



**OFFICE OF STATE PROCUREMENT
DEPARTMENT OF GENERAL SERVICES**

INVITATION FOR BIDS (IFB)

SOLICITATION NO. 001IT821173/BPM020029

Issue Date: July 15, 2020

Emergency Generator Maintenance and Repair Services

NOTICE TO BIDDERS/OFFERORS

A Prospective Bidder that has received this document from the Department of General Services' website or procurement.maryland.gov, or that has received this document from a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide the Prospective Bidder's name and mailing address so that addenda to the IFB or other communications can be sent to the Prospective Bidder.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NO BID NOTICE**

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

**Title: Emergency Generator Maintenance and Repair Services
Solicitation No: 001IT821173/BPM020029**

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

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

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

E-mail Address: _____

ATTENTION: PLEASE FAX OR EMAIL ONLY

**STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES
IFB KEY INFORMATION SUMMARY SHEET**

Invitation for Bids: Emergency Generator Maintenance and Repair Services

Solicitation Number: 001IT821173/BPM020029

IFB Issue Date: July 15,2020

IFB Issuing Office: Department of General Services

Procurement Officer: Alex Ferguson
301 W. Preston Street M-4
Baltimore, Maryland 21201
Phone: 410-767-4612 Fax: 410-333-5509
e-mail: alex.ferguson@maryland.gov

Contract Monitor: James Welch
Department of Information Technology
100 Community Place
Crownsville, MD 21032
Phone: (410) 697-9392
e-mail: james.welch@maryland.gov

Pre-Bid Conference: NA

Pre-Bid Attendance RSVP due by: NA

Cut-off Date for Q &A: All questions or issues pertaining to this solicitation must be submitted to the Procurement Officer via email by July **,2020

Closing Date and Time: August 6, 2020 at 2 pm Local Time

Term of Service: October 1, 2020 through September 30, 2023

Options Two (2) one (1) year renewal options

MBE Subcontracting Goal: None

MBE Split Goals: None

VSBE Subcontracting Goal: None

Small Business Reserve: None

Small Business Preference: None

Federally Funded No

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Department of General Services (or the Department) is issuing this Invitation for Bids (IFB) to procure the services defined in the detailed specifications and scope of work (Section 3.1), as specified in this IFB, from a Contract between the successful bidder(s) and the State.
- 1.1.2 It is the State's intention to obtain services, as specified in this IFB, from a Contract between the selected Bidder and the State. The anticipated duration of services to be provided under this Contract can be found on **the IFB Key Information Summary Sheet (page iii)**.
- 1.1.3 The Department intends to make "a single award" as a result of this IFB.
- 1.1.4 Bidders, either directly or through their subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation and the successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work
- 1.1.5 1.2 Abbreviations and Definitions

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

- a. **Bid** – A statement of price offered by a Bidder in response to an IFB.
- b. **Bidder** – An entity that submits a Bid in response to this IFB.
- c. **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).
- d. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
- e. **Consecutive** – uninterrupted services provided from one year to next.
- f. **Continuous** – period of time when the contractor has maintained work for a client.
- g. **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment A**.
- h. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. See Section 1.4.
- i. **Contract Monitor (CM)** – 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.
- j. **Contractor** – The selected Bidder that is awarded a Contract by the State.
- k. **Department** – The Department of General Services.

- l. **eMMA** – eMaryland Marketplace Advantage (see IFB Section 1.8).
- m. **Invitation for Bids (IFB)** – This Invitation for Bids solicitation issued by the (Department), Solicitation Number (solicitation number) dated (date of issuance), including any addenda. **See the IFB Key Information Summary Sheet (page iii).**
- n. **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.
- o. **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.
- p. **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.dgs.maryland.gov – keyword: State Holidays.
- q. **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 Commencement Date and is the official start date of the Contract for the actual delivery of services as described in this solicitation.
- r. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- s. **State** – The State of Maryland.
- t. **Term of Contract** – The anticipated begin and expiration date of a contract period.
- u. **Total Bid Price** - The Bidder’s total price for services in response to this solicitation, included in the Bid in Attachment F – Bid Form, and used in determining the recommended awardee (see IFB Section 1.15).
- v. **Veteran-owned Small Business Enterprise (VSBE)** – a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- w. **Working Day(s)** – Same as “Business Day(s).”

1.3 Contract Type

The Contract resulting from this solicitation shall be a Firm Fixed Price for Parts and Equipment as defined in COMAR 21.06.03.02 A(1) and Time and Material for Maintenance and Repair Service as defined in COMAR 21.06.03.05A(2)

1.4 Contract Duration

- 1.4.1 The Contract that results from this solicitation shall commence as of the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required (“Contract Commencement”).
- 1.4.2 **See the IFB Key Information Summary Sheet (page iii) for the complete term of the contract.**

- 1.4.3 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see Attachment A) shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

1.5 Procurement Officer

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

Alex Ferguson
Procurement Officer
Department of General Services
301 W. Preston Street M-4
Baltimore, Maryland 21201
Phone Number: 410-767-4612
Fax Number: 410-333-5509
E-mail: alex.ferguson@maryland.gov

The Department may change the Procurement Officer at any time by written notice. No other State or DGS employee, official or representative has authority to change requirements except the Procurement Officer or their authorized representative, subject to the limits of their authority and other limitations imposed by law.

1.6 Contract Monitor

The Contract Monitor is:

James Welch
Contract Monitor
Department of Information Technology
100 Community Place
Crownsville, MD 21032
Phone Number: (410) 697-9392
E-mail: james.welch@maryland.gov

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

1.7 Pre-Bid Conference

Not applicable for this solicitation

1.8 eMarylandMarketplace Advantage

- 1.8.1 Bids for this solicitation are being accepted solely online through eMaryland Marketplace Advantage (eMMA). Bidders must bid all line items. Partial or incomplete bids will be rejected unless otherwise stated in the solicitation. Bidders shall elaborate on items in Specifications only when requested. Bidders should not provide any comments in the comments box for each line item. If comments are provided the bid may be determined to be non-responsive. Bidders should not provide unsolicited discounted pricing unless instructed to do so in the Specifications.

- 1.8.2 **Print out all forms and attachments** and carefully review the entire solicitation. **After bids are opened, you will no longer be able to access this solicitation.** Retain all sections for future reference.
- 1.8.3 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to <https://procurement.maryland.gov>, click on “Register” to begin the process, and then follow the prompts. If the State of Maryland or other regulatory body requires a license or certificate to perform the services required under this IFB, please provide a copy with your bid response.

1.9 Questions and Inquires

- 1.9.1 All questions or issues pertaining to this solicitation must be submitted via email to the Procurement Officer. **See the IFB Key Information Summary Sheet (page iii) for the Cut-Off Date for submitting questions.** Only information communicated by the Procurement Officer or their authorized representative will be the official position of the State on an issue.
- 1.9.2 All questions should be submitted in a timely manner. When questions are not received in a timely manner, the Procurement Officer will, based on the availability of time to research and communicate an answer, decide whether they can answer an untimely question before the bid due date.
- 1.9.3 Current Contract Pricing Information will not be provided because the specifications may have been modified. Contractors are advised that basing their bid on current contract pricing when specifications have been modified could lead to non-responsive bid pricing. As part of a responsibility determination, bidders may be required to attend or schedule a site visit at the facility to inspect specific conditions in detail to assist in their bid preparation.

1.10 Procurement Method

This Contract will be awarded in accordance with the Competitive Sealed Bidding method in accordance with Section 13-103 of the State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.05.02. In accordance with COMAR 21.05.02.13, the Contract will be awarded to the responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the IFB and is either the most favorable bid price or most favorable evaluated bid price.

1.11 Bids – Opening/Due Date and Time/References

- 1.11.1 Bids for this solicitation are being accepted solely online through eMaryland Marketplace Advantage (eMMA). **See the IFB Key Information Summary Sheet (page iii) for the Bid Due Date and Time.** This contract shall be awarded to the responsible Bidder that submits the lowest responsive bid meeting the specifications. Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set for the opening. Bids will be opened electronically in eMMA as soon as practicable after the deadline for the receipt of bids in the solicitation. Bid results will **not** be given by phone. **Bids may not be submitted by e-mail or facsimile.**
- 1.11.2 Should a Bidder be in doubt as to the meaning or intent of any section or subsection of this IFB, the Bidder must request clarification from the Procurement Officer via email. **Do not use the comments box in the eMMA solicitation to ask a question or comment on the solicitation. See Section 1.9**

- 1.11.3 Vendors not responding to this solicitation are requested to submit the “**No Bid Notice**” 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 IFB on page (ii), immediately following the Title Page. Fax or email only.**
- 1.11.4 All Bidders should read and retain a copy of all the bid documents for their reference. Your bid documents should consist of the solicitation with all required attachments, including the affidavits and any other required submissions specified in the solicitation, or amendments, if any.
- 1.11.5 Submission requirements **must** be submitted with each bid independently and **cannot** be referenced to prior bid submissions to satisfy the requirements. Print out all forms and carefully review the entire solicitation. After bids are opened, you will no longer be able to access this solicitation.
- 1.11.6 Vendor must provide a list of references of companies or organizations for which it provided services within the past ten (10) consecutive years. See Section 4.4.4. This list must be submitted to the Procurement Officer electronically via eMMA as an attachment by the bid opening due date.

1.12 Multiple or Alternate Bids

Multiple and/or alternate Bids will not be accepted.

1.13 BPO as a Contract

The Blanket Purchase Order (BPO) issued as a result of the Invitation for Bid (IFB) and any subsequent amendments, modifications or options issued relevant to the IFB or BPO, shall comply with all of the terms, conditions and specifications issued with the IFB and are incorporated in and made part of the BPO.

1.14 Confidentiality

- 1.14.1 Bidders should give specific attention to the identification of those portions of their bid which they deem to be confidential, or to contain proprietary information or trade secrets. Bidders should provide justification why such material, upon request, should not be disclosed by the State under the Maryland Public Information Act (PIA), State Government Article, Title 10, Subtitle 6 of the Annotated Code of Maryland. Any section or part of a bid or proposal deemed confidential or proprietary should be so identified on the respective page of the bid or proposal.
- 1.14.2 For requests for information made under the Public Information Act (PIA), the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

1.15 Award Basis

- 1.15.1 The Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable Total Bid Price (as referenced in COMAR 21.05.02.13) for providing the service as specified in this IFB. Bidders must bid all lines items. Partial or incomplete bids will be rejected unless otherwise stated in the solicitation.

- 1.15.2 Award of this contract by DGS will not be final and complete until after: (1) the Contractor submits complete and satisfactory documentation required under the Contract and/or documentation required by the Procurement Officer; and (2) a proposed award is approved by DGS, and/or the Board of Public Works.
- 1.15.3 The BPO issued as a result of the solicitation, and any subsequent amendments, modifications or options issued relevant to the solicitation or BPO, complies with all the terms, conditions and specifications issued with the solicitation and is incorporated in and made part of the Contract – Attachment A.

1.16 Tie Bids

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

1.17 Duration of Bid

Bids submitted in response to this IFB are irrevocable for 120 days following the closing date of the Bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

1.18 Revisions to the IFB

If it becomes necessary to revise this IFB before the due date for Bids, the Department shall provide addenda to all prospective Bidders through eMMA. Addenda will be placed on eMMA within a reasonable time to allow Bidders to consider them in preparing their bids. It remains the responsibility of all prospective Bidders to check eMMA for any addenda issued prior to the submission of Bids. If the due date for submission of bids does not permit adequate time for consideration of the addenda by Bidders, the bid due date will be extended.

Bidders should acknowledge receipt of all addenda to this IFB issued before the Bid due date. Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be rejected as being non-responsive to the requirements of the IFB.

1.19 Cancellations

The State reserves the right to cancel this IFB, or accept or reject any and all Bids, in whole or in part, received in response to this IFB.

1.20 Incurred Expenses

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or in performing any other activities related to submitting a Bid in response to this solicitation.

1.21 Protest/Disputes

Any protest or dispute related, respectively, to this solicitation or the resulting Contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2 of the Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).

1.22 Bidder Responsibilities

The selected Bidder shall be responsible for rendering services for which it has been selected as required by this IFB. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this IFB (see Section 1.33 “Minority Business Enterprise Goals” and Section 1.41 “Veteran-Owned Small Business Enterprise Goals.”).

If a Bidder that seeks to perform or provide the services required by this IFB is the subsidiary of another entity, all information submitted by the Bidder, such as but not limited to, references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder’s Bid shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.23 Substitution of Personnel

If the solicitation requires that a particular individual or personnel be designated by the Bidder to work on the Contract, any substitution of personnel after the Contract has commenced must be approved in writing by the Contract Monitor prior to the substitution. If the Contractor substitutes personnel without the prior written approval of the Contract Monitor, the Contract may be terminated for default which shall be in addition to, and not in lieu of, the State’s remedies under the Contract or which otherwise may be available at law or in equity.

1.24 Mandatory Contractual Terms

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached herein as **Attachment A**. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. **Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.**

1.25 Bid/Proposal Affidavit

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

1.26 Contract Affidavit

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit will also be required to be completed by the Contractor prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term.

1.27 Compliance with Laws/Arrearages

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

1.28 Verification of Registration and Tax Payment

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The website for the State Department of Assessments and Taxation is <http://www.dat.state.md.us>, e-mail address is charterhelp@dat.state.md.us, and phone numbers for the State Department of Assessments and Taxation are: **(410) 767-1340 or (888) 246-5941**.

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

1.29 False Statements

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

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

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

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

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

1.30 Payments by Electronic Funds Transfer

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

1.31 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (formerly the Governor's Office of Minority Affairs, or GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code

Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, Section 31 “Prompt Payment” (see **Attachment A**). Additional information is available at: <http://gomdsmallbiz.maryland.gov>

1.32 Electronic Procurements Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder/Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 “Payments by Electronic Funds Transfer”) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
 - 1. The Procurement Officer may conduct the procurement using eMMA, e-mail, or facsimile to issue:
 - (a) the solicitation (e.g., the IFB/RFP);
 - (b) any amendments;
 - (c) pre-Bid/Proposal conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer’s decision on any Bid protest or Contract claim.
 - 2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
 - (a) ask questions regarding the solicitation;
 - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) submit a "No Bid/Proposal Response" to the solicitation.
 - 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.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

1. submission of Proposals;
2. filing of Bid Protests;
3. filing of Contract Claims;
4. submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder/Offeror be provided in writing or hard copy.

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

1.33 Minority Business Enterprise Goal and Sub-goals

There is no MBE subcontractor participation goal for this procurement.

1.34 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Md. Code Ann., State Finance and Procurement Article, Title 18. Additional information regarding the State’s living wage requirement is contained in **Attachment G**. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Bid/Proposal. If a Bidder/Offeror fails to complete and submit the required documentation, the State may determine a Bidder/Offeror to be not responsible under State law.

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

The 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 Bidder/Offeror must identify in its Bid/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.

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. **In this circumstance, this Contract will be determined to be a Tier 1 Contract.**
- When State contract services valued at 50% or more of the total value of the contract is performed in the Tier 1 Area Contractors and Subcontractors are subject to the Living Wage Law and shall pay each covered employee at least **\$14.24** per hour.

- When State contract services valued at 50% or more of the total value of the contract is performed in the Tier 2 Area Contractors and Subcontractors are subject to the Living Wage and shall pay each covered employee at least **\$10.70** per hour.

NOTES: Whereas the Living Wage rate may change annually, the Contract price may not be changed because of a Living Wage rate change or a change in the State minimum wage rate.

As of January 1, 2020, the minimum wage will increase to \$11.00 and up to \$15.00 by January 2025. Therefore, the minimum wage will prevail over the Tier 2 Living Wage rates. The bidder should plan to pay this rate and for the yearly increase accordingly.

The Contractor shall be responsible for any wage/rate increase during the term of this contract and such increase may not be passed on to the Department of Information Technology or the State of Maryland once the contract has commenced.

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

1.35 Federal Funding Acknowledgement

This Contract does not contain Federal funds.

1.36 Conflict of Interest Affidavit and Disclosure

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

1.37 Non-Disclosure Agreement

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

1.38 Company Profile

A Company Profile is required and must be submitted with the Bid. (**Attachment K**)

1.39 Nonvisual Access

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

1.40 Mercury and Products That Contain Mercury

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

1.41 Veteran-Owned Small Business Enterprise Goals

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

1.42 Location of the Performance of Services Disclosure

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

1.43 Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a Hiring Agreement.

1.44 Small Business Reserve (SBR) Procurement / Small Business Preference (SBP) Procurement

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

SMALL BUSINESS PREFERENCE

This solicitation is not designated as a Small Business Preference (SBP) Procurement

1.45 Performance Bond

A Performance Bond is not required with this contract. See Attachment R – Performance Bond

1.46 Payment Bond

A Payment Bond is not required with this contract. See Attachment S – Payment Bond

1.47 Bid Bond

A Bid Bond is not required with this contract. See Attachment T – Bid Bond

1.48 Vendor Performance Report

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QUARTERLY VENDOR PERFORMANCE REPORT

This form will be used to report satisfactory or unsatisfactory vendor performance. A copy will be given to the vendor and will become a permanent part of the vendor’s file. This report must be completed by the agency quarterly and submitted to the DGS Procurement Officer within ten (10) days.

eMail To:

_____ Alex Ferguson _____
Name of Procurement Officer
Alex.Ferguson@maryland.gov
Report Date: _____
Report Due By: _____

User Agency/Department Submitting Report:

Contact Person: _____ Telephone Number: _____
Address: _____ eMail Address: _____

Title of Service/ _____
Location _____
DGS BPO # _____

Is there a Minority Business Enterprise (MBE) goal?
Yes _____ Goal _____ No _____
Is contractor compliant? Yes _____ No _____
Is this a Small Business Reserve (SBR)?
Yes _____ No _____
Term of Contract: _____ to _____

Vendor’s Name: _____
Name of Company _____

Vendor’s Phone #: _____
Vendor’s eMail Address: _____

Brief description of service(s) provided by Vendor:

A. Using your Invitation to Bid (IFB), Scope of Work (SOW), for this contract, evaluate the vendor’s performance. For any area(s) of non-compliance, include the specific section(s) consistent with the area(s) of vendor’s compliance with contract terms and conditions. Use additional pages to complete Sections A, B, and C, as needed.

- 1.
- 2.
- 3.

B. Explain steps taken on the agency’s level to resolve the problem and the vendor’s response to those steps: (User Agency shall maintain documentation to support all areas of vendor’s non-compliance).

C. Remarks: Be accurate, complete and factual.

Overall rating Satisfactory Unsatisfactory

Printed Name and Title of Person Initiating Form Authorized Signature and Date

1.49 Use of Contractor's Form Not Binding on State

The Bidder may not substitute, modify, or provide any other document in lieu of the documents provided with this bid. Only those forms and documents provided with this solicitation and by the Procurement Officer will be considered acceptable as bid submission.

SECTION 2 – MINIMUM QUALIFICATIONS

2.1 Bidder Minimum Qualifications

The Bidder must provide proof with its Bid that the following Minimum Qualifications have been met (see also Section 4):

Unless stated elsewhere in the IFB, the minimum qualifications for award for this solicitation are as follows:

- 2.1.1 Prior to submitting a bid for the work covered by the specifications for this solicitation, the successful Bidder must have: a) a minimum of three (3) consecutive years of its entity being formed and in business; and b) a minimum of three (3) complete and consecutive years, within the last ten (10) years, of successful (Insert Type of Service) service performance comparable in scope, type, size, magnitude, and complexity as required in this IFB. The Bidder must provide three (3) references that can substantiate this experience timely upon the request of the Procurement Officer.

The Bidder shall submit online with the bid response **on the Company Profile (Attachment K) a minimum of three (3) references** of companies or organizations for which the Bidder provided services in scope, type, size, magnitude and complexity comparable to those specified in the Scope of Work. Each reference shall be from a client for whom the Bidder has provided services within the past ten (10) consecutive years and shall include the following information:

- 2.1.2 Each reference must include:

- a. Name and complete address of business or company
- b. Name of the contact person, email address, and current phone number
- c. Term and length of each contract
- d. Size and type of facility (square footage)
- e. Type of services provided
- f. Names of supervisory personnel who will perform under the contract, specifying the length and type of experience of each such personnel
- g. Contract value

The Department reserves the right to request additional references or utilize references not provided by a Bidder.

- 2.1.3 **List of Current or Prior State Contracts:** (References used to meet any Bidder Minimum Qualifications in Section 2.1.1 may be used to meet this request.

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

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

Information obtained regarding the Bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

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SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

The State is issuing this solicitation for the purposes to obtain emergency generator maintenance and repair services for the seven (7) emergency generators supporting MD FiRST, the State's 700 MHz radio system, and one (1) additional emergency generator supporting the DoIT data center. The Emergency Generators support the mission critical transmission facilities for the State of Maryland.

3.2 Scope of Work - Requirements

- 3.2.1 The contractor shall provide emergency and preventive generator maintenance and repair services for the seven (7) emergency generators supporting MD FiRST and one supporting the DoIT data center.
- 3.2.2 All locations are secured facilities and require the accompaniment of a MD FiRST or DoIT representative.
- 3.2.3 Locations and details of emergency generators:
- A. **Maryland FiRST Generator 1**
Make: Cummins/Onan, Model: GGHF, Size: 75kW (LP) Location: **Annapolis, MD**
 - B. **Maryland FiRST Generator 2**
Make: Cummins/Onan, Model: GGPB, Size: 75kW (LP) Location: **Aberdeen, MD**
 - C. **Maryland FiRST Generator 3**
Make: Cummins/Onan, Model: GGHF, Size: 75kW (LP) Location: **Pasadena, MD**
 - D. **Maryland FiRST Generator 4**
Make: Kohler, Model: 25REZG, Size: 25kW (LP) Location: **Berlin MD**
 - E. **Maryland FiRST Generator 5**
Make: Cummins/Onan, Model: GGPC, Size: 75kW (LP) Location: **Cambridge, MD**
 - F. **Maryland FiRST Generator 6**
Make: Generac, Model: QT02524ANSNA, Size: 25kW (Natural Gas) Location: **Lonaconing, MD**
 - G. **Maryland FiRST Generator 7**
Make: Generac, Model #: SG0080AG188.0V18HPNLC Location: Warrior Mountain WMA, **Oldtown MD**
 - H. **Maryland Data Center Generator (Network MD)**
Make: Generac, Model: 2053020100, Type SG200, Size: 200 kW, Volts: 277/480, Phase 3. Engine 13.3 (Natural Gas) Location: **Baltimore, MD**

3.3 Responsibilities and Tasks

- 3.1.1 The Contractor shall provide the following:
- A. The names and telephone numbers of Contractor's primary point of contact to DoIT personnel in order to expedite restoration of services during an outage or to obtain status during an outage.
 - B. Maintenance and service reports, via email, to the Contract Manager within seven (7) business days of service/repair performed. Maintenance and Service Reports must identify the date and locations of work performed, contain a Department Representative's signature, and include the Serial #, model and the services performed.
- 3.1.2 The Contractor shall maintain records of work performed, test results, periodic performance, reporting, and written recommendations for any work recommended that is beyond the scope of the standard manufacturer's

servicing schedule and must comply with National Electrical Code (NEC) checklists and procedures for preventive maintenance. All labor and materials used shall be documented on the Contractor's service reports.

- 3.1.3 Contractor personnel shall have access to a smart phone, cell phone, or direct-connect radios and must wear appropriate Personal Protective Equipment (PPE) while servicing equipment.
- 3.1.4 The Contractor shall:
 - A. Acknowledge emergency repair request within (30) thirty minutes of DoIT request. NOTE: DoIT will initially request service through a phone call but will leave a voicemail and send an email if the contractor does not answer the phone call.
 - B. For all sites, apart from MDFiRST Generator 6 (in Lonaconing, MD), arrive on-site within (2) two hours of the request.
 - C. For the MDFiRST Generator 6 site (in Lonaconing, MD), arrive on site within four (4) hours following the request.
 - D. Contact the Department to obtain the required escorted access needed to perform emergency repairs.
 - E. Have the ability to obtain parts in order to complete repairs.
 - F. Complete all emergency repairs within 24 hours, of the request. DoIT, in its sole discretion, may choose to extend this timeframe as needed.
- 3.1.5 The Contractor's work shall be executed in such a manner that it does not disrupt day-to-day functions of the Department where the work is performed.
- 3.1.6 The Contractor shall notify the Contract Manager thirty (30) business days in advance, by e-mail, for all planned service outages that may affect the State's services. This notice shall include:
 - A. Reasons for the planned service outages, (ex. Oil changes, belt changes, etc.)
 - B. Scope of the planned services outages
 - C. Expected duration of the planned service outage
- 3.1.7 When scheduling work at MD FiRST locations, and the Data Center Site, the Contractor shall request the accompaniment of a MD FiRST or Data Center representative to obtain access to the sites.
- 3.1.8 The Department shall have the right to add, remove, or upgrade generators anywhere within the state during the Contract period. Any changes in scope due to any add, remove or upgrade will be addressed pursuant to the Contract's change order provisions. When adding a new generator, the Department will provide the Contractor with the location, make, model, size, and fuel type. The Contractor shall provide a schedule for the preventive maintenance within one (1) week of notification of the new generator.

3.4 Preventive Maintenance

- A. The Contractor shall provide manufacturer recommended preventive maintenance and additional maintenance identified for the emergency generators. The frequency shall not be less than what is specified by the manufacturer for each model of generator.
- B. The Contractor shall provide an annual preventative maintenance schedule, which includes the locations, dates, and times. Any changes to the schedule will require 30 days' notice and approval from the Department.
- C. The Contractor shall perform manufacturer recommended standard tests and inspections.
- D. The Contractor shall provide all equipment and parts necessary to perform preventative maintenance, including, but not limited to, filter replacement, belts, fluids, etc.

- E. The Contractor shall perform full load tests on all emergency generators in accordance with the manufacturer's recommended schedule at the DoIT representative's discretion.
- F. The Contractor shall provide the Department with a signed service report for every preventive maintenance service.

3.5 Non-Emergency Repairs

- A. The Contractor shall identify and perform required equipment repair during every site visit.
- B. The Contractor shall have the ability to obtain parts in order to complete repairs.
- C. The Contractor shall complete all emergency repairs within 10 business days.
- D. The Contractor shall make repairs required beyond standard maintenance must be pre-authorized from the Department. The Contractor shall provide the Department with a quote containing labor and bill of materials costs.

3.6 Parts and Warranty

- A. All replacement parts and equipment shall be new, unused and in current production. The manufacturer's standard warranty shall apply. Remanufactured parts may be substituted with prior written approval from the Department.
- B. The Contractor shall warranty all labor and services.
- C. All parts and equipment are to be supplied and installed in accordance with the manufacturer's specifications.
- D. Defective items shall be replaced at no additional cost to the Department.
- E. Warranty repairs shall be corrected within 10 business days of notification for non-emergency repairs and within 24 hours of notification for emergency repairs. If the Contractor fails to correct the repairs, the Department may have the defects corrected by a third party and the Contractor will be liable for all expenses incurred. Such action shall not relieve the Contractor of further warranty liabilities.
- F. The provisions of this section apply equally to work performed by Subcontractors, as well as to work performed by direct employees of the Contractor.
- E. The Contractor shall assist the Department with processing warranty claims

3.7 Deliverables

3.7.1 Deliverable Submission

- A. For every deliverable, the Contractor shall request the Contract Monitor confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.
- B. Unless specified otherwise, written deliverables shall be compatible with Microsoft Office, Microsoft Project or Microsoft Visio within two (2) versions of the current version. At the Contract Monitor's discretion, the Contract Monitor may request one hard copy of a written deliverable.
- C. A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. This review process is entered when the Contractor completes a deliverable.
- D. For any written deliverable, the Contract Monitor may request a draft version of the deliverable, to comply with the minimum deliverable quality criteria listed in **Section 3.7.3 Minimum Deliverable Quality**. Drafts of each final deliverable, except status reports, are required at least two weeks in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of

a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 3.7.3 Minimum Deliverable Quality**.

3.7.2 Deliverable Acceptance

- A. A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in **Section 3.7.4 Deliverable Descriptions/Acceptance Criteria**.
- B. The Contract Monitor shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contract Monitor is responsible for coordinating comments and input from various team members and stakeholders. The Contract Monitor is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.

3.7.3 Minimum Deliverable Quality

- A. The Contractor shall subject each deliverable to its internal quality-control process prior to submitting the deliverable to the State.
- B. Each deliverable shall meet the following minimum acceptance criteria:
 - 1) Be presented in a format appropriate for the subject matter and depth of discussion.
 - 2) Be organized in a manner that presents a logical flow of the deliverable's content.
 - 3) Represent information reasonably expected to have been known at the time of submittal.
 - 4) In each section of the deliverable, include only information relevant to that section of the deliverable.
 - 5) Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
 - 6) Meets the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
 - 7) Contains no structural errors such as poor grammar, misspellings or incorrect punctuation.
 - 8) Must contain the date, author, and page numbers. When applicable for a deliverable, a revision table must be included.
 - 9) A draft written deliverable may contain limited structural errors such as incorrect punctuation and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with minimum deliverable quality criteria above.

3.7.4 Deliverable Descriptions/Acceptance Criteria

In addition to the items identified in the table below, the Contractor may suggest other subtasks or deliverables to improve the quality and success of the assigned tasks.

Deliverables Summary Table*

Deliverable Description	Acceptance Criteria	Due Date / Frequency
Annual Preventative Maintenance Schedule	Yearly calendar that identifies when the quarterly preventative maintenance will occur.	Submit to Contract Monitor within ten (10) business days after NTP
Personnel Training Certifications	Provide training certifications for personnel	Submit within five (5) business days after notice of recommended award
Initial Problem Escalation Procedure (PEP)	Outline how problems will be escalated in order to resolve issues in a timely manner	Submit with the proposal response
Final Problem Escalation Procedure (PEP)	Outline how problems will be escalated in order to resolve issues in a timely manner	Submit to the Contract Manager NLT ten (10) business days after notice of recommended award
Service Reports	Include the date and locations of work performed, a Department Representative’s signature, Serial #, model #, and the services performed	Submit to the Contract Manager within seven (7) business days of service/repair performed

*The deliverables summary table may not list every contractually required deliverable. Offerors and Contractors should read the RFP thoroughly for all Contract requirements and deliverables.

3.7.5 Reductions for Non-Performance or Failure to Meet Standards:

The following reductions shall be used in adjusting the Contractor’s invoice when the Contractor fails to perform any task required in these specifications or performs any task below the standards as required in these specifications.

- A. First occurrence - written documentation notice from the Contract Monitor to the contractor.
- B. Second occurrence - written documentation and deduction of 1/60th of monthly invoice amount.
- C. Third occurrence - written documentation and deduction of 1/30th of monthly invoice amount.
- D. Reductions for “No Shows” may be based on the normal number of Contractor’s personnel assigned to the building multiplied by the hours normally worked by the Contractor.
- E. Reductions for below standards work may be made if, after the second documented notification, the Contractor has not corrected the deficiency and State workers are assigned to perform the task. Reductions will be based on the hourly wage rate of the State employee assigned to perform the task times the hour/hours required for State workers to perform the task.
- F. Reductions for non-performance may be made if the task was not done and State workers have to be assigned immediately to perform the task. Reductions will be based on the hourly wage rate of the State employee assigned to perform the task times the hour/hours required for State workers to perform the task.
- G. The referenced conditions (examples) may result in Termination of Contract for Default by the Procurement Officer.

3.7.6 **Disputes Arising from Reductions:**
(Enter titles and address as applicable)

- A. Should the Contractor dispute the validity of a reduction determination made by the Building Manager, he may appeal the reduction to the Superintendent within seven (7) calendar days of receiving notice of the reduction.
- B. The Superintendent will review the reduction and make a written determination as to its validity within seven (7) days of the receipt of the appeal from the Contractor.
- C. Should the Contractor disagree with the decision of the Superintendent, the Contractor may appeal the Superintendent's decision to the Assistant Secretary for Facilities Operations and Maintenance, Annapolis Public Buildings and Grounds, 29 St. John's Street, Annapolis, Maryland 21401 within seven (7) calendar days of the receipt of the Manager's decision.
- D. The Assistant Secretary for Facilities Operations and Maintenance shall review all documentation, evidence and arguments of the Contractor and the Building Manager and make a written determination as to the validity of the reduction within seven (7) days of receiving the appeal from the Contractor.

3.8 Security Requirements

3.8.1 **Employee Identification**

- A. Each person who is an employee or agent of the Contractor or subcontractor shall always display his or her company ID badge while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- B. At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are always not limited to being prepared to be escorted, providing information for badge issuance, and wearing the badge in a visual location at all times.

3.8.2 **Information Technology**

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

3.9 Insurance Requirements

- 3.9.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.9.2 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.
- 3.9.3 Fidelity Bond – Contractor's employees shall be bonded by a company approved by the Maryland Insurance Commissioner to issue such bonds in Maryland. The bond or bonds shall protect the State against loss by theft of money or other property from the premises to which the State or others may sustain as a result of any fraudulent or dishonest act of Contractor's employee, acting alone or in collusion with others, during the term of the contract. Said bond or bonds shall have a limit of \$2,500 per occurrence, per employee. Contractor must deliver said bond or bonds to the State no later that time of award.
- 3.9.4 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Monitor with current certificates of insurance and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Monitor. 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 as required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act.
 - B. Commercial General Liability as required in Section 3.9.1
 - C. Automobile and/or Commercial Truck Insurance as required in Section 3.9.2
 - D. Employee Theft Insurance as required in Section 3.9.3
- 3.9.5 The State shall be listed as an additional insured on the policies except for Worker’s Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 45 days’ advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.

On the Certificate of Liability, the “DESCRIPTION OF OPERATIONS” shall read as follows:

“(TYPE OF SERVICE) at the (LOCATION). THE STATE OF MARYLAND IS INCLUDED AS AN ADDITIONAL INSURED SOLELY WITH RESPECT TO THE OPERATIONS AND ACTIVITIES OF THE NAMED INSURED”. (CONTRACT # and CONTRACTOR)

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

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

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

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

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

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

3.11 Invoicing

3.11.1 General

(a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor. All invoices shall include the following information:

- Contractor name;
- Remittance address;
- Federal taxpayer identification number (or if sole proprietorship, the individual's social security number);
- Invoice period;
- Invoice date;
- Invoice number
- State assigned Contract number;
- State assigned (Blanket) Purchase Order number(s);
- Services provided; and
- Amount due.

The Contractor shall e-mail the original of each invoice to the Contract Monitor at James Welch at james.welch@maryland.gov, and the DoIT Fiscal Office at doitifiscal.invoiceservice@maryland.gov

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

- (b) The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Any action on the part of the Department, 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 21.10.02.

3.11.2 Invoice Submission Schedule

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

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

3.12 MBE Reports

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

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

3.13 VSBE Reports

If this solicitation includes a VSBE Goal (see Section 1.41), the Contractor and its VSBE subcontractors shall provide the following VSBE Monthly Reports based upon the commitment to the goal:

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

3.14 SOC 2 Type II Audit Report

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

3.15 End of Contract Transition

The Contractor shall cooperate in the orderly transition of services from it to a subsequent contractor at the end of the contract term or upon receipt of a Notice of Termination from the State. Transition shall be provided in a prompt and timely manner, shall proceed in accordance with the schedule provided to the Contractor by the State in the Notice of Transition, and shall be for a period of at least sixty (60) days. Additional instructions regarding transition services may be provided in the event of a Notice of Termination issued by the State.

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SECTION 4 – BID FORMAT

4.1 One Part Submission

Bids and all attachments for this solicitation are being accepted solely online through eMaryland Marketplace Advantage (eMMA).

4.2 Labeling

Labeling is not required for this solicitation.

4.3 Bid Price Form

If applicable, the Bid Form is an attachment on eMMA.

The Bid Form shall contain all price information in the format specified on the Bid Form (**Attachment F**). Complete the Bid Form only as provided in the Bid Pricing Instructions. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

4.4 Required Bid Submissions

Bidders shall include the following with their Bid on eMMA:

4.4.1 Minimum Qualifications Documentation:

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

4.4.2 Completed Required Attachments:

- a. Completed MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) *see **Section 1.33**.
- b. Completed Bid Form (Attachment F, if applicable).
- c. Completed Bid/Proposal Affidavit (Attachment B).

- d. Completed Maryland Living Wage Requirements Affidavit of Agreement (Attachment G-1, if applicable). **See Section 1.34
- e. Completed Company Profile (Attachment K)

4.4.3 Additional Attachments * See appropriate IFB Section to determine whether the following Attachments are required for this procurement:

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

4.4.4 References: (See Attachment K)

At least three (3) references are requested from customers who are capable of documenting the Bidder's ability to provide the services specified in this IFB. References used to meet any Bidder Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Bidder has provided services within the past ten (10) consecutive years and shall include the following information:

References must include the following

- a. Name, title, address, phone number and e-mail address, if available, of point of contact for client organization.
- b. Length of service provided – term of contract.
- c. Name of facility and service provided.
- d. Size and type of facility (square footage).
- e. Letters of testament are desirable, but not required.

The Department reserves the right to request additional references or utilize references not provided by a Bidder.

4.4.5 List of Current or Prior State Contracts:

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

- g. The State contracting entity;
- h. A brief description of the services provided;
- i. The dollar value of the contract;
- j. The term of the contract;
- k. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- l. 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 Bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

4.4.6 Certificate of Insurance:

The Bidder shall provide a copy of the Bidder's current certificate of insurance. The recommended awardee must provide a certificate of insurance with the prescribed limits set forth in Section 3.9 "Insurance Requirements," naming the State as an additional insured if required, within five (5) Business Days from notification by the Procurement Officer that the Bidder has been determined to be the apparent awardee.

4.4.7 Subcontractors:

The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder 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.

4.4.8 Legal Action Summary:

This summary shall include:

- i. A statement as to whether there are any outstanding legal actions or potential claims against the Bidder and a brief description of any action;
- ii. A brief description of any settled or closed legal actions or claims against the Bidder over the past five (5) years;
- iii. A description of any judgments against the Bidder within the past five (5) years, including the case name, number court, and what the final ruling or determination was from the court; and
- iv. In instances where litigation is on-going and the Bidder has been directed not to disclose information by the court, provide the name of the judge and location of the court.

4.5 Reciprocal Preference

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

- The most advantageous offer is from a responsible Bidder whose headquarters, principal base of operations, or principal site (that will primarily provide the services required under this IFB) is in another state.
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The preference does not conflict with a Federal law or grant affecting the procurement Contract.

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

4.6 Delivery

Bids for this solicitation are being accepted solely online through eMaryland Marketplace Advantage (eMMA).

4.7 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 and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each with original signatures.

- a. signed Contract (**Attachment A**),
- b. completed Contract Affidavit (**Attachment C**),

- c. completed MBE **Attachments D-2 and D-3A and D-3B**, within ten (10) Working Days, if applicable; ***see Section 1.33**,
- d. MBE Waiver Justification within ten (10) Working Days (see **MBE Waiver Guidance and forms in Attachment D-1B, D-1B – Exhibit A, and D-1C**, if a waiver has been requested (if applicable; ***see Section 1.33**),
- e. signed Non-Disclosure Agreement (**Attachment J**), if applicable; ***see Section 1.37**,
- f. completed VSBE **Attachments M-2 and M-3**, if applicable ***see Section 1.41**,
- g. completed DHS Hiring Agreement, **Attachment O**, if applicable ***see Section 1.43**, and
- h. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.9 “Insurance Requirements,” listing the State as an additional insured, if applicable; ***see Section 3.9**.

IFB ATTACHMENTS

ATTACHMENT A – Contract

This is the sample contract used by the Department. It is provided with the IFB for informational purposes and is not required to be submitted at Bid 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 two (2) 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 B – Bid/Proposal Affidavit

This Attachment must be completed and submitted with the Bid.

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Minority Business Enterprise Forms

If there is a MBE Goal for the solicitation (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1A must be properly completed and submitted with the Bidder's Bid or the Bid will be deemed non-responsive and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Bidder must submit Attachments D-2 and D-3A and D-3B.

ATTACHMENT E – Pre-Bid Conference Response Form

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

ATTACHMENT F – Bid Form Instructions and Bid Form (If applicable)

The Bid Form must be completed and submitted with the Bid.

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

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

ATTACHMENT H – Federal Funds Attachment

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

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

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

ATTACHMENT J – Non-Disclosure Agreement

If required (see Section 1.37), 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 Bid.

ATTACHMENT K – Company Profile

This Attachment must be completed and submitted with the Bid, (see Section 1.38)

ATTACHMENT L – Mercury Affidavit

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

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

If required (see Section 1.41), these Attachments include the VSBE Attachments M-1 through M-4. Attachment M-1 must be completed and submitted with the Bid. Attachment M-2 is required to be submitted within ten (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT N – Location of the Performance of Services Disclosure

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

ATTACHMENT O – Department of Human Services (DHS) Hiring Agreement

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

ATTACHMENT P – Small Business Reserve Affidavit

If required (see Section 1.44), this Attachment must be completed and submitted with the Bid.

ATTACHMENT Q – Intentionally Left Blank

ATTACHMENT R – If Applicable, Performance Bond– Will be a separate Attachment in eMaryland Market

If required (see Section 1.45), this Attachment must be completed and submitted within to (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT S – If Applicable Payment Bond – Will be a separate Attachment in eMaryland Market

If required (see Section 1.46), this Attachment must be completed and submitted within to (10) Business Days of receiving notification of recommendation for award.

ATTACHMENT T – If Applicable, Bid Bond– Will be a separate Attachment in eMaryland Market

If required (see Section 1.47), this Attachment must be completed and submitted with the Bid.

ATTACHMENT U – Financial Proposal Form (See Section 3.11.2)

ATTACHMENT A – CONTRACT

EMERGENCY GENERATOR MAINTENANCE AND REPAIR

THIS CONTRACT (the “Contract”) is made this (“Xth”) day of (month), (year) by and between (Contractor’s name) and the STATE OF MARYLAND, acting through the (DEPARTMENT).

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

i. Definitions

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

- 1.1 “Bid” means the Contractor’s Bid dated (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract Monitor” means the Department employee identified in Section 1.6 of the IFB as the Contract Monitor.
- 1.4 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.5 “Department” means the (Department).
- 1.6 “IFB” means the Invitation for Bids for (solicitation title) Solicitation # (solicitation number), and any addenda thereto issued in writing by the State.
- 1.7 “Procurement Officer” means the Department employee identified in Section 1.5 of the IFB as the Procurement Officer.
- 1.8 “State” means the State of Maryland.

ii. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, and services specific to the Contract awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. 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 IFB

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

Exhibit C – The Bid

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the IFB. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting

forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately (number of years of base term of Contract) years (change to months if necessary) beginning (anticipated Contract start date) and ending on (anticipated end date of base term of Contract).
- 3.2 Further, this Contract may be extended for (number of Option Years) periods of one year each at the sole discretion of the Department and at the prices quoted in the Bid for Option Years. (Delete this section if there are no Option Years and change the numbering of the next section to 3.2).
- 3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the (Bid or Bid Form, choose one) (Attachment F). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$ (Not-to-Exceed amount). (The following paragraph may be added to indefinite quantity, labor hour and time and materials contracts at the discretion of the Contract Monitor; otherwise delete it.):

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used

by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

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

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the procurement officer.

6. Exclusive Use

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

7. Patents, Copyrights, and Intellectual Property

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

8. Confidentiality

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws, including without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

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

10. Indemnification

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

- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

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

12. Disputes

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

13. Maryland Law

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

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national

origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

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

16. Non-availability of Funding

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

17. Termination for Cause (Default)

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

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Payment of State Obligations

Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor.

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

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

The State is not liable for interest:

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

23. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies

during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

24. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, §§ 14-101 through 14-108, 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: (a) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (b) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

25. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. This Section 24 shall survive expiration or termination of the Contract.

26. Compliance with Laws

The Contractor hereby represents and warrants that:

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

27. Cost and Price Certification

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

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

28. Subcontracting; Assignment

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

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; and
 - c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

30. Parent Company Guarantee (If Applicable)

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

31. Commercial Nondiscrimination

- 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 at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, 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 the Department, in all subcontracts.

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

32. Prompt Pay Requirements

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

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

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

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

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

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

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

32.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- b. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - (a) The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- c. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- d. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
 - f. 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.

(If there is an MBE goal for the Contract, enter and complete pursuant to GOMA’s Guidelines for Liquidated Damages Provisions for Contracts Containing Minority Business Enterprise Participation Goals. Delete this clause if there is no MBE goal, and revise the numbering of the clauses in this Contract accordingly.)

33. Liquidated Damages

- 33.1 The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur economic damages and losses, including, but not limited to, loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and pertinent MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult or impossible to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or pertinent MBE Contract provisions and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages

owed. The Contractor further agrees that for each specified violation, the agreed-upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of each violation.

- 33.1.1 Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3): \$ (dollar amount) per day until the monthly report is submitted as required.
- 33.1.2 Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4): \$(dollar amount) per MBE subcontractor.
- 33.1.3 Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- 33.1.4 Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- 33.1.5 Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of the Contract: \$(dollar amount) per day until the undisputed amount due to the subcontractor is paid.

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

34. Living Wage

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

35. Contract Monitor and Procurement Officer

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

36. 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: (name of Procurement Officer)
Procurement Officer
(address and contact information for Procurement Officer)

If to the Contractor: _____

(The following clauses may be required under certain funding or other conditions. Use these clauses only when appropriate. Delete any clauses not used and renumber as needed.)

(Mandatory clause for Federally funded contracts involving healthcare entities or individuals, the employment of healthcare entities or individuals, or subcontracting with healthcare entities or individuals that may be named on the DHHS List of Excluded Individuals/Entities.):

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

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

38. Hiring Agreement

This contract does not require a Hiring Agreement.

39. Limited English Proficiency

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

40. Miscellaneous

- 40.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this contract shall survive termination or expiration of this contract and continue in full force and effect.
- 40.2 If any term contained in this contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

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

CONTRACTOR

STATE OF MARYLAND
(DEPARTMENT)

By: _____

By: **(name and title of Department Head)**

Or designee:

Date

Date

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

Assistant Attorney General

APPROVED BY BPW: _____ (Date) _____ (BPW Item #)

**EMERGENCY GENERATOR MAINTENANCE AND REPAIR
001IT821173/BPM020029****A. AUTHORITY**

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/proposal on this project, the Bidder/Offeror has considered all Bid/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, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test, disability, or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal. As part of its Bid/proposal, the Bidder/Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)— (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):
-

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

- (1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
 - (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
-

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, 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. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

In preparing its bid/proposal on this project, the Bidder/Offeror has considered all bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel and its territories. The Bidder/Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for bid/proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the bid/proposal.

N. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or bid/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.

O. ACKNOWLEDGEMENT

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

By: _____
Signature of Authorized Representative and Affiant

Printed Name: _____
Printed Name of Authorized Representative and Affiant

Title: _____
Title

Date: _____
Date

EMERGENCY GENERATOR MAINTENANCE AND REPAIR
001IT821173/BPM020029

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 \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

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 procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

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

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

ATTACHMENT E – PRE-BID CONFERENCE RESPONSE FORM

Not applicable

ATTACHMENT F – BID PRICING INSTRUCTIONS

In order to assist Bidders in the preparation of their Bid and to comply with the requirements of this solicitation, Bid Pricing Instructions and a Bid Form have been prepared. Bidders shall submit their Bid on the Bid Form in accordance with the instructions on the Bid Form and as specified herein. Do not alter the Bid Form or the Bid Form may be rejected. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Form.

The Bid Form is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) **Bidders must bid all lines in eMaryland Marketplace Advantage. Unless stated within the IFB, all Bid Prices must be submitted on eMaryland Marketplace Advantage as indicated on the Line Item. Bid prices submitted on eMaryland Marketplace Advantage prevail over bid prices indicated elsewhere.**
- E) Every blank in every Bid Form shall be filled in. Any blanks may result in the Bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Form by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the Bid Form, nothing shall be entered on or attached to the Bid Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions usually render the Bid non-responsive, which means it will be rejected.
- G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Bid to be rejected.
- H) If option years are included, Bidders must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the IFB at the prices entered in the Bid Form.

- I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for bidding purposes only. The Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.
- K) Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

ATTACHMENT F (cont.) – BID FORM

Bids for this solicitation is accepted in eMaryland Marketplace Advantage only. Bidder must bid all line items in eMaryland Marketplace Advantage. Failure to do so may result in the bid being declared as non-responsive.

During the evaluation, and upon the request of the Procurement Officer, the bidder shall be required to submit a breakdown of its total bid cost as stated in Attachment F (I) BID PRICING INSTRUCTIONS above to demonstrate a responsible bid price. Bidders may submit the breakdown with their bid.

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 Maryland Department of Labor and Industry website <http://www.dllr.state.md.us/labor/> and clicking on Living Wage for State Service Contracts.

Maryland Living Wage Requirements Affidavit of Agreement
001IT821173/BPM020029
EMERGENCY GENERATOR MAINTENANCE AND REPAIR
(submit with Bid/Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

- The employee(s) proposed to work on the contract will spend less than one-half of the employee’s time during any work week on the contract

ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

001IT821173/BPM020029

EMERGENCY GENERATOR MAINTENANCE AND REPAIR

(Submit with Bid/Proposal)

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

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

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

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

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

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

Date: _____ By: _____
(Authorized Representative and Affiant)

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

This solicitation does not require a Non-Disclosure Agreement.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

ATTACHMENT K – COMPANY PROFILE

COMPANY PROFILE
Solicitation No.: 001IT821173/BPM020029
EMERGENCY GENERATOR MAINTENANCE AND REPAIR
AGENCY: DoIT

FAILURE TO FULLY ADDRESS ALL QUESTIONS MAY RENDER YOUR BID NON-RESPONSIVE.

THE BIDDER SHALL SUBMIT A MINIMUM OF THREE (3) REFERENCES THAT REFLECT A MINIMUM OF THREE (3) COMPLETE AND CONSECUTIVE YEARS OF SUCCESSFUL SERVICE PERFORMANCE WITHIN THE LAST TEN (10) YEARS COMPARABLE IN SCOPE, TYPE, SIZE, MAGNITUDE, AND COMPLEXITY AS REQUIRED IN THE IFB.

Company Name:		
Address:		
City:	State:	Zip Code:
Federal ID No.:		
Point of Contact:		Email Address:
Phone No.:	Fax No.:	
Date of Incorporation:		
Number of Years in Business under Present Name:		
Other/Former Names under which your Organization has Operated:		
Type of Organization (i.e., Corporation, Partnership, Individual, Joint Venture):		

Information furnished in response to this questionnaire and any verification made by the DGS shall provide a basis for determining the responsibility of bidders. In the event that references are deemed insufficient by the DGS, the State reserves the right to determine the bidder as **not responsible**, which will cause the rejection of their bid.

Attach a copy of all current Licenses, Permits and Certificates as deemed appropriate and required by State, Federal and Local Laws.

The DGS reserves the right to request any other information and data for the purpose of determining the

bidder's ability to perform the contract.

List at least three (3) but no more than five (5) Company Clients for work similar in scope to the requirements of this ITB. Please furnish all requested information. If more space is needed for type of service provided, please list on an additional sheet. All references must be reachable and willing to furnish information by email or telephone conversation. Please PRINT clearly.

#1. Company:		Contact Person:	
Address:			
City:		State:	Zip Code:
Phone No.:		Email Address for Contact Person:	
Type of Contract: (Please Check Box) <input type="checkbox"/> Armed Uniformed Guard - Shift <input type="checkbox"/> Unarmed Uniformed Guard - Shift <input type="checkbox"/> Armed Uniformed Guard – 24/7/365 <input type="checkbox"/> Unarmed Uniformed Guard – 24/7/365		<input type="checkbox"/> HVAC Maintenance <input type="checkbox"/> Elevator Maintenance <input type="checkbox"/> Janitorial Service <input type="checkbox"/> Pest Control <input type="checkbox"/> Other: _____	
Term of Contract: Start (Mth/Year) _____ End (Mth/Year) _____ Do not indicate “to the present”		Contract Value: \$ _____ <input type="checkbox"/> Annual <input type="checkbox"/> Three years <input type="checkbox"/> Other _____	
Size (Sq. Footage) <u>and</u> describe the Type of Facility:			
Please <u>describe in detail</u> the services that were provided:			

#2. Company:		Contact Person:	
Address:			
City:		State:	Zip Code:
Phone No.:		Email Address for Contact Person:	
Type of Contract: (Please Check Box) <input type="checkbox"/> Armed Uniformed Guard - Shift <input type="checkbox"/> Unarmed Uniformed Guard - Shift <input type="checkbox"/> Armed Uniformed Guard – 24/7/365 <input type="checkbox"/> Unarmed Uniformed Guard – 24/7/365		<input type="checkbox"/> HVAC Maintenance <input type="checkbox"/> Elevator Maintenance <input type="checkbox"/> Janitorial Service <input type="checkbox"/> Pest Control <input type="checkbox"/> Other: _____	
Term of Contract: Start (Mth/Year) _____ End (Mth/Year) _____ Do not indicate “to the present”		Contract Value: \$ _____ <input type="checkbox"/> Annual <input type="checkbox"/> Three years <input type="checkbox"/> Other _____	
Size (Sq. Footage) <u>and</u> describe the Type of Facility:			

Please describe in detail the services that were provided:

#3. Company:		Contact Person:	
Address:			
City:		State:	Zip Code:
Phone No.:		Email Address for Contact Person:	
Type of Contract: (Please Check Box) <input type="checkbox"/> Armed Uniformed Guard - Shift <input type="checkbox"/> Unarmed Uniformed Guard - Shift <input type="checkbox"/> Armed Uniformed Guard – 24/7/365 <input type="checkbox"/> Unarmed Uniformed Guard – 24/7/365		<input type="checkbox"/> HVAC Maintenance <input type="checkbox"/> Elevator Maintenance <input type="checkbox"/> Janitorial Service <input type="checkbox"/> Pest Control <input type="checkbox"/> Other: _____	
Term of Contract: Start (Mth/Year) _____ End (Mth/Year) _____ Do not indicate “to the present”		Contract Value: \$ _____ <input type="checkbox"/> Annual <input type="checkbox"/> Three years <input type="checkbox"/> Other _____	
Size (Sq. Footage) <u>and</u> describe the Type of Facility:			
Please <u>describe in detail</u> the services that were provided:			

#4. Company:		Contact Person:	
Address:			
City:		State:	Zip Code:
Phone No.:		Email Address for Contact Person:	
Type of Contract: (Please Check Box) <input type="checkbox"/> Armed Uniformed Guard - Shift <input type="checkbox"/> Unarmed Uniformed Guard - Shift <input type="checkbox"/> Armed Uniformed Guard – 24/7/365 <input type="checkbox"/> Unarmed Uniformed Guard – 24/7/365		<input type="checkbox"/> HVAC Maintenance <input type="checkbox"/> Elevator Maintenance <input type="checkbox"/> Janitorial Service <input type="checkbox"/> Pest Control <input type="checkbox"/> Other: _____	
Term of Contract: Start (Mth/Year) _____ End (Mth/Year) _____ Do not indicate “to the present”		Contract Value: \$ _____ <input type="checkbox"/> Annual <input type="checkbox"/> Three years <input type="checkbox"/> Other _____	

Size (Sq. Footage) <u>and</u> describe the Type of Facility:
Please <u>describe in detail</u> the services that were provided:

#5. Company:		Contact Person:	
Address:			
City:		State:	Zip Code:
Phone No.:		Email Address for Contact Person:	
Type of Contract: (Please Check Box) <input type="checkbox"/> Armed Uniformed Guard - Shift <input type="checkbox"/> Unarmed Uniformed Guard - Shift <input type="checkbox"/> Armed Uniformed Guard – 24/7/365 <input type="checkbox"/> Unarmed Uniformed Guard – 24/7/365		<input type="checkbox"/> HVAC Maintenance <input type="checkbox"/> Elevator Maintenance <input type="checkbox"/> Janitorial Service <input type="checkbox"/> Pest Control <input type="checkbox"/> Other: _____	
Term of Contract: Start (Mth/Year) _____ End (Mth/Year) _____ Do not indicate “to the present”		Contract Value: \$ _____ <input type="checkbox"/> Annual <input type="checkbox"/> Three years <input type="checkbox"/> Other _____	
Size (Sq. Footage) <u>and</u> describe the Type of Facility:			
Please <u>describe in detail</u> the services that were provided:			

ATTACHMENT L – MERCURY AFFIDAVIT

MERCURY AFFIDAVIT

(submit with Bid/Proposal)

**001IT821173/BPM020029
EMERGENCY GENERATOR MAINTENANCE AND REPAIR**

AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:

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

MERCURY CONTENT INFORMATION:

The product(s) offered do not contain mercury.

OR

The product(s) offered do contain mercury.

In an attachment to this Mercury Affidavit:

(1) Describe the product or product component that contains mercury.

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

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

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

_____ By: _____
Date Signature

Print Name: _____
Authorized Representative and Affiant

ATTACHMENT M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

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

ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

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

ATTACHMENT O – DHS HIRING AGREEMENT *revised 10-2017 DHS*

This solicitation does not require a DHS Hiring Agreement

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THIS IS THE END OF THE SOLICITATION