

Request for Proposals

Commercial Off-the-Shelf Software 2012 (COTS 2012)

PROJECT NO. 060B2490021



DEPARTMENT OF INFORMATION TECHNOLOGY

Issue Date: May 16, 2012

NOTICE

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

Minority Business Enterprises are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State proposals solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to submit a proposal on this Contract, please email this completed form to cotsproposals.doit@maryland.gov.

Title: **Commercial Off-the-Shelf Software 2012 (COTS 2012)**

Project No: 060B2490021

1. If you have responded with a "no proposal", 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.
 - We cannot be competitive. (Explain in REMARKS section.)
 - Time allotted for completion of the proposals is insufficient.
 - Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
 - Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
 - Other: _____

2. If you have submitted a proposal, but wish to offer suggestions or express concerns, please use the Remarks section below.

REMARKS:

Offeror Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

KEY INFORMATION SUMMARY SHEET

RFP Title:	Commercial Off-the-Shelf Software 2012 (COTS 2012)
RFP Number:	060B2490021
RFP Issue Date:	May 16, 2012
Closing Date and Time:	June 7, 2012 2:00 P.M., Local Time
RFP Issuing Agency:	Department of Information Technology (DoIT) IT Procurement Office
Send Questions to:	Robert Krysiak cotsproposals.doit@maryland.gov Office Phone Number: 410-260-7179 Office FAX Number: 410-974-5615
Procurement Officer:	Robert Krysiak Office Phone Number: 410-260-7179 Office FAX Number: 410-974- 5615
Proposals are to be sent to:	Department of Information Technology 45 Calvert Street, Room 445A Annapolis, MD 21401 Attention: Robert Krysiak
Contract Manager:	Mike Balderson Mike.Balderson@maryland.gov Office Phone Number: 410-260-7549 Office FAX Number: 410-974-5615
Contract Duration:	15 Years
MBE Goal:	0%
Pre-Proposal Conference:	WebEx available for viewing on Wednesday, May 30, 2012, 10:00 AM Local Time

NOTE

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

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The Department of Information Technology (DoIT) is issuing this Request for Proposals to procure commercial off-the-shelf software, installation and training services for the COTS software, and manufacturer's software maintenance, for the State of Maryland. Through the Master Contracts awarded as a result of this solicitation, the State will have a flexible means of obtaining these products and services, quickly, efficiently and cost effectively by issuing Purchase Order Requests for Proposals (PORFPs) specific to its needs. Microsoft COTS software products are excluded from this RFP.
- 1.1.2 The scope of this solicitation encompasses three (3) functional areas as follows:
Functional Area I – COTS Software (Microsoft COTS software products are excluded)
Functional Area II – Installation and Training Services
Functional Area III- Manufacturer's Software Maintenance
- 1.1.3 DoIT intends to award a Master Contract to an unlimited number of Offerors that are authorized by the Manufacturer or Distributor to sell the proposed products and services, and determined by the State to be qualified. Offerors may propose to Functional Area I, Functional Areas I and II, Functional Areas I and III, Functional Areas II and III, Functional Area III or all three (3) functional areas as specified in Section 2.

Each request for COTS software, installation and/or training services, and/or manufacturer's software maintenance, throughout the term of the Master Contract, will be issued and summarized by the Requesting Agency in a PORFP. A Master Contractor/Manufacturer Product Line matrix for the COTS software will be established and maintained by DoIT. All Offerors awarded a Master Contract and listed under the Manufacturer Product Line for which the PORFP has been issued for a specific functional area will be invited to compete for a PORFP. Based upon PORFPs issued by the State of Maryland, a Master Contractor will be selected to provide the requested COTS software, installation and/or training services and/or manufacturer's maintenance. A Purchase Order (PO) will then be issued by the Requesting Agency to the selected Master Contractor, which will bind the Master Contractor to the terms of the PORFP response, including the price. Master Contractors may add Manufacturers' Product Lines from time to time throughout the life of the Master Contract by submitting Letters of Authorization from the Manufacturer or Distributor of the COTS software in accordance with the procedure set forth in Section 2.7. Neither a PORFP nor a PO, may, in any way, conflict with or supersede the Master Contract.

1.2 Background

- 1.2.1 The COTS Software Master Contract, Project Number 060B9800011, providing for the purchase of COTS software and related services, is scheduled to expire September 30, 2012. COTS software purchases executed under the COTS Software Master Contract total approximately \$53,000,000 which includes Manufacturer's Software Maintenance. This solicitation does not include hardware.

1.3 Abbreviations and Definitions

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

- a. Agency Point of Contact (Agency POC) – Requesting Agency contact listed in a PORFP.
- b. COMAR – Code of Maryland Regulations, available on-line at www.dsd.state.md.us
- c. Contract Manager (CM) – The State representative who serves as the manager for the resulting Master Contract.
- d. COTS – Commercial Off-the-Shelf software, offered to the State, without modification, in the same form in which it is sold in the commercial marketplace. Standard options are not considered modifications. Microsoft products are excluded for purposes of this definition.
- e. COTS Software Training – Instruction on features or procedures of the COTS software.
- f. DoIT– Maryland Department of Information Technology
- g. DGS – Maryland Department of General Services
- h. Distributor –First tier agent authorized by the requisite parties that own rights to the COTS software product, to sell and/or service the COTS software product.
- i. Fixed-price PORFP – A PORFP which places responsibility on the Master Contractor for the delivery of the COTS software or the complete performance of the services in accordance with the PORFP at a price that may be firm or may be subject to contractually specified adjustments.
- j. Fixed Hourly Labor Category Rates – Fully loaded hourly rates established in the Master Contract that include all direct and indirect costs and profit for the Master Contractor to perform Installation or Training services required in a PORFP.
- k. Fully Loaded – The inclusion in labor category billing rates of all profit, direct and indirect costs associated with performing Installation or Training services required in a PORFP. The indirect costs shall include all costs that would normally be considered general and administrative costs and/or routine travel costs, or which in any way are allocated by the Master Contractor against direct labor hours as a means of calculating profit or recouping costs which cannot be directly attributable to services required in a PORFP. Non-routine travel costs will be identified in a PORFP, when appropriate.
- l. Installation – Transferring Manufacturer’s electronic media to computer systems so that the COTS software will provide the features and functions generally described in the User Documentation.
- m. IT – Information Technology
- n. Letter of Authorization – A document issued by the Manufacturer or Distributor authorizing the Offeror/Master Contractor to sell and/or provide services for the Manufacturer’s Product line.
- o. Local Time - Time in the Eastern Time zone as observed by the State of Maryland.

- p. Manufacturer's Software Maintenance – Electronic media and consulting services that includes, but is not limited to, upgrades and enhancements for technology advancements, improved functionality, and compatibility with new industry standards. Software maintenance and support may also include:
- Direct access to experienced consultants of the software;
 - Flexible service options including telephone or e-mail support;
 - Timely problem resolution of reported discrepancies;
 - Remote technical support; and
 - Online self-help functions.
- q. Master Contract – The Contract between each of the Offerors determined technically capable of performing the requirements of this RFP and the State.
- r. Master Contractor – An Offeror who is awarded a Master Contract under this RFP..
- s. MBE – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- t. MSRP – Manufacturer’s Suggested Retail Price. The use of the term MSRP shall be construed to apply to each respective software title, or maintenance, as appropriate, as identified in a PORFP
- u. Offeror – An entity that submits a proposal in response to this RFP.
- v. Purchase Order (PO) – Authorizes the selected Master Contractor to proceed with delivery of products and/or any services requested via a PORFP.
- w. POC – Point of Contact
- x. Procurement Officer – The State representative, as identified in Section 1.6, responsible for this RFP, for the determination of the Master Contract scope issues, and the only State representative who can authorize changes to the Contract.
- y. Request for Proposals (RFP) – This RFP for the Maryland Department of Information Technology, Project Number 060B2490021, dated May 16, 2012, including any amendments.
- z. Purchase Order Request for Proposal (PORFP) – A request by the Requesting Agency for the price of the required COTS software, installation and training services and/or manufacturer’s software maintenance.
- aa. Requesting Agency – The unit of the Executive Branch of Maryland State government issuing the PORFP.
- bb. SBR – Small Business Reserve – A procurement in accordance with Title 14, Subtitle 5 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended. See Section 1.25 for details.
- cc. State – State of Maryland

1.4 Master Contract Type

The Master Contract shall be an Indefinite Quantity Contract as defined in COMAR 21.06.03.05 and 06. Fixed Price (FP) and Labor Hour PORFPs will be issued under the Master Contract as described in each respective PORFP, as appropriate to the type of products and/or services being requested.

1.5 Master Contract Duration

The term of this Contract shall be for a period of 15 years, beginning on or about August 1, 2012 and will terminate on July 31, 2027. At three (3) year intervals following the award of the COTS 2012 Master Contract, DoIT will announce an Expansion Window during which new Offerors may propose to become Master Contractors. Further, during an announced Expansion Window, DoIT will allow existing Master Contractors to propose to add functional areas to their Master Contract. Expansion Windows will continue through Year 12 of the Master Contract.

1.6 Procurement Officer

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

Robert Krysiak
Maryland Department of Information Technology
IT Procurement Office
45 Calvert Street, Room 445A
Annapolis, Maryland 21401
Phone Number: 410-260-7179
Fax Number: 410-974-5615
E-mail: cotsproposals.doit@maryland.gov

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

1.7 Contract Manager

The State CM monitors the daily activities of the Contract and provides technical guidance to the Contractor. The State CM will be:

Michael Balderson
Maryland Department of Information Technology
45 Calvert Street, Room 444A
Annapolis, Maryland 21401
Phone Number: 410-260-7549
Fax Number: 410-974-5615
Email: Mike.Balderson@maryland.gov

DoIT may change the State CM at any time by written notice to the Contractor.

1.8 Pre-Proposal Conference

A pre-proposal conference viewable by WebEx on Thursday, May 24, 2012 at 10:00 AM Local Time. Questions will be accepted in response to the WebEx and should be sent to cotsproposal.doit@maryland.gov.

1.9 eMaryland Marketplace (eMM)

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DoIT web site (www.DoIT.maryland.gov) and other means for transmitting the RFP and associated materials, the solicitation and summary of the pre-proposal conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via e-Maryland Marketplace.

In order to receive a Contract award, an Offeror must be registered on Maryland Marketplace (eMM). Registration is free. Vendors may register at: <https://emaryland.buyspeed.com>. Click on "Registration" to begin the process and follow the prompts.

1.10 Questions

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

Questions will also be accepted subsequent to the pre-proposal conference and should be submitted in a timely manner prior to the proposal due date to the Procurement Officer. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the RFP.

1.11 Proposals Due (Closing) Date

An unbound original and two (2) bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.6, no later than 2:00 PM (local time) on June 7, 2012 in order to be considered. An electronic version (CD or flash drive) of the Technical Proposal in MS Word format must be enclosed with the original technical proposal. An electronic version (CD or flash drive) of the Financial Proposal in MS Word format and signed PDF must be enclosed with the original financial proposal. Make sure that the electronic media are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial).

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02, proposals received by the Procurement Officer after the due date, June 7, 2012 at 2:00 PM (local time) will not be considered.

Proposals may not be submitted by e-mail or facsimile.

1.12 Duration of Offer

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

1.13 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for proposals, amendments to the RFP will be posted on the DoIT Procurement web page and through eMM. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

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

1.14 Cancellations; Discussions

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

1.15 Incurred Expenses

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

1.16 Economy of Preparation

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

1.17 Protests/Disputes

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

1.18 Multiple or Alternative Proposals

Neither multiple nor alternate proposals will be accepted. Submitting proposals for more than one functional area is not considered a multiple or alternate proposal.

1.19 Public Information Act Notice

An Offeror shall give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland.

Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information can be disclosed (see COMAR 21.05.08.01).

1.20 Offeror Responsibilities

Any selected Offeror shall be responsible for all products and services required by this RFP within the functional area proposed. If an Offeror that seeks to perform or provide the services required by this RFP is a subsidiary of another entity, all information submitted by the Offeror, such as, but not limited to, references, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.21 Mandatory Contractual Terms

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

1.22 Proposal Affidavit

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

1.23 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this RFP. This Affidavit shall be provided within five (5) business days from notification of proposed Contract award.

1.24 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of **0%** has been established for Master Contracts awarded pursuant to this RFP. However, MBE participation is strongly encouraged.

1.25 Small Business Reserve

The State reserves the right to designate any PORFP issued pursuant to this RFP as a Small Business Reserve PORFP. The Requesting Agency for an SBR PORFP must be a “designated procurement unit” pursuant to §14-501(b) of the State Finance and Procurement Article of the Maryland Annotated Code as amended from time to time. In the event a PORFP is designated a Small Business Reserve PORFP, the PO awarded thereunder may only be awarded to a Contractor that is a certified small business, that meets the statutory qualifications of a Small Business as defined in §14-501(c), Annotated Code of Maryland, and is registered with the Department of General Services Small Business Reserve Program.

Throughout the term of the Master Contract, Contractors qualified under the Small Business Reserve, shall notify the State CM of any change in status. Should a Contractor become certified through the Small Business Reserve after award of a Master Contract, that Contractor shall notify the State CM and provide the State CM with its DGS-assigned Small Business Qualification number.

1.26 Arrearages

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

1.27 Procurement Method

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

1.28 Verification of Registration and Tax Payment

Before a corporation can do business in the State, it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. Any potential Offeror should complete registration prior to the due date for receipt of proposals. Failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

1.29 False Statements

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

- (a) In connection with a procurement contract a person may not willfully:
- Falsify, conceal, or suppress a material fact by any scheme or device;
 - Make a false or fraudulent statement or representation of a material fact; or
 - Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

1.30 Non-Visual Access

By submitting a quotation in response to a PORFP, the Master Contractor warrants that the COTS software offered under the PORFP (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Master Contractor further warrants that the cost, if any, of modifying the Information Technology (IT) for compatibility with software and hardware used for non-visual access will not increase the cost of the IT by more than five percent. For purposes of this Master Contract, the phrase “equivalent access” means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Non-visual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations, which can be found at: www.doit.maryland.gov - keyword: non-visual access

1.31 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller’s Office grants an exemption. Any selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption shall be submitted to the State Comptroller’s Office for approval at the address specified on the COT/GAD X-10 form and shall include the business identification information as stated on the form and include the reason for the exemption. The COT/GAC X-10 form can be downloaded at: <http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>

1.32 Contract Extended to Include Other Non-State Governments or Agencies

For the purposes of IT or telecommunications procurements, pursuant to §3-702(b) of the State Finance and Procurement Article of the Annotated Code of Maryland, county, municipal, and other non-state governments or agencies may purchase from the Master Contractor goods or services covered by this Contract at the same prices chargeable to the State. All such purchases by non-State governments or agencies:

- Shall constitute contracts between the Master Contractor and that government or agency;
- Shall not constitute purchases by the State or State agencies under this RFP;
- Shall not be binding or enforceable against the State, and
- May be subject to other terms and conditions agreed to by the Master Contractor and the purchaser. Master Contractor bears the risk of determining whether or not a government or agency with which the Contractor is dealing is a State agency.

1.33 Conflict of Interest

The successful Offeror(s) will provide COTS software and services for State agencies, or component programs with those agencies and must do so impartially and without any conflicts of interest. Master Contractors may be required to complete a Conflict of Interest Affidavit. A copy of this Affidavit is included as Attachment E of this RFP. If the Requesting Agency Procurement Officer makes a determination before award of a PORFP that facts or circumstances exist that give rise to or could in the future give rise to a conflict of interest within the meaning of COMAR 21.05.08.08A, the Requesting Agency Procurement Officer may reject a proposal under COMAR 21.06.02.03B.

1.34 Prompt Pay

This procurement and the contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs dated August 1, 2008. The Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offerors who are awarded Master Contracts under this RFP must comply with the prompt payment requirements outlined in the Contract, §32 (see Attachment A). Additional information is available on the GOMA website at <http://www.oma.state.md.us/>.

The remainder of this page is intentionally left blank.

SECTION 2 – SCOPE OF WORK

2.1 Scope

The scope of this solicitation encompasses three functional areas as follows:

- 1) Functional Area I – COTS Software (**excluding Microsoft Software**)
- 2) Functional Area II – Installation and Training Services
- 3) Functional Area III – Manufacturer’s Software Maintenance (See RFP Definitions, 1.3p)

2.2 General Requirements

Depending upon the requirements of PORFP, the following shall apply:

2.2.1 Required Project Policies, Guidelines and Methodologies

The Master Contractor shall keep itself informed of and comply with all Federal, State and local laws, regulations, ordinances, policies, standards and guidelines affecting IT projects applicable to its activities and obligations under this Contract, as those laws, policies, standards and guidelines may be amended from time to time, and it shall obtain and maintain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract. These may include, but are not limited to:

- A) The State’s System Development Life Cycle methodology at: www.DoIT.maryland.gov - keyword: SDLC;
- B) The State Information Technology Security Policy and Standards at: www.DoIT.maryland.gov - keyword: Security Policy;
- C) The State Information Technology Project Oversight at: www.DoIT.maryland.gov - keyword: IT Project Oversight;
- D) The State of Maryland Enterprise Architecture at www.DoIT.maryland.gov - keyword: MTAF
- E) The Master Contractor shall follow the project management methodologies that are consistent with the Project Management Institutes Project Management Body of Knowledge Guide. Contractor’s staff and subcontractors are to follow a consistent methodology for all PORFP activities.

2.3 Functional Area I – COTS Software

2.3.1 Master Contractors shall provide COTS software, in accordance with the guidelines provided hereunder. Master Contractors may add Manufacturer Product Lines periodically throughout the term of the Master Contract in accordance with the terms of Section 2.7. This includes software licenses which grant the Requesting Agency the right to run or access the purchased software program within the terms and conditions of the license agreement.

2.3.2 Master Contractors shall refund to the State within 30 calendar days of receipt of the returned COTS software, the purchase price of the returned COTS software, including shipping costs. The State shall not be charged restocking fees.

2.3.3 Master Contractors shall provide prepaid delivery, FOB (the delivery destination specified in the PORFP) to any State eligible customer located within the State’s geographic boundaries. Unless specified otherwise in a PORFP, all COTS software is to be delivered, prepaid, to the location specified in a PORFP within three (3) business days from the date of the PO. The MSRP will be construed to include delivery within three (3) business days from the date of the PO. Similarly, provided a PORFP allows at least three (3) business days delivery time, any price proposed in response to a PORFP that is lower than the MSRP will be construed to include delivery within three (3) business days from the date of the PO.

If a PORFP specifies delivery in less than three (3) business days (which will be termed an expedited delivery) and an Offeror proposes the MSRP as its proposal price, the Offeror may include as a separate distinct charge, the cost of the expedited delivery. However, if an Offeror proposes a price lower than the MSRP for a PORFP that requires expedited delivery, the PORFP proposal price shall include the cost of the expedited delivery and no separate, additional charge will be permitted.

Title does not pass until the shipment reaches the destination, and the goods belong to seller while in transit. If expedited shipping is required by the State, additional charges may apply for:

- Standard Overnight (delivery by 3:00 PM the next day)
- Priority Overnight (delivery by 10:30 AM the next business day)
- Saturday Delivery (delivery by 12:00 PM)

2.4 Functional Area II –Installation and Training Services

Installation and/or Training services may only be purchased when purchasing COTS software under Functional Area I – COTS Software or Functional Area III – Manufacturer’s Software Maintenance. Functional Area II services may not be purchased alone. In addition, Functional Area II services may not exceed 49% of the total value of the PORFP. Installation services required separately from the purchase of COTS software must be purchased via a separate vehicle such as Maryland’s Consulting and Technical Services contracts or a stand-alone procurement.

2.4.1 Installation Services

Installation services are limited to the installation of the COTS software with only the configuration necessary to ensure that the COTS software operates properly in the Requesting Agency’s environment. Installation services shall not include customization or installation-specific enhancements.

2.4.2 Training Services

Training may only be purchased contemporaneously with the original purchase of COTS software or with the purchase of Manufacturer’s Software Maintenance and shall include, but is not limited to:

- Formal on-site or off-site training that is planned in advance and that has a defined curriculum;
- Computer-based training that includes software that provides interactive, self-paced training at your desktop, workstation, or laptop computer; and

- Web-based training that provides courses or classes that are accessible via an internal Intranet or the Internet.

2.5 Functional Area III – Manufacturer’s Software Maintenance

2.5.1 Manufacturer’s software maintenance may be purchased in conjunction with or separately from Functional Area I – COTS Software, at any time, or in conjunction with Functional Area II – Installation and Training. Master Contractors authorized by the Manufacturer or Distributor of the COTS software may only provide manufacturer’s software maintenance. Manufacturer’s software maintenance shall include, but is not limited to:

- Electronic media and consulting services, upgrades and enhancements for technology advancements, improved functionality, and compatibility with new industry standards;
- Direct access to experienced consultants of the software;
- Flexible service options including telephone or e-mail support;
- Timely problem resolution of reported discrepancies;
- Remote technical support; and
- Online self-help functions.

2.6 Warranty

Master Contractors shall provide the Manufacturer’s Warranty with its response to a PORFP for Functional Area I. Master Contractors shall be responsible for coordinating warranty issues. On-site warranty will begin upon acceptance of the COTS software by the Requesting Agency. Acceptance will be defined in the PORFP as either receipt or installation. Onsite warranty means the Master Contractor will either remotely access or travel, if necessary, to the facility where the warranty service is required at no additional cost to the Requesting Agency during the manufacturer’s warranty period.

2.7 Procedure for Adding a Manufacturer’s Product Line

Each Master Contractor, in a Functional Area, may add additional Manufacturer Product Lines, in that Functional Area, throughout the life of the Software Master Contract. To add a Manufacturer product line, a Master Contractor must submit a Letter of Authorization from the Manufacturer or Distributor for each new product line proposed. Once the Letter of Authorization has been confirmed by DoIT, the Manufacturer product line will be added to that Master Contractor’s list of product lines available.

Requests to add new product lines, with the required Letters of Authorization, shall be submitted to the CM for consideration by the 10th business day of each month. Approved requests will be added to the Manufacturer/Master Contractor matrix by the first business day of the following month.

2.8 PORFP Procedures

2.8.1 PORFP Content

The Agency POC will submit a PORFP to all Master Contractors awarded a Master Contract to sell the manufacturer product line requested. As an example, each PORFP may contain the following information:

- A) Requesting Agency;
- B) Agency POC;
- C) Description of the required software and version number;
- D) Delivery requirements;
- E) Invoicing instructions;
- F) Required date for submission of quotation;
- G) Installation requirements, if applicable;
- H) Training requirements, if applicable;
- I) Type of PORFP (Fixed Price or Time and Materials);
- J) Manufacturer's Software Maintenance requirements, if applicable;
- K) Performance period; and
- L) Security requirements, if applicable.

2.8.2 PORFP Submission Requirements

Upon receipt of a PORFP, each Master Contractor shall, no later than the PORFP due date and time, either prepare and submit a detailed quotation, or provide a PORFP Feedback Form explaining why they do not intend to submit a quotation. As an example, the quotation may provide the following:

- A) Explanation of how the Master Contractor intends to meet the requirements of the PORFP;
- B) Description of the proposed COTS software and version number;
- C) Transportation and delivery schedule;
- D) Installation services provided and schedule, if applicable;
- E) Manufacturer's Software Maintenance provided, if applicable;
- F) Training Services provided and schedule, if applicable;
- G) Guarantee that the COTS proposed will be virus free;
- H) A statement that the Master Contractor is authorized by the Manufacturer or Distributor to provide the COTS software and/or services as of the date of the response;
- I) Subcontractors, if any, including required letters of authorization;
- J) Warranty terms;
- K) Proposed price; and
- L) Captured COTS publisher or other COTS distributor screen shot of current MSRP as of date of PORFP proposal submission. Subject to the approval of the State of Maryland, a comparable substitute directly from the COTS publisher or other COTS distributor may be acceptable.

2.8.3 Procedure for Awarding a PORFP

Evaluation criteria for award will be established at the PORFP level. The PO will be awarded to the Master Contractor whose proposal is determined to be the most advantageous to the State, considering price and the evaluation factors set forth in the PORFP. The Agency POC will initiate and deliver a PO to the selected Master Contractor.

2.8.4 Delivery of Software and Services

Delivery of COTS software and any manufacturer's maintenance, installation and/or training services shall be initiated only upon issuance of a PO authorized by the Requesting Agency.

2.9 Order Processing Procedure

- 2.9.1** The Master Contractor shall provide the order processing procedure necessary to demonstrate how it will perform the requirements in a PORFP. The Master Contractor is expected to establish a project organization/office to provide overall management of the Contract work. The Master Contractor shall manage dedicated personnel, and all subcontractors.
- 2.9.2** The Master Contractor shall designate a primary POC, who will be responsible for the response to any PORFPs and overall cost, schedule, and technical performance. This individual will be the principal POC throughout the duration of the Master Contract.

2.10 Insurance Requirements

- 2.10.1** The Master Contractor shall maintain property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Master Contractor action or inaction in the performance of the contract by the Master Contractor, its agents, servants, employees or subcontractors.
- 2.10.2** The Master Contractor shall maintain a policy of general liability insurance that is of the proper type and of sufficient limits that the State and its officials, employees, agents, servants, guests and subcontractors are reasonably covered in the event of injury or death.
- 2.10.3** The State of Maryland will be named as an additional named insured on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage. Certificates of insurance evidencing this coverage will be provided prior to the commencement of any activities in the Master Contract. All insurance policies must be with a company licensed to do business in Maryland.

2.11 Invoicing

- 2.11.1** All invoices shall be submitted by the Master Contractor within the time period required in the PORFP and shall include, at the minimum, the following information:

- A) Name and address of the Requesting Agency being billed;
- B) Master Contractor name;
- C) Products(s) and/or service(s) purchased listed separately including the amount for each individual charge (i.e., 5 - ABC Software @ \$2,000 Total \$10,000.00, 2 - CD Training @ \$100.00 Total \$200.00, Installation one-time cost \$300.00)
- D) Supporting Documentation (i.e., timesheets for Labor Hours POs)
- E) E-mail address/phone number of Master Contractor's POC;
- F) Remittance address;
- G) Federal taxpayer identification or (if owned by an individual) Master Contractor's social security number;
- H) Invoice period, invoice date, invoice number and amount due, and;
- I) PO number(s) being billed.

Invoices submitted without the required information will not be processed for payment until the Master Contractor provides the required information.

- 2.11.2** The Master Contractor shall submit the invoices for any PO to the Requesting Agency identified in the PO. The State is generally exempt from Federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Master Contractor, however, is not exempt from such sales and use taxes and may be liable for the same.

2.12 Personnel Qualifications (Functional Area II)

2.12.1 For Training and Installation services only.

- A) Labor Hour – A type of payment for labor provided in performing Installation or Training services as required in a PORFP. The Master Contractor will be paid for services performed based on direct labor hours billed at specific hourly rates fixed by labor category in the Master Contract, up to a specified cost ceiling, plus non-routine travel costs as may be identified in a PORFP. The labor category hourly rates for Installation or Training services may not exceed the hourly rates specified in the Master Contract. The Master Contractor will be required to provide time records and/or other documentation that all direct hours billed have actually been expended by its employees, or those of subcontractors, totally and productively in the performance of the Installation or Training services. The fixed hourly labor category rates plus non-routine travel will be the only payment made for this type of PORFP.
- B) Master Contractors shall only propose staff available at the time of the PORFP. In response to each PORFP, Master Contractors shall provide personnel that satisfy the personnel qualifications specified within Section 2.13 for each of the labor categories required under the specific PORFP.
- C) Specific areas of required expertise may be further defined in the PORFP. Master Contractors shall certify that all candidates meet the required qualifications.
- D) The PORFP shall define specific requirements for the services required. The PORFP shall clearly identify all applicable experiences related to the COTS software.
- E) Substitution of Education for Experience. Substitution shall be reviewed and approved by the State.
- F) Substitution of Experience for Education. Substitution of experience for education may be permitted at the discretion of the State.
- G) Substitution of Professional Certificates for Experience: Professional certification may be substituted for up to two (2) years of general and specialized experience. The Requesting Agency shall approve or disapprove substitutions.

2.12.2 Substitution of Personnel.

- A) Individuals proposed and accepted as personnel for PORFPs are expected to remain dedicated throughout the term of the PORFP award. Substitutions will be allowed only when the Requesting Agency specifically agrees to the substitution in writing or due to an emergency circumstance as described below. All proposed substitutes of personnel must have qualifications at least equal to that of the person initially proposed and evaluated and accepted in the PORFP. The burden of illustrating this comparison shall be the Master Contractor's. The

resumes of the initially proposed personnel shall become the minimum requirement for qualifications for successor personnel for the duration of the total PORFP term. If one or more of the personnel are unavailable for work under a PORFP for a continuous period exceeding 15 calendar days, the Master Contractor shall immediately notify the Requesting Agency and propose to replace personnel with personnel of equal or better qualifications within 15 calendar days of notification to the Requesting Agency. All substitutions shall be made in accordance with this provision.

- B) During the performance period for a PORFP, no substitutions of personnel will be permitted unless such substitutions are necessitated by an individual's sudden illness, death, or as otherwise approved by the Requesting Agency. In any of these events, the Master Contractor shall promptly notify the Requesting Agency and provide the information required above. All proposed substitutions of personnel for other than emergency situations must be submitted in writing, at least 15 business days in advance of the proposed substitution, to the Requesting Agency, with the information required above. The Requesting Agency must agree to the substitution in writing before such substitution shall become effective.
- C) All requests for substitutions must provide a detailed explanation of the circumstances necessitating the proposed substitutions, a resume of the proposed substitute, and any other information requested by the Requesting Agency to make a determination as to the appropriateness of the proposed substitution. All proposed substitutes must have educational qualifications and work experience equal to or better than the resume initially proposed for personnel; the burden of illustrating this comparison shall be the Master Contractor's.
- D) Resumes shall be signed by all substituting individuals and their formal supervisor, and the official resume of the previous employee shall be provided for comparison purposes.
- E) Substitution of Experience for Education. Substitution of experience for education may be permitted at the discretion of the State.

2.13 Labor Categories and Qualifications

2.13.1 Training Specialist/Instructor

Duties: Conducts the research necessary to develop and revise training courses and prepares appropriate training catalogs. Prepares all instructor materials (course outline, background material, and training aids). Prepares all student materials (course manuals, workbooks, handouts, completion certificates, and course critique forms). Trains personnel by conducting formal classroom courses, workshops, and seminars.

Education: A Bachelor's Degree from an accredited college or university with a major in Education/Training in the areas of Computer Science, Information Systems, Engineering, Business, or other related scientific or technical discipline. A Master's Degree is preferred. A Master's Degree in one of the above disciplines equals one year specialized and two years general experience.

General Experience: Must have four (4) years of experience in information systems development, training, or related fields.

Specialized Experience: At least two (2) years of experience in developing and providing IT and end user training on computer hardware and application software.

2.13.2 Network Administrator

Duties: Performs a variety of network management functions related to the operation, performance or availability of data communications networks. Experience with cable/LAN meters, protocol analyzers, SNMP and RMON based software products. Knowledge of Ethernet, FDDI and high speed WANs and routers. Analyze client LANs/WANs, isolate source of problems, and recommend reconfiguration and implementation of new network hardware to increase performance. Requires an advanced knowledge of network operating systems. Modifies command language programs, network start up files, assigns/reassigns network device logicals, participates in load balancing efforts throughout the network to achieve optimum device utilization and performance. Establishes new user accounts on the network granting access to required network files and programs. Manages network Email functions. Establishes mailboxes and monitors mail performance on the network. Troubleshoots network/user problems, presents resolutions for implementation. Prepares a variety of network resource reports.

Education and other Requirements: An Associate's degree from an accredited college or university in Computer Science, Information Systems, Engineering or a related field, or two years of college or university study in Computer Science, Information Systems, Engineering or a related field. If applicable, should be certified as a network administrator for a specific network operating system as defined in the State solicitation. Certification criteria is determined by the network operating system manager. An additional year of specialized experience may be substituted for the required education.

General Experience: Two (2) years of experience in a computer-related field.

Specialized Experience: One (1) year of experience in one or more of the following areas: data communications engineering, data communications hardware or software analysis, network administration or management, data communications equipment installation and maintenance, or computer systems administration and management.

2.13.3 Subject Matter Expert

Duties: Defines the problems and analyzes and develops plans and requirements in the subject matter area for moderately complex-to-complex systems. Coordinates and manages the preparation of analysis, evaluations, and recommendations for proper implementation of programs and systems specifications including, but not limited to: information technology, health care, education, public safety, social services, human resources, transportation, and environment.

Education: A Bachelor's Degree from an accredited college or university with a major in Computer Science, Information Systems, Engineering, Business, or other related scientific or technical discipline. A Master's Degree is preferred. A Master's Degree in one of the above disciplines equals one year specialized and two years general experience.

General Experience: Must have seven (7) years of experience in the IT field.

Specialized Experience: At least five (5) years of combined new and related older technical experience in the IT field directly related to the required area of expertise.

2.14 Travel Reimbursement

Routine travel is travel within a 50-mile radius of Requesting Agency's base location, as identified in the PORFP, or the Master Contractor's facility, whichever is closer to the training or installation site. There will be no payment for labor hours for travel time or reimbursement for any travel expenses for work performed within these radiuses or at the Master Contractor's facility.

Non-routine travel is travel beyond the 50-mile radius of agency's base location, as identified in the PORFP, or the Master Contractor's facility, whichever is closer to the training or installation site. Non-routine travel will be identified within a PORFP, if appropriate, and will be reimbursed according to the State's travel regulations and reimbursement rates, which can be found at: www.dbm.maryland.gov - keyword: Fleet Management. If non-routine travel is conducted by automobile, the first 50 miles of such travel will be treated as routine travel and will not be reimbursed. The Master Contractor may bill for labor hours expended in traveling by automobile beyond the identified 50-mile radius.

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SECTION 3 – PROPOSAL FORMAT

3.1 Two Part Submission

Offerors shall submit proposals in two separate volumes:

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

Offerors will be required to submit only one Proposal, even if proposing multiple functional areas. Each functional area will be evaluated as a separate and independent proposal. As described below, the Technical Proposal shall contain a section on Offeror experience and capabilities and separate sections for each functional area proposed. Offerors must follow the instructions within this section.

3.2 Proposals

Volume I-Technical Proposal shall be sealed separately from Volume II-Financial Proposal, but submitted simultaneously to the Procurement Officer. An unbound original, so identified and two (2) copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word format and the Volume II- Financial Proposal in MS Word and signed PDF format shall also be submitted with the unbound originals technical or financial volumes, as appropriate. Electronic media may be CD or flash drive and shall bear a label on the outside containing the RFP number and name, the name of the Offeror, and the volume number.

3.3 Submission

Each Offeror is required to submit a separate sealed package for each Volume, which is to be labeled Volume I- Technical Proposal and Volume II- Financial Proposal respectively. Each sealed package shall bear the RFP title and number, name and address of the Offeror, the Volume number (I or II), functional areas proposed and closing date and time for receipt of the proposals on the outside of the package. Offerors shall submit only one Technical Proposal and one Financial Proposal, even if proposing to all three functional areas. Offerors shall include a separate section for each functional area proposed describing what part of that functional area (as described in Section 2) the Offeror has the ability to provide and how the Offeror qualifies to provide what is proposed. All pages of both proposal Volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”).

3.4 Volume I – Technical Proposal

3.4.1 Transmittal Letter

A transmittal letter shall accompany the technical proposal. **The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda.** The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. See Offeror’s Responsibilities in Section 1.20.

3.4.2 Format of Technical Proposal

Inside a sealed package described in Section 3.3, above, an unbound original, to be so labeled, two (2) copies and the electronic version shall be provided. Section 2 of this RFP provides requirements and

Section 3 provides reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposal shall be organized and numbered in the same order as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by paragraph number.

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

3.4.2.1 Title and Table of Contents

The Technical Proposal shall begin with a title page bearing the name and number of this RFP and the Offerors:

- Name;
- Address;
- FEIN;
- eMM Number; and
- MBE and/or SBR Registration Number (if applicable).

A table of contents shall follow the title page for the Technical Proposal.

3.4.2.2 Executive Summary

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary". The Summary shall provide a broad overview of the contents of the entire proposal. The summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. **If there are no exceptions taken, the Offeror is to state that they have no exceptions to the requirements of this RFP, the Contract (Attachment A), or any other attachments.** Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. In addition, the Offeror shall clearly identify each functional area for which they are proposing. Offerors certified under the Small Business Reserve and certified as a Maryland Minority Business Enterprise are asked to provide those certification numbers.

3.4.2.3 Manufacturer's or Distributor's Letter of Authorization

- A) Offerors must state each Manufacturer product line that they propose selling through the Software Master Contract.
- B) Manufacturer or Distributor's Letters of Authorization are required for each Manufacturer product line proposed by the Offeror. An Offeror may not propose a Manufacturer product line without providing the required Letter of Authorization at the time it submits its proposal. The Letter of Authorization shall certify that the Offeror is an authorized reseller or distributor of the Manufacturer's COTS software, or is authorized to provide Installation, Training and/or Maintenance services. The Letter of Authorization shall be on the Manufacturer or Distributor's letterhead or through a Manufacturer's or Distributor's e-mail. Each Letter of Authorization or e-mail must provide the following information:
 - Manufacturer or Distributor POC name and alternate for verification
 - Manufacturer or Distributor POC mailing address
 - Manufacturer or Distributor POC telephone number
 - Manufacturer or Distributor POC email address

- Manufacturer or Distributor POC fax number
- If available, a Re-seller Identifier

3.4.2.4 Explanation of Offeror's Order Fulfillment Capabilities, including

- Order receipt
- Order processing and routing
- Order Tracking
- Customer service and inquiry support
- Shipping, including express shipping
- Invoicing
- Returns
- Quality control
- Order turnaround time

3.4.2.5 Offeror Experience and Capabilities

This section shall include the following:

- A) Offeror's organization experience, type of COTS software and/or services provided and the length of time the organization has been providing the COTS software and/or services.
- B) State of Maryland Experience

If applicable, the Offeror shall submit a list of all contracts it currently holds or has held within the past five years with any government entity of the State of Maryland. For each identified contract, the Offeror shall provide:

- The State contracting entity
- A brief description of the services/goods provided
- The dollar value of the contract
- The term of the contract
- Whether the contract was terminated prior to the specified original contract termination date
- Whether any available renewal option was not exercised
- The State employee contact person (name, title, telephone number and e-mail address)

This information will be considered as part of the experience and past performance evaluation criteria in the RFP.

3.4.2.6 Other Required Submissions

- A) Completed Bid/Proposal Affidavit (Attachment B)
- B) A copy of the Offeror's current certificate of insurance required by Section 2.10 (property, casualty and liability), which, at a minimum, shall contain the following:
 - Carrier (name and address)
 - Type of insurance
 - Amount of coverage

- Period covered by insurance
- Exclusions

C) Conflict of Interest Affidavit and Disclosure (Attachment E)

3.5 Volume II - Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 3.4, the Offeror shall submit an original unbound copy, two (2) copies, and an electronic version in Word and signed PDF format of the Financial Proposal as follows:

3.5.1 Functional Area I – COTS Software and Functional Area III- Manufacturer’s Software Maintenance:

Offeror’s shall certify by signing Attachment D-1 and D-3 (as applicable), that the Offeror shall provide pricing no higher than MSRP as of the date of the PORFP proposal submission. For items not having A MSRP, as in the case when a manufacturer is the only distributor of its own product, the manufacturer’s proposed price on its letterhead will be sufficient for MSR pricing.

3.5.2 Functional Area II –Installation and Training Services

A) Installation Services:

If proposing to provide Installation Services, the Offeror must complete Attachment D-2 Labor Rate Schedule for Software Installation and/or Training. Prices at the PORFP level may be quoted as fixed price. When combined with a software purchase in the PORFP, prices for Installation must be priced separately from the price of the Proposal.

B) Training Services:

If proposing to provide Training services, the Offeror must complete Attachment D-2 Labor Rate Schedule for COTS Software Installation and/or Training Services. Prices at the PORFP level may be quoted as fixed price. When combined with a software purchase in the PORFP, prices for training must be priced separately from the price of the software in the Proposal.

Complete the Price sheets as provided in Attachment D - Price Proposal Form Instructions.

For Functional Area II, the State will consider the procurement to be competitive if two or more qualified offers are received for a fixed price PORFP. If only one response is received for a fixed price PORFP, the procurement officer is required to provide a written determination that the total proposal, including price is fair and reasonable.

SECTION 4 – EVALUATION CRITERIA AND SELECTION PROCEDURE

4.1 Evaluation Criteria

Master Contracts will be awarded to all qualified Offerors in accordance with the Competitive Sealed Proposals procurement process under Code of Maryland Regulations 21.05.03.

4.2 Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance:

- Letter of Authorization (Sec.3.4.2.3)
- Offeror's order fulfillment capabilities (Sec. 3.4.2.4)
- Offeror's experience (Sec. 3.4.2.5)

4.3 Financial Criteria

Financial Proposals will be evaluated separately. Prices set by Master Contracts are the maximum prices the State will pay for any COTS software, installation and training, and/or manufacturer's software maintenance services.

4.4 Reciprocal Preference

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

4.5 Selection Procedures

4.5.1 General Selection Process

Master Contracts will be awarded in accordance with the Competitive Sealed Proposals process under Code of Maryland Regulations 21.05.03. The Competitive Sealed Proposals method is based on discussions and revision of proposals during these discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions. In either case of holding discussions or not doing so, the State may determine an Offeror to be not responsible and/or an Offeror's proposal to be not reasonably susceptible of being selected for award, at any time after the initial closing date for receipt of proposals and the review of those proposals. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be

not reasonably susceptible of being selected for award, an Offeror's financial proposal will be returned unopened.

4.5.2 Selection Process Sequence

4.5.2.1 The first step in the process will be an evaluation for technical merit. The purpose of this evaluation will be to assure a full understanding of the State's requirements and the Offeror's ability to perform.

4.5.2.2 Offerors must confirm in writing any substantive clarification of, or change in, their proposals made in the course of clarification requests. Any such written clarification or change then becomes part of the Offeror's proposal.

4.5.2.3 The financial proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of qualified Offerors, the Procurement Officer may again conduct discussions to further evaluate the Offeror's entire proposal.

4.5.2.4 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers.

4.5.3 Award Determination

Upon completion of all discussions and negotiations, the Procurement Officer will recommend award of a Master Contract to all technically qualified Offeror(s).

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ATTACHMENT A - Commercial Off-the-Shelf Software 2012 (COTS 2012) Contract

THIS CONTRACT is made as of this _____ day of _____, 2012 by and between _____ and the MARYLAND DEPARTMENT OF INFORMATION TECHNOLOGY.

IN CONSIDERATION of the premises and the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Definitions

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

1.2 “Contract” means this Contract for Software Services.

1.3 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.

1.4 “Contract Manager” means the individual identified in Section 1.7 of the RFP or a successor designated by the Department.

1.5 “Department” means the Maryland Department of Information Technology.

1.6 “Financial Proposal” means the Contractor’s Financial Proposal dated _____.

1.7 Installation means transferring manufacturer’s electronic media to computer systems so that the COTS software will provide the features and functions generally described in the User Documentation.

1.8 “Purchase Order (PO)” authorizes Contractor to proceed with delivery of products and/or any services requested via a PORFP.

1.9 “PORFP” means Purchase Order Request for Quotation.

1.10 “Procurement Officer” means the individual identified in section 1.6 of the RFP or a successor designated by the Department.

1.11 “RFP” means the Request for Proposals for Software, No. 060B2490021 dated May 16, 2012 and any amendments thereto issued in writing by the State.

1.12 “Software” means those services described in Section 2 of the RFP.

1.13 “State” means the State of Maryland.

1.14 “Technical Proposal” means the Contractor’s Technical Proposal, dated _____.

2. Scope of Work

2.1 The Contractor shall provide COTS Software, Training and Installation and/or Maintenance, for the State as described in the PO and the PORFP, in one or more of the three (3) functional areas as follows:

These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached and incorporated herein by reference. If there are any inconsistencies between this Contract and Exhibits A, B, C, and D, the terms of this Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision.

Exhibit A - The RFP.

Exhibit B - The Technical Proposal.

Exhibit C - The Financial Proposal.

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

2.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract, the PORFP, or the PO. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Article 10, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance

The Contractor shall provide services in accordance with this Master Contract and any PORFP. The term of this Contract is for a period of 15 years, beginning on _____, 2012 and ending _____, 2027 unless terminated earlier as provided in this Master Contract.-All prices for rates and terms as offered in Attachments D-1, D-2, and D-3 are binding on the Contractor for the term of the Contract.

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract and any PORFP, the Department shall pay the Contractor in accordance with the not-to-exceed rates and terms of Exhibit C, Contractor's Financial Proposal. POs that are on a time and materials basis shall include a not-to-exceed ceiling for payments. Any work performed by the Contractor in excess of the ceiling amount of any PO without the prior written approval of the Contract Manager is at the Contractor's risk of non-payment. Payments under POs issued on a fixed price basis shall be limited to the price specified in the PORFP, regardless of the actual cost to the Contractor.

4.2 Invoices must be provided in the format and on the schedule identified in the PORFP. Each invoice must reflect the Contractor's federal tax identification number, which is _____. The Contractor's eMM identification number is _____. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited. PORFPs may specify periodic payments based on deliverables or stages of completion. A PORFP may specify that a portion of the payments due will be withheld until completion of the PO. The amount withheld from each payment shall be paid to the Contractor within thirty (30) days of the State's acceptance of all deliverables required under the PO and receipt from the Contractor of a release in a form prescribed by the State for any claims arising out of or related to the PORFP. The final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

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

4.4 The State will use electronic funds transfer to pay the Contractor for this Contract and any POs thereunder and any other State payments due Contractor unless the State's Comptroller Office grants the Contractor an exemption.

5. PORFPs

A PORFP may specify terms in addition to the terms specified herein. Such additional terms may include warranties, deliverables, and acceptance test requirements. PORFPs, POs and Reference BPOs may not limit the State's rights as provided by law, in this Contract, or in the RFP and may not change the terms of this Contract or the RFP.

6. Rights to Records

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

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

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

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

6.5 Upon termination of this 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.

7. Confidentiality

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

8. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act, omission, or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and is recoverable by the Contractor.

9. Non-Hiring of Employees

No official or employee of the State of Maryland as defined under State Government Article section 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract shall, during the 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.

10. Disputes

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

11. Maryland Law

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

12. Nondiscrimination in Employment

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

13. Contingent Fee Prohibition

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

14. Nonavailability 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.

15. Termination for Cause

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

termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

16. Termination for Convenience

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

17. Delays and Extensions of Time

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

18. Suspension of Work

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

19. Pre-Existing Regulations

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

20. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, as from time to time amended, which requires that every business that enters into contracts, leases, or other agreement with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

21. Political Contribution Disclosure

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

22. Retention of Records

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

23. Compliance with Laws

The Contractor hereby represents and warrants that:

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

24. Cost and Price Certification

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

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

25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the 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, any such approvals to be in the State's sole and absolute subjective discretion; provided however, a Contractor may assign monies receivable under a PO after due notice to the State. Any such subcontract or assignment shall include the terms of sections 8, and 10 through 23 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

26. Indemnification

26.1 The Contractor shall hold harmless and indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

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

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

26.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or relating to the Contractor's obligations under the Contract. In the event that a claim, suit or action is made or filed against the State as a result of or relating to the Contractor's performance under this Contract, the Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. This section shall survive expiration of this Contract.

27. Administrative

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

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

If to the State: State of Maryland
Department of Information Technology
Office of Procurement
45 Calvert Street, Room ____
Annapolis, MD 21401-1907
Attention: _____

If to the Contractor: _____

28. Risk of Loss; Transfer of Title.

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

29. Nonvisual Accessibility Warranty

The Contractor warrants that the information technology offered under the proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Contractor further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase "equivalent access" means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

30. Commercial Nondiscrimination

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

Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by DoIT, in all sub-contracts.

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

31. Patents, Copyright, Intellectual Property

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

31.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law.

To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor shall state why it believes that it should not thereby relinquish, transfer, and assign to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract.

31.3 The Contractor shall hold and save harmless the State of Maryland, including but not limited to the Department and its agents, officers, and employees, from liability of any nature or kind arising out of a claim or suit for or on account of the use of any copyrighted or uncopied composition, trademark, service mark, secure process, patented or unpatented invention, article or appliance furnished or used in the performance of any Contract resulting from this RFP. The Contractor agrees to assume the defense of any and all such suits and pay the costs and expenses incidental hereto, subject to the right of the State to provide additional legal counsel at the State's own expense. If a third party claims that a product infringes that party's patent or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the State (i) notifies the Contractor in writing of the claim within a reasonable time after the State's receipt of such claim, with the understanding that the State's failure to give reasonably timely notice shall not relieve Contractor of any obligation hereunder except and to the extent that such failure prejudices Contractors' ability to defend against such claim; and (ii) allows Contractor to control, and cooperates with Contractor in, the defense and any related settlement negotiations.

31.4 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 shall, after consultation with the State and at the Contractor's own expense: (a) procure for the State the right to continue using the applicable item, (b)

replace the produce with a non-fringing product that, in the State's view, substantially complies with the item's specifications, or (c) modify the item so that it becomes non-infringing and, in the State's view, performs in a substantially similar manner to the original item.

31.5 In connection with services provided under a PORFP, the Contractor may create, acquire or otherwise have rights in, and may, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Contractor Technology"). To the extent that any Contractor Technology is contained in any of the Contract deliverables including any derivative works, the Contractor grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Contractor Technology in connection with the Contract deliverables for the State's purposes.

31.6 The Contractor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to the Contractor. In a PORFP, the State may, in its sole discretion, elect to grant the Contractor a worldwide, perpetual, non-exclusive license, for which the State may require compensation, perhaps in the form of a royalty, for the Contractor's internal use non-confidential Contract deliverables first originated and prepared by the Contractor for delivery to the State.

32. Limitation of Liability

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, trademarks, trade secrets and copyrights as provided in Section 31 ("Patents, Copyrights, Intellectual Property") of this Contract;
- B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;
- C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability per claim shall not exceed five (5) times the total amount of the PORFP out of which the claim arises; provided however, the State may, in its sole discretion, decrease the ceiling established hereunder in any PORFP issued pursuant to this RFP. Third party claims arising under Section 26 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 26 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 26.

33. Prompt Pay Requirements

33.1 If a contractor withholds payment of an undisputed amount to its subcontractor, the Agency, at its option and in its sole discretion, may take one or more of the following actions:

33.1.1 Not process further payments to the contractor until payment to the subcontractor is verified;

33.1.2 Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

33.1.3 Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;

33.1.4 Place a payment for an undisputed amount in an interest-bearing escrow account; or

33.1.5 Take other or further actions as appropriate to resolve the withheld payment.

33.2 An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include (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.

33.3 An act, failure to act, or decision of a procurement officer or a representative of the Agency, concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:

33.3.1 Affect the rights of the contracting parties under any other provision of law;

33.3.2 Be used as evidence on the merits of a dispute between the Agency and the contractor in any other proceeding; or

33.3.3 Result in liability against or prejudice the rights of the Agency.

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

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

33.5.1 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.

33.5.2 This verification may include, as appropriate:

33.5.2.1 Inspecting any relevant records of the contractor;

33.5.2.2 Inspecting the jobsite; and

33.5.2.3 Interviewing subcontractors and workers.

33.5.2.4 Verification shall include a review of:

33.5.2.4.1 The contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and

33.5.2.4.2 The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.

33.5.3 If the Agency determines that a contractor is in noncompliance with certified MBE participation goals, then the Agency 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.

33.5.4 If the Agency determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Agency requires, then the Agency may:

33.5.4.1 Terminate the contract;

33.5.4.2 Refer the matter to the Office of the Attorney General for appropriate action; or

33.5.4.3 Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.

33.5.5 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.

34. Parent Company Guarantee (If Applicable)

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

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

CONTRACTOR

MARYLAND DEPARTMENT OF
INFORMATION TECHNOLOGY

By:

By:

Date

Date

Witness

Witness

Approved for form and legal sufficiency this _____ day of _____ 2012.

Assistant Attorney General

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

ATTACHMENT B - Bid/Proposal Affidavit

(Authorized Representative and Affiant)

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, _____ (print name), possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned bidder 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 or proposal and:

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

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

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

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

_____.

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. ACKNOWLEDGEMENT

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

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)



ATTACHMENT C - Contract Affidavit

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, _____ (print name), possess the legal authority to make this Affidavit.

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID

Number: _____ Address: _____

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

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

(1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone 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 Bid/Proposal Affidavit dated _____, 20____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D - Price Proposal Forms and Instructions

Instructions

In order to assist Offerors in the preparation of their price proposal and to comply with the requirements of this solicitation, Price Instructions and Price Forms have been prepared. Offerors shall submit their price proposal on the forms in accordance with the instructions on the forms and as specified herein. Do not alter the forms or the price proposal may be rejected. The Price Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to all proposed prices. Any incorrect entries or inaccurate calculations by the vendor will be treated as provided in COMAR 21.05.03E and 21.05.02.12.

OFFERORS SHALL DETERMINE WHICH FUNCTIONAL AREAS TO PROPOSE EXCEPT, IF PROPOSING FUNCTIONAL AREA II AN OFFEROR MUST ALSO PROPOSE FUNCTIONAL AREA I AND/OR FUNCTIONAL AREA III. FUNCTIONAL AREA II CANNOT BE PROPOSED ALONE.

FORM D-1 FUNCTIONAL AREA I COTS SOFTWARE MSRP COMMITMENT

The Offeror must acknowledge the use of the MSRP as a ceiling price for the master contract and commit to charging no more than the MSRP published on-line at the time of the PORFP proposal submission.

FORM D-2 FUNCTIONAL AREA II INSTALLATION AND TRAINING SERVICES

Offerors are required to record the fully-loaded hourly prices they are proposing for each listed item. Record the hourly labor rate for all 15 years of the Master Contract for all labor categories.

FORM D-3 FUNCTIONAL AREA III MANUFACTURER'S SOFTWARE MAINTENANCE MSRP COMMITMENT

The Offeror must acknowledge the use of the MSRP as a ceiling price for the master contract and commit to charging no more than MSRP published on-line at the time of the PORFP proposal submission response.

ATTACHMENT D-1 - Functional Area I

COTS Software MSRP Commitment

I acknowledge by signing this attachment, the requirement of providing pricing no higher than MSRP as of the date of the PORFP proposal submission.

OFFERORS SHALL STATE BELOW THE MANUFACTURER OF THE COTS SOFTWARE PROPOSED (Attach additional sheets, if necessary):

Submitted By:

Authorized Signature Date

Printed Name And Title

Company Name

Company Address

FEIN Number

Telephone Number

ATTACHMENT D-2 - Functional Area II

Installation and Training Services Labor Rate Schedule

NOTE: COMPLETING D-2 REQUIRES OFFERORS TO ALSO COMPLETE D-1 FOR THE CORRESPONDING SOFTWARE AND/OR D-3 FOR MAINTENANCE

Labor Category:	Training Specialist/Instructor	Network Administrator	Subject Matter Expert
Year 1	\$	\$	\$
Year 2	\$	\$	\$
Year 3	\$	\$	\$
Year 4	\$	\$	\$
Year 5	\$	\$	\$
Year 6	\$	\$	\$
Year 7	\$	\$	\$
Year 8	\$	\$	\$
Year 9	\$	\$	\$
Year 10	\$	\$	\$
Year 11	\$	\$	\$
Year 12	\$	\$	\$
Year 13	\$	\$	\$
Year 14	\$	\$	\$
Year 15	\$	\$	\$

Example: Contract year one begins on the date of the contract award and continues until July 31, 2013, contract year two begins on August 1, 2013 and continues for one year until July 31, 2014, etc.

Submitted By

Authorized Signature

Date

Printed Name And Title

Company Name

Company Address

FEIN Number

Telephone Number

ATTACHMENT D-3 - Functional Area III

Manufacturer's Software Maintenance MSRP Commitment

I acknowledge by signing this attachment, the requirement of providing pricing no higher than MSRP for the specified manufacturer's software maintenance as of the date of the PORFP proposal submission.

OFFERORS SHALL STATE BELOW THE MANUFACTURER LINE(S) FOR WHICH MAINTENANCE IS BEING PROPOSED (Attach additional sheets, if necessary):

Submitted By:

Authorized Signature

Date

Printed Name And Title

Company Name

Company Address

FEIN Number

Telephone Number

ATTACHMENT E - Conflict of Interest Affidavit and Disclosure

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

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

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

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

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

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

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