Authorized Representative and Affiant)

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

## ATTACHMENT I – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through the Maryland Energy Administration (the “Department”), and \_\_\_\_\_ (the “Contractor”).

### RECITALS

**WHEREAS**, the Contractor has been awarded a contract (the “Contract”) following the solicitation for Energy Programs Technical Support Provider for the Maryland Energy Administration, Solicitation # DEXR7400002; and

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

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

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

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



- e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
- f. The Recitals are not merely prefatory but are an integral part hereof; and
- g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

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

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

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

By: \_\_\_\_\_

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

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

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

**NON-DISCLOSURE AGREEMENT - ATTACHMENT I-1**

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

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

**NON-DISCLOSURE AGREEMENT – ATTACHMENT I-2**

**CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the State of Maryland and

\_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_, 20\_\_\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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

DATE: \_\_\_\_\_

NAME OF CONTRACTOR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

**ATTACHMENT J – HIPAA BUSINESS ASSOCIATE AGREEMENT**

This solicitation does not require a HIPAA Business Associate Agreement.

**ATTACHMENT K – MERCURY AFFIDAVIT**

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**

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

**ATTACHMENT M – CONTRACT**

**Energy Technical Services Provider for the Maryland Energy Administration**

THIS CONTRACT (the “Contract”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between \_\_\_\_\_ and the STATE OF MARYLAND, acting through the MARYLAND ENERGY ADMINISTRATION (MEA).

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

**1. Definitions**

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

**1.1** “Contract Manager” means Jennifer Gallicchio, Program Manager, Energy Efficiency Maryland Energy Administration, or other person designated in writing by the Administration.

**1.2** “Contractor” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.

**1.3** “Department” means the Maryland Energy Administration.

**1.4** “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_.

**1.5** “Procurement Officer” means Ralph Scherini, Maryland Energy Administration or other person designated in writing by the Administration.

**1.6** “RFP” means the Request for Proposals for an Energy Technical Services Provider for the Maryland Energy Administration, Project DEXR7400002, and any amendments thereto issued in writing by the State.

**1.7** “State” means the State of Maryland.

**1.8** “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_\_.

**2. Scope of Work**

**2.1** The Contractor shall provide all deliverables as defined in the RFP Section 2. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Technical Proposal

Exhibit C – The Financial Proposal

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

**2.2** The Procurement Officer may make changes in the work, within the general scope of the Contract or RFP, through a written “change” order. 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. No other order, statement or conduct by the Procurement Officer or any other person shall be treated as a change to the Contract, nor entitle the Contractor to an equitable adjustment under this section. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of the 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** Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

### **3. Time for Performance.**

The Contract resulting from this RFP shall commence upon the issuance of the Notice-To-Proceed and end January 18, 2021 with two (2) additional one (1) year renewal options.

The Contractor shall provide services upon receipt of a Notice to Proceed from the Procurement Officer.

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

**4.1** In consideration of the satisfactory performance of the work set forth in this Contract, MEA shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Attachment B, Contractor’s Financial Proposal and the reimbursement for costs as defined and allowed in RFP Section 1.3

**4.2** Payments to the Contractor shall be made no later than thirty (30) days after MEA’s receipt of a proper invoice for services provided by the Contractor accompanied by the required reports and invoice documentation outlined in RFP Section 2, acceptance by MEA of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor’s Federal Tax Identification Number which is\_\_\_\_\_. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract



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

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

**4.4** Contractor's eMarylandMarketplace vendor ID number is \_\_\_\_\_

## **5. Rights to Records**

**5.1** The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract, shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without having to compensate the Contractor, other than that specifically provided by this Contract.

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

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

**5.4** The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. Exclusive Use**

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright

owner and Contractor may copyright material connected with this project only with the express written approval of the State.

## **7. Patents, Copyrights, Intellectual Property**

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

**7.2** The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

**7.3** If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (1) is lawfully in the public domain; (2) has been independently developed by the other party without violation of this Contract; (3) was already in the possession of such party, (4) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (5) which such party is required to disclose by law.

## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor

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

## **10. Indemnification**

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

**10.2** The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person or entity not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

**10.3** The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

**10.4** The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and the Contractor will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

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

No official or employee of the State, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **12. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must

file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

### **13. Maryland Law**

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

**13.2** The Maryland Uniform Computer Information Transactions Act, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any purchase order, or Notice to Proceed, issued under this Contract.

**13.3** Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

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

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

### **15. Contingent Fee Prohibition**

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

### **16. Non-availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and

the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### **17. Termination for Cause**

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

#### **18. Termination for Convenience**

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

#### **19. Delays and Extensions of Time**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

## **20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer determines 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 every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases, or other agreements, reaches \$100,000, file with the Secretary of the State certain specified information including disclosure of beneficial ownership of the business.

## **23. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, §14-101 - 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies. The statement shall cover the preceding two calendar years, and if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term: (1) on February 5, to cover the 6-month period ending January 31; and (2) on August 5, to cover the 6-month period ending July 31.

## **24. Retention of Records**

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

section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances.

## **25. 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 hereafter as 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 of this Contract;

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **26. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

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

## **27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 11 and 13 through 26 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

## **28. Prompt Payment Requirements and MBE Compliance**

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

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

**28.2.** An “undisputed amount” means an amount owed by a 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.

**28.3.** An act, failure to act, or decision of a procurement officer or a representative of MEA, concerning a withheld payment between a Contractor and subcontractor under this provision, may not:

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

**28.4.** The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

**28.5.** To ensure compliance with certified MBE subcontract participation goals MEA may, consistent with COMAR 21.11.03.13, take the following measures:

- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- (b) This verification may include, as appropriate:
  - i. Inspecting any relevant records of the Contractor;
  - ii. Inspecting the jobsite; and
  - iii. Interviewing subcontractors and workers.
  - iv. Verification shall include a review of:
    - a. The Contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
    - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- (c) If MEA determines that a Contractor is in noncompliance with certified MBE participation goals, then MEA will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective



action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

- (d) If MEA determines that a Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that MEA requires, then MEA may:
- i. Terminate the contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
- (e) Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

## **29. Liability**

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

A. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

C. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10, "Indemnification", of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

## **30. Parent Company Guarantee (If Applicable)**

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

State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

### **31. Commercial Non-Discrimination**

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

**31.2** The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by MEA, in all subcontracts.

**31.3** As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request, a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

### **32. Administrative**

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

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

If to the State: Maryland Energy Administration  
1800 Washington Blvd, Suite 755  
Baltimore, MD 21230  
Attn: Ralph Scherini

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**33. Contract Extended to Include Local Entities**

If after receiving written approval for use of this contract from the Maryland Energy Administration and in accordance with § 13-110 of the State Finance and Procurement Article, Annotated Code of Maryland, any Local entity in Maryland (Maryland county, municipal corporation, bi-county or multicounty agency, public authority, special taxing district, or other political subdivision or unit of a political subdivision of this State, including boards of education and library boards that receive funding from the State), may purchase from the Contractor goods or services covered by this Contract at the same prices chargeable to the State. All such purchases by non-State Maryland governments or agencies: (1) shall constitute contracts between the Contractor and that government or agency; (2) shall not constitute purchases by the State or State agencies under this Contract; (3) shall not be binding or enforceable against the State, and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. The Contractor bears the risk of determining whether or not a government or agency with which the Contractor is dealing is a State agency.

Any usage of the Contract resulting from this RFP by Maryland Local entities will not be counted towards the amount established for this Contract. Nonetheless, Maryland Local entity Contract usage shall be at the same rates and with the same types and level of service as is required for State agencies.

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

CONTRACTOR

STATE OF MARYLAND  
BY: MARYLAND ENERGY ADMINISTRATION

\_\_\_\_\_  
By:

\_\_\_\_\_  
By: Mary Beth Tung, Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved for form and legal  
sufficiency this \_\_\_\_ day \_\_\_\_\_, 2017.

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Assistant Attorney General

**ATTACHMENT N – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

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

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

**I FURTHER AFFIRM THAT:**

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

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

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

Name and Department ID  
Number: \_\_\_\_\_ Address: \_\_\_\_\_

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

Name and Department ID  
Number: \_\_\_\_\_ Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

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

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

#### F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

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

By: \_\_\_\_\_ (printed name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)



**ATTACHMENT O – DHR HIRING AGREEMENT**

This solicitation does not require a DHR Hiring Agreement.

## APPENDIX 1

### ABBREVIATIONS AND DEFINITIONS

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

1. **Administration** – Maryland Energy Administration (MEA)
2. **Advanced Degree** – A Master’s or Doctorate Degree.
3. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
4. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
5. **Contract(s)** – The Contract(s) awarded to the successful Offeror(s) pursuant to this RFP. The Contract(s) will be in the form of **Attachment M**.
6. **Contract Commencement** - The date the Contract is signed by the MEA following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
7. **Contract Manager** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Manager may authorize in writing one or more State representatives to act on behalf of the Contract Manager in the performance of the Contract Manager’s responsibilities.
8. **Contractor** – The selected Offeror that is awarded a Contract by the State.
9. **Cost Contract** – A contract which provides for reimbursement for specified allowable costs but no fee.
10. **Department or MEA** – Maryland Energy Administration.
11. **eMM** – eMaryland Marketplace accessible on the Maryland Department of General Services website at <https://emaryland.buyspeed.com/bs/> (see RFP Section 4.2).
12. **Fixed Hourly Labor Category Rates** – These are the fully loaded, fixed hourly rates for all contracted labor as established in the Contract. These rates will be utilized by the Contractor(s) upon proposing and executing services under a Contract and task orders (TO). The rates quoted in a Contractor’s task order in response to a TO request may bill up to but not exceed the fixed Fully Loaded Fixed Hourly Labor Category Rates in the Contract for the applicable Labor Category.
13. **Fully Loaded** – means the costs associated with a specific fixed hourly labor rate that includes all profit and direct and indirect costs associated with performing a TO. The indirect costs shall include all costs that would normally be considered General and Administrative costs and/or

routine travel costs, or which in any way are allocated by the Contractor against direct labor hours as a means of calculating profit or recouping costs which cannot be directly attributable to a TO.

14. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation.
15. **Key Personnel** – All personnel identified by the Offeror in its Proposal in the Project Manager, Senior Program Analyst, and Senior Energy Engineer labor categories are considered to be essential to the work being performed under the Contract or in the Contractor’s proposed Task Order. See RFP Sections 3.10 and 5.4.2.7.
16. **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.
17. **MEA** – Maryland Energy Administration, 1800 Washington Blvd, Suite 755, Baltimore, MD 21230.
18. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
19. **Net Zero Energy School** – a School whose total annual energy generation is equivalent (or greater) than the total annual energy usage and where all energy sources (electricity, natural gas, propane, etc.) are considered.
20. **Non-Routine Travel** – Non-routine travel is defined as travel authorized by an MEA task order that is beyond the 50 mile radius of MEA’s location or the Contractor’s facility, whichever is closer to the consulting worksite. In the case of a subcontractor working on a specific task order, non-routine travel is defined as travel authorized by an MEA task order that is beyond the 50 mile radius of MEA, the Contractor’s facility, or the subcontractor’s facility, whichever is closer to the consulting worksite.
21. **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.
22. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the Go-Live Date, and is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or the MEA Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
23. **Offeror** – An entity that submits a Proposal in response to this RFP.
24. **Procurement Officer** – The person authorized by the Maryland Energy Administration (the Administration) to issue and administer this RFP, administer the evaluation and selection of the winning proposal, and administer the resulting contract in accordance with the State’s Procurement Law as set forth in Division II of the State Finance and Procurement Article of the Annotated Code of Maryland. 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 Administration may change the Procurement Officer at any time by written notice to the Contractor.

25. **Program Cost Account (PCA)** – The accounting tracking number assigned by the MEA to an energy program.
26. **Project Manager** – Until the time of award of a Contract by MEA, this is the person designated as the point-of-contact in the Offeror’s proposal with the authority to represent a Contractor and to resolve contract matters on behalf of the Contractor. After the issuance of award(s) by MEA, the Project Manager role will be defined for Subject Matter Area I by RFP Section 2.4.3.2 and for Subject Matter Area II by RFP Section 2.5.3.2.
27. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
28. **Request for Proposals (RFP)** – This Request for Proposals for Energy Technical Services Provider for the Maryland Energy Administration, Project Number **DEXR7400002**, August 10, 2017, including any amendments.
29. **Routine Travel** – Routine travel is defined as travel authorized by an MEA task order that is within a 50 mile radius of the MEA’s location of 1800 Washington Blvd, Baltimore, MD 21230 or a facility of the Contractor, whichever is closer to the consulting work site. For any travel completed by a subcontractor, routine travel is defined as travel authorized by an MEA task order that is within a 50 mile radius of the MEA’s location of 1800 Washington Blvd, Baltimore, MD 21230, a facility of the Contractor, or a facility of the subcontractor, whichever is closer to the consulting work site.
30. **State** – The State of Maryland.
31. **Task Order (TO)** - Task Order is a supplementary contractual and obligating instrument used during execution of an indefinite quantity contract to establish specific work detail, quantity, deliverables, pricing and timing for an assigned task.
32. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment B – Financial Proposal Form, and used in the financial evaluation of Proposals (see RFP Section 5.5).
33. **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.