



STATE BOARD OF ELECTIONS (SBE)

REQUEST FOR PROPOSALS (RFP)

SOLICITATION NO. D38B4400019

Issue Date: July 22, 2014

VOTING SYSTEM SOLUTION (VSS)

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO VENDORS**

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

Title: VOTING SYSTEM SOLUTION

Solicitation No: D38B4400019

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

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

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

E-mail Address: _____

STATE OF MARYLAND
State Board of Elections
RFP KEY INFORMATION SUMMARY SHEET

Request for Proposals:	Voting System Solution
Solicitation Number:	D38B4400019
RFP Issuing Office:	State Board of Elections (SBE)
Contract Type:	Indefinite Delivery Indefinite Quantity (IDIQ), Fixed Price (FP) Lease or Purchase
Procurement Officer:	Whitney Faust State Board of Elections 151 West Street, Suite 200 Annapolis, MD 21401-0486 Office Phone: 410-269-2863 Office Fax: 410-974-2019 Whitney.Faust@Maryland.gov
Contract Manager:	Paul Aumayr State Board of Elections 151 West Street, Suite 200 Annapolis, MD 21401-0486 Office Phone: 410-269-2860 Paul.Aumayr@Maryland.gov
Proposals are to be sent to:	State Board of Elections 151 West Street, Suite 200 Annapolis, MD 21401-0486 Attention: Whitney Faust
Send Questions and Proposals to:	Whitney Faust Whitney.Faust@Maryland.gov
RFP Issue Date:	July 22, 2014
Pre-Proposal Conference:	July 31, 2014 at 10:00 A.M. EST State Board of Elections 151 West Street, Suite 200 Annapolis, MD 21401-0486
Closing Date for Q&A:	August 22 26 , 2014
RFP Closing Date and Time:	September 2 9 , 2014 at 4:00 P.M. EST
Oral Presentation (Approx.):	September 22 29 , 2014 to September 26 October 3 16 , 2014
Contract Start (Approx.):	January 1, 2015
MBE Subcontracting Goal:	0% (See Section 1.33 for additional details)
VSBE Subcontracting Goal:	0%
Small Business Reserve (SBR):	No
Primary Place of Performance:	State Board of Elections 151 West Street, Suite 200 Annapolis MD 21401-0486

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

- 1.1.1 The State Board of Elections (SBE), also referenced as “The Agency”, is issuing this Request for Proposals (RFP) to Procure a Voting System Solution (VSS) by Lease or Purchase (see RFP Section 1.2), to replace the existing statewide voting system.
- 1.1.2 It is the State’s intention to obtain the VSS, as specified in this RFP, from a Contract between the selected Offeror and the State. The anticipated duration of the Contract is from Notice to Proceed (NTP) to 03/31/2017 with two (2) optional extensions:
- NTP on or about 1/1/2015 to 3/31/2017 (Base Period)
 - ~~4/1/2017 to 12/31/2018 (Option Period 1)~~
 - ~~1/1/2019 to 12/31/2020 (Option Period 2)~~
 - 4/1/2017 to 3/31/2019 (Option Period 1)
 - 4/1/2019 to 3/31/2021 (Option Period 2)

See RFP Section 1.4 for more information.

- 1.1.3 The Agency intends to make a single award as a result of this RFP.
- 1.1.4 Offerors, either directly or through their subcontractor(s), must be able to meet all of the requirements and services requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

1.2 Abbreviations and Definitions

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

- a. **Agency or SBE**—State Board of Elections
- b. **BAFO**—Best and Final Offer
- c. **Ballot Marking Device (BMD)**—a device that allows voters to electronically mark the ballots with their selections
- d. **Ballot Style Indicator**—A unique number to designate a ballot with content specific to a precinct.
- e. **Business Day(s)**—The official Working Days of the week to include Monday through Friday. Official Working Days exclude State Holidays (see definition of “Normal State Business Hours” below).
- f. **Care, Custody and Control**—property belonging to the Contractor which is in the possession and control of SBE.
- g. **Central Warehouse**—A State of Maryland facility to be selected for receiving and testing of all VSS Components.
- h. **Change Request (CR)**—A change request is a formal written document, presented by the Contractor to the Procurement Officer to evaluate and potentially authorize a change in scope to the project. No changes to the scope shall occur without a Change Request signed by SBE.
- i. **COMAR**—Code of Maryland Regulations available on-line at www.dsd.state.md.us.
- j. **Contract**—The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment A**.
- k. **Contract Commencement**—The date the Contract is signed by The Agency following any required approvals of the Contract, including approval by the Board of Public Works. See RFP Section 1.4.

- l. **Contract Manager**—The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract.
- m. **Contractor**—The selected Offeror that is awarded a Contract by the State.
- n. **DBM**—Department of Budget and Management.
- o. **Direct Recording Electronic**—Voting units that electronically store ballots and where the voter interacts directly with the voting unit.
- p. **DoIT**—Department of Information Technology
- q. **DPAF**—Deliverable Performance Acceptance Form
- r. **Early Voting**—Ability of voters to cast ballots in person before Election Day.
- s. **EAC**—US Election Assistance Commission
- t. **Election Law Article**—The volume of the Annotated Code of Maryland that governs all federal, State, and county elections in Maryland. Available online at:
http://elections.maryland.gov/laws_and_regs/election_law.html
- u. **eMaryland Marketplace (eMM)**—is an electronic commerce system administered by the Maryland Department of General Services (see RFP Section 1.8).
- v. **Fixed Price (FP)**—A contract is appropriate for use when the extent and type of work necessary to meet State requirements can be reasonably specified and the cost can be reasonably estimated, as is generally the case for construction or standard commercial products. A fixed-price type of contract is the only type of contract that can be used in competitive sealed bidding.
- w. **Firmware**—computer programs embedded in non-volatile memory
- x. **Fully Loaded Prices**—For the purpose of this RFP, Fully Loaded Prices shall mean prices and rates that include all direct and indirect costs associated with providing all goods, services and equipment required by this RFP. No other amounts will be paid to the Contractor including overtime amounts.
- y. **General Election**—Election usually held the first Tuesday after the first Monday in November where candidates are actually elected to office.
- z. **Go-Live Date**—The date when the Contractor shall begin providing all services required by this solicitation. See RFP Section 1.4.
- aa. **High Speed Scanning (HSS) device**—A document scanner capable of imaging batches of ballots at high speed that is normally used at the LBE
- bb. **Indefinite Delivery Indefinite Quantity**—A type of contract that provides for an indefinite quantity of supplies or services during a fixed period of time.
- cc. **Jurisdiction**—Includes the 23 Maryland Counties and the City of Baltimore
- dd. **LAN**—Local Area Network
- ee. **Lease**—The Agency defines the word “Lease” to mean that the Agency will receive and use the hardware and software for the defined Contract Duration (see RFP Section 1.4) in consideration of a fixed schedule of payments. SBE will maintain Care, Custody and Control of, but will not own, the VSS Components during the course of the Contract. At the end of the contract period, the Contractor will retrieve the hardware and software.
- ff. **Local Board of Election (LBE)**—The Election Director and staff who oversee the conduct of elections held in their respective jurisdictions. Located in each of the 23 counties of Maryland and in the City of Baltimore, each LBE is administered by an Election Director.

- gg. **Local Time**—Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- hh. **Minority Business Enterprise (MBE)**—Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- ii. **New Voting System Replacement project (NVSR)**—The SBE’s designated project name for the project designated to implement the Voting System Solution for the State of Maryland.
- jj. **Normal State Business Hours**—Normal State business hours are 8:00AM – 5:00PM Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
- kk. **Notice to Proceed (NTP)**—A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date. The start date listed in the NTP is the official start date of the Contract for the actual delivery of services as described in this solicitation. After Contract Commencement, additional NTPs may be issued by either the Procurement Officer or The Agency Contract Manager regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- ll. **NVSR Senior Project Manager**—Project Manager executing daily activities for this project.
- mm. **Offeror**—An entity that submits a Proposal in response to this RFP.
- nn. **Precinct Based Scanning (PBS) Device**—An electronic voting system that uses an optical scanner or digital imaging to read votes cast on marked paper ballots and tally the results.
- oo. **Primary Election**—A Primary Election narrows the field for the General Election. Election held the 1st Tuesday in April for Presidential Election years and the last Tuesday in June for Gubernatorial Election years
- pp. **Preventative Maintenance**—Scheduled or periodic maintenance procedures specified by the Contractor to ensure the VSS Components are operational and available for the Contract Duration (see RFP Section 1.4).
- qq. **PEP**—Problem Escalation Procedure
- rr. **Procurement or Procure**—For the purposes of this RFP, the terms Procurement and Procure shall refer to all of the following Contract Types:
a. Lease
b. Purchase
- ss. **Procurement Officer**—The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative who can authorize changes to the Contract. The Agency may change the Procurement Officer at any time by written notice to the Contractor.
- tt. **Project Manager**—The individual responsible for directing the work of the project team in a leadership capacity.
- uu. **Proposal**—As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
- vv. **Purchase**—The Agency defines the word “Purchase” to mean that the Agency will receive, use and own the hardware and software.
- ww. **Repair**—Perform problem determination, fix, restore service or replace all VSS Components including hardware, software and firmware as necessary to ensure the VSS Components are operational and available for the Contract Duration (see RFP Section 1.4).
- xx. **Request for Proposals (RFP)**—This Request for Proposals issued by the SBE, Solicitation Number D38B4400019 including all addenda.
- yy. **SBE**—The State Board of Elections is the Agency that manages and oversees elections conducted by the 24 LBEs in Maryland. The agency and members of the State Board of Elections ensure compliance with the requirements of Maryland and federal laws by all persons in the election process.

- zz. **SBE EMS**—The SBE Election Configuration and Candidate System.
- aaa. **SDAT**—State Department of Assessments and Taxation.
- bbb. **Split Precinct**—A split precinct is one in which some of the voters in the precinct vote in one election district and other voters vote for the same type of office, but in a different election district.
- ccc. **State**—The State of Maryland
- ddd. **Source Code Delivery Event**—Defined points when Source Code must be delivered to SBE from Software Escrow.
- eee. **Time and Materials (T&M)**—A type of payment whereby the Contractor will be paid for services performed based on direct labor hours billed at specific hourly rates, plus non-routine travel costs as may be identified in a contract agreement, plus the actual cost of any materials used or other direct expenses incurred in the performance of a contract agreement, up to a specified cost ceiling.
- fff. **Total Proposal Price**—The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment F – Price Form, and used in the financial evaluation of Proposals (see RFP Section 5.3).
- ggg. **User Acceptance Testing (UAT)**—A process of verifying that the VSS solution works based upon the requirements of this RFP.
- hhh. **Veteran-owned Small Business Enterprise (VSBE)**—a business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- iii. **Voter-Verifiable Paper Record**—A paper ballot prepared by the voter for the purpose of being read by a PBS.
- jjj. **Voting System**—Method of casting and tabulating ballots or votes
- kkk. **VS EMS**—the voting system’s election management system
- lll. **VSS Component**—includes all elements of the proposed VSS including hardware and software (i.e. PBS, HSS, BMD, and VS EMS)
- mmm. **VSS Device**—includes only hardware elements of the proposed VSS (i.e. PBS, HSS, and BMD)
- nnn. **VSTL**—Voting System Test Laboratory. A laboratory federally-accredited to test voting systems to US Elections Assistance Commission (EAC) approved voting system standards.
- ooo. **VVSG**—Voluntary Voting System Guidelines. Voluntary voting system standards developed, adopted, and published by the EAC
- ppp. **Working Day(s)**—Same as “Business Day(s).”

1.3 Contract Type

The Contract that results from this RFP will be an IDIQ Contract with FPs and Time and Materials (T&M) in accordance with Code of Maryland Regulations (COMAR) 21.06.03.

1.4 Contract Duration

- 1.4.1 The Contract resulting from this RFP shall be for a Base Period starting at NTP on or about January 1, 2015 and ending on March 31, 2017. The term of the Contract shall begin on the date the Contract is signed by SBE following approval of the Board of Public Works (BPW). The Contractor shall provide services under this Contract upon receipt of official notification of award and a written NTP issued by the Procurement Officer.

Further, the Contract may be extended with two (2) optional renewal options at the sole discretion of SBE and at the prices quoted in the Financial Proposal for Option Periods. The option periods are:

- 4/1/2017 to 3/31/2019 (Option Period 1)
- 4/1/2019 to 3/31/2021 (Option Period 2)

1.4.2 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term shall survive expiration or termination of the Contract and continue in effect until all such obligations are satisfied.

1.5 Procurement Officer

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

Whitney Faust
State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401-0486
Office Phone: 410-269-2863
Office Fax: 410-974-2019
Whitney.Faust@Maryland.gov

The Agency may change the Procurement Officer at any time by written notice.

1.6 Contract Manager

The Contract Manager is:

Paul Aumayr
State Board of Elections
151 West Street, Suite 200
Annapolis, MD 21401-0486
Office Phone: 410-269-2860
Paul.Aumayr@Maryland.gov

The Agency may change the Contract Manager at any time by written notice.

1.7 Pre-Proposal Conference

A Pre-Proposal Conference (the Conference) will be held on July 31, 2014, beginning at 10:00AM Local Time, at 151 West Street, Suite 200, Annapolis, MD 21401. All prospective Offerors are encouraged to attend in order to facilitate better preparation of their Proposals.

The Conference will be summarized. As promptly as is feasible subsequent to the Conference, a summary of the Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP. This summary, as well as the questions and answers, will also be posted on eMaryland Marketplace (eMM). See RFP Section 1.8.

In order to assure adequate seating and other accommodations at the Conference, please e-mail, mail, or fax to 410-974-2019 the Pre-Proposal Conference Response Form to the attention of the Procurement Officer no later than 4:00 PM Local Time July 28, 2014. The Pre-Proposal Conference Response Form is included as **Attachment E** to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please notify the Procurement Officer no later than July 25, 2014. The Agency will make a reasonable effort to provide such special accommodation.

1.8 eMarylandMarketplace

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

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 eMM.

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

1.9 Questions

All questions shall be submitted via e-mail to the Procurement Officer no later than the date and time indicated in the Key Information Summary Sheet. Please identify in the subject line the Solicitation Number and Title. Answers to all questions that are not clearly specific only to the requestor will be distributed to all companies who are known to have received a copy of the RFP.

Only answers that have been answered in writing by the State are considered final and binding.

1.10 Procurement Method

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

1.11 Proposals Due (Closing) Date and Time

Proposals, in the number and form set forth in RFP Section 4.2 must be received by the Procurement Officer at the address listed on the RFP Key Information Summary Sheet, no later than the date listed on the RFP Key Information Summary Sheet in order to be considered.

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

Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in this section for receipt of Proposals.

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

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

1.12 Multiple or Alternate Proposals

Multiple and/or alternate Proposals will not be accepted.

1.13 Economy of Preparation

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

1.14 Public Information Act Notice

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., State

Government Article, Title 10, Subtitle 6 (see RFP Section 4.4.2.2). This confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

1.15 Award Basis

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 5 for further award information.

1.16 Oral Presentation

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

1.17 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for 180 days following the later of the closing date for submission of proposals, the closing date for best and final offers (BAFOs) if requested, or the date any protest concerning this RFP is finally resolved.. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.18 Revisions to the RFP

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

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

1.19 Cancellations

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, to waive or permit the 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 discussions or negotiations.

1.20 Incurred Expenses

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

1.21 Protest/Disputes

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

1.22 Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) of this RFP (see RFP Section 1.33 and Section 1.41).

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

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

1.23 Substitution of Personnel

A. Continuous Performance of Key Personnel

Unless substitution is approved per paragraphs 1.23 B-D, key personnel shall be the same personnel proposed in the Contractor's Technical Proposal, which will be incorporated into the Contract by reference. Such identified key personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key personnel may not be removed by the Contractor from working under this Contract, as described in the RFP or the Contractor's Technical Proposal, without the prior written approval of the Contract Manager.

B. Definitions

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

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

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

Sudden – means when the Contractor has less than thirty (30) days prior notice of a circumstance beyond its control that will require the replacement of any key personnel working under the Contract.

C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph 1.23 D.

1. The Contractor shall demonstrate to the Contract Manager's satisfaction that the proposed substitute key personnel have qualifications at least equal to those of the key personnel for whom the replacement is requested.
2. The Contractor shall provide the Contract Manager with a substitution request that shall include:
 - A detailed explanation of the reason(s) for the substitution request;
 - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
 - The official resume of the current personnel for comparison purposes; and
 - Any evidence of any required credentials.
3. The Contract Manager may request additional information concerning the proposed substitution. In addition, the Contract Manager and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Manager will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Manager will not unreasonably withhold approval of a requested key personnel replacement.

D. Replacement Circumstances

1. Voluntary Key Personnel Replacement

To voluntarily replace any key personnel, the Contractor shall submit a substitution request as described in paragraph C of this section to the Contract Manager at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph 1.23 D.2, a substitution may not occur unless and until the Contract Manager approves the substitution in writing.

2. Key Personnel Replacement Due to Vacancy

The Contractor shall replace key personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, incapacitating injury, illness or physical condition, or death of such personnel (a termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section D.1 of this section).

Under any of the circumstances set forth in this paragraph (1.23 D.2), the Contractor shall identify a suitable replacement and provide the same information or items required under paragraph 1.23 C within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.

3. Key Personnel Replacement Due to an Indeterminate Absence

If any key personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information or items to the Contract Manager as required under paragraph 1.23 C.

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

4. Directed Personnel Replacement

- a. The Contract Manager may direct the Contractor to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Manager determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Manager deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Manager can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Contractor shall, in accordance with paragraph 1.23 C, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

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

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

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

1.24 Mandatory Contractual Terms

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment A**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary (See RFP Section 4.4.2.4) of the Technical Proposal. **A Proposal that takes exception to any of these terms may be rejected.**

1.25 Proposal Affidavit

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

1.26 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 as **Attachment C** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit will also be required to be completed by the Contractor prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term.

1.27 Compliance with Laws/Arrearages

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

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

1.28 Verification of Registration and Tax Payment

Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://www.dat.state.md.us/sdatweb/>.

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

1.29 False Statements

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

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

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

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

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

1.30 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$100,000. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form at:

http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption.

1.31 Prompt Payment Policy

This procurement and the Contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008.

Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor must comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Payment" (see **Attachment A**). Additional information is available on GOMA's website at:

http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf.

1.32 Electronic Procurements Authorized

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, the Agency may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. "Electronic means" includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsol/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP Section 1.30) and subject to the exclusions noted in RFP Section 1.32 E, the following transactions are authorized to be conducted by electronic means on the terms described:
1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
 - (a) the solicitation (e.g., the IFB/RFP);
 - (b) any amendments;
 - (c) pre-Proposal conference documents;
 - (d) questions and responses;
 - (e) communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
 - (f) notices of award selection or non-selection; and
 - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
 2. A Offeror or potential Offeror may use e-mail or facsimile to:
 - (a) ask questions regarding the solicitation;
 - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) submit a "No Proposal Response" to the solicitation.
 3. The Procurement Officer, the Contract Manager, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section 1.32 E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Manager.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
1. Submission of initial Proposals;
 2. Filing of Bid Protests;
 3. Filing of Contract Claims;
 4. Submission of documents determined by The Agency to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
 5. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.
- F. Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Manager.

1.33 Minority Business Enterprise Goals

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal. However, Offerors are encouraged to submit their own MBE participation plan which will be given credit towards evaluation of the Economic Benefit Factor.

1.34 Living Wage Requirements

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

Additional information regarding the State's living wage requirement is contained in **Attachment G**.

Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment G-1**) with their Proposal. If an Offeror fails to complete and submit the required documentation, the State may determine an Offeror to be not responsible under State law.

If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

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

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

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

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

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

1.35 Federal Funding Acknowledgement

This Contract does not contain Federal funds.

1.36 Conflict of Interest Affidavit and Disclosure

Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with their Proposal. All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful

Contractor's personnel who perform or control work under this Contract and each of the participating subcontractor personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to **Attachment I** Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

1.37 Non-Disclosure Agreement

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

1.38 HIPAA - Business Associate Agreement

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

1.39 Nonvisual Access

By submitting a Proposal, the Offeror warrants that the information technology offered under the Proposal: (1) provides equivalent access for effective use by both visual and nonvisual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual 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 nonvisual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than five percent (5%). For purposes of this solicitation and resulting Contract, the phrase "equivalent access" means the ability to receive, use, and manipulate information and to operate controls necessary to access and use information technology by nonvisual 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 Nonvisual 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. See www.doit.maryland.gov, keyword: NVA.

1.40 Mercury and Products That Contain Mercury

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

1.41 Veteran-Owned Small Business Enterprise Goals

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

1.42 Location of the Performance of Services Disclosure

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

1.43 Department of Human Resources (DHR) Hiring Agreement

Agencies are required to state whether the DHR Hiring Agreement is applicable for its solicitations. The DHR Hiring Agreement is not applicable for SBE Solicitation No. D38B4400019.

1.44 Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, §§ 14-101 through 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more after January 1, 2015 for the life of the contract, shall file with the State Board of Elections a statement disclosing

contributions of \$500 or more made during the reporting period to an office holder or a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections:

- (a) at the time of award by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and
- (b) twice a year, throughout the contract term, on:
 - i. February 5, to cover the six (6) month period ending January 31; and
 - ii. August 5, to cover the six (6) month period ending July 31.

1.45 Liquidated Damages

If the Contractor fails to meet any Maintenance and Repair scheduled activities in the agreed to timeframe, an event shall be declared. For each event, the Agency reserves the right to assess the Contractor liquidated damages as specified (see RFP Section 3.5).

The liquidated damages will result in the damages amount being subtracted from the next period recurring invoice. If there is no next period recurring invoice from which to subtract the liquidated damages, the Agency shall have the right to collect such damages by any action permitted hereunder, or at law or in equity. Amounts owed the Agency that remain uncollected may disqualify the Contractor from being paid under subsequent contracts with any State governmental entity.

1.46 End of Contract

Upon the expiration or termination of the Contract, all documents, reports, listings, graphics, data and all other materials developed as a result of the Contract shall be delivered to and become the property of the Agency. In the event of termination, the materials shall be delivered within fifteen (15) days after receipt of the Notice of Termination. Upon contract expiration, the materials shall be delivered within fifteen (15) days of the Contract expiration date.

1.47 Performance Bond

The successful Offeror must submit a Performance Bond (see Attachment S), or other suitable security in the amount of \$1,500,000 for the duration of the Contract. This Performance Bond must be submitted to SBE upon notification of selection of Contract award. Acceptable security for a performance bond is limited to a bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State, identified within and excerpted from COMAR 21.06.07.

The cost of this bond is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item. The successful Offeror shall deliver the Performance Bond to the State within 5 working days after being notified of the proposed Contract award.

~~SBE will entertain a request for annual acceptable performance bond renewal that must be submitted by the 15th day of January for each year for the entire term of the Contract. Failure to renew and submit the acceptable security on the 15th day of January of each year, the State shall reserve the right to withhold Contractor invoices until such time that the value of the bond has been accumulated. After such accumulation, the State may purchase a Performance Bond on behalf of the Contractor to cover the remaining term of the Contract.~~

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SECTION 2 – CONTRACTOR QUALIFICATIONS

2.1 Offeror Minimum Qualifications

The Offeror must provide proof with its Proposal that the following:

- 2.1.1 The Offeror shall provide evidence to verify an application for certification of the proposed VSS has been filed with the SBE.
- 2.1.2 The Offeror shall submit proof that the proposed VSS has been submitted to an US Election Assistance Commission (EAC) accredited Voting System Test Laboratory (VSTL) for testing and Federal Certification, RFP Section 3.3.2.
- 2.1.3 The Offeror shall submit proof that it has successfully deployed voting system products to a jurisdiction of at least 500,000 registered voters

2.2 Preferred Qualifications of Key Personnel

- 2.2.1 Project Manager RFP Section 3.13.6.8 through 3.13.6.10
- 2.2.2 Subject Matter Expert RFP Section 3.13.7.8 through 3.13.7.10
- 2.2.3 Ballot Programmer RFP Section 3.13.8.8 through 3.13.8.10
- 2.2.4 Trainer RFP Section 3.13.9.6 through 3.13.9.7

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SECTION 3 – SCOPE OF WORK

3.1 Background and Purpose

In 2007, SBE was mandated to select, certify, and implement a new statewide paper-based Voting System to replace the current Direct Recording Electronic voting system (Election Law Article § 9-102 of the Annotated Code of Maryland). This system will be used in all counties in Maryland and Baltimore City. The new statewide system must produce a voter-verifiable paper record of each voter's selections. The voter-verifiable paper record is defined in the law as a paper ballot prepared by the voter. SBE intends to have the new VSS in place and ready for use during the 2016 Presidential Election cycle and specifically in time for Early Voting use in the Presidential Primary Election held in March of 2016.

SBE has responded to this mandate by designating the New Voting System Replacement (NVSR) project as a major IT project administered by SBE's Project Management Office (PMO). The VSS RFP Procurement is a subproject in which the new voting system will be identified, procured and implemented across the state.

Additional NVSR subprojects outside of this RFP include:

- deployment activities,
- booths,
- carts,
- transportation,
- ballot printing,
- supplies,
- voter outreach,
- call center,
- process definition,
- Ballot on Demand printers,
- staffing,
- regulations,
- training,
- mock elections,
- organizational change management, and
- documentation.

3.2 Voting System Solution General Requirements

- 3.2.1 The Offeror shall propose a VSS to include delivery, installation, implementation, support and maintenance of VSS Components which includes, but is not limited to, the hardware, software, firmware and associated equipment as described more fully in this RFP.
- 3.2.2 The Contractor shall provide a single point of contact for all matters relative to the award and implementation resulting from this solicitation for the base period and all option periods.
- 3.2.3 The Offeror shall propose a turnkey solution with all software, firmware and hardware installed and configured on all devices.
- 3.2.4 The Offeror shall propose a solution comprised of Precinct Based Scanning (PBS) devices, Ballot Marking Devices (BMDs), secure ballot box receptacles, High Speed Scanning (HSS) devices, and a Voting System Election Management System (VS EMS).

- 3.2.5 The Contractor's PBS devices and BMDs shall be capable of operating with an aggregate failure rate of 1% or less for all units deployed during User Acceptance Training (UAT), Mock Election, Early Voting, on Election Day, and during absentee and provisional canvassing.
- 3.2.6 All VSS Devices shall be newly manufactured equipment that has not been previously deployed, reconditioned or refurbished in any manner.
- 3.2.7 The Offeror shall base the number of each type of unit, software and licensing using the counts supplied in ~~Attachment R~~ **the Financial Proposal Form.**
- 3.2.8 Each VSS Device shall have the memory capacity to store all ballot images and tabulation results for the respective voting period. NOTE: The Offeror shall base its calculations and recommendations on estimated minimum of 5200 registered voters per precinct (largest precinct) and a multi-page 18" two-sided ballot (the largest ballot).
- 3.2.9 The Offeror's proposed solution, including each component, shall meet all voting system requirements as set forth by the Election Law Article of the Annotated Code of Maryland and Title 33 of the Code of Maryland Regulations.
- 3.2.10 The Contractor shall provide and staff a public demonstration of the proposed solution upon completion of Maryland Certification.
- 3.2.11 The Contractor shall provide SBE full access to the final build record and test results, as requested by SBE, and shall provide written authorization to the VSTL that tested the solution permitting the release of this information to SBE upon award.
- 3.2.12 Within seven (7) calendar days of receipt of a written request from SBE, the Contractor shall:
- 3.2.12.1 make the source code available to SBE or a third party designated by SBE for the purpose of independent testing, systems integration or other purposes; and
 - 3.2.12.2 provide hardware, software and software interface documentation to SBE or a third party designated by SBE to develop and test interfaces between the solution and other SBE systems.
- 3.2.13 The Contractor shall provide access to its development team to any third party designated by SBE upon request by SBE.
- 3.2.14 Within thirty (30) days of Maryland certification of any subsequent version of any software or firmware component, the Contractor shall deliver to the escrow agent the revised source code for that component and any corresponding revisions of Escrow Package materials that resulted from the source code revision.
- 3.2.15 The Contractor shall participate in and support ~~the VSS~~ a mock election prior to the initiation of a live election.
- 3.2.16 SBE shall have the ability to Procure individual VSS Devices after the initial Procurement and during the option years as priced in the Financial Proposal Form.
- 3.2.17 The VSS Components shall contain a lockable enclosure to protect public accessible component items including but not limited to:
- 3.2.17.1 Logic boards;
 - 3.2.17.2 Firmware;
 - 3.2.17.3 Removable memory storage devices; and
 - 3.2.17.4 On/off power switch controls.
- 3.2.18 Access to data and programs used on the public accessible VSS components shall be restricted so they are only accessible by authorized personnel.
- 3.2.19 The Offeror shall provide as part of its proposal a system diagram illustrating the interaction of all VSS Components.
- 3.2.20 The Contractor shall allow SBE to move all property in its Care, Custody, and Control to any location in the State.

- 3.2.21 **The Contractor shall notify SBE within one business day of any confirmed bugs, malfunctions, or security breaches throughout the life of the contract.**

3.3 Voting System Certification Requirements

3.3.1 Federal Certification

The VSS proposed by the Offeror shall have been tested and successfully met the requirements of an EAC accredited VSTL and the federal voting system standards and the EAC's 2005 Voluntary Voting System Guidelines (VVSG) prior to the Offeror receiving an award. The Offeror may propose a VSS that is presently submitted to a VSTL and is undergoing testing required for EAC certification and shall provide a copy of the certification prior to award.

3.3.2 Maryland Certification

The VSS proposed by the Offeror shall have been submitted to the SBE for testing and certification as set forth by the Election Law Article of the Annotated Code of Maryland and Title 33 of the Code of Maryland Regulations, and shall have received approval for certification by the SBE prior to the Offeror receiving an award. In order for the proposed VSS to be considered for Maryland certification, an application for certification shall have been filed with the SBE in accordance with the SBE Instructions for Voting System Certification. As part of that application, the Offeror shall submit proof that the proposed Voting System Solution has been submitted to an EAC accredited VSTL for testing and Federal Certification as stated in RFP Section 3.3.1. If the Offeror cannot submit proof that the proposed VSS has been submitted to the EAC for testing and certification at the time of application, the Offeror's application for Maryland Certification shall be held and not processed until such proof of submission has been established.

3.4 Voting System Solution Component Requirements

Each VSS Component shall meet each requirement listed by category in the following sections.

3.4.1 PBS Device

The proposed PBS device shall:

- 3.4.1.1 receive election configuration data from the VS EMS through removable memory devices and one of either Local Area Network (LAN) or wireless transmission;
- 3.4.1.2 be capable of manually running pre-election testing of all major components of the device;
- 3.4.1.3 store the results of pre-election testing on internal as well as removable memory storage;
- 3.4.1.4 utilize a touchscreen interface to securely access the administrative functionality of the device as required for the setup, operation and closing of the device;
- 3.4.1.5 include ancillary peripheral components or functionality, as needed:
 - 3.4.1.5.1 to secure the PBS from voter access to anything other than voting a ballot;
 - 3.4.1.5.2 provide tamper resistant accessories for PBS presentation to the voter that maintains access to electrical power and network connectivity;
 - 3.4.1.5.3 provide enclosures for secure transportation;
- 3.4.1.6 display instructions to voters on the touchscreen interface;
- 3.4.1.7 allow the voter to switch the displayed content on the touchscreen interface between languages;
- 3.4.1.8 **if available**, allow the voter to magnify the displayed content on the touchscreen interface;
- 3.4.1.9 **if available**, allow the voter to adjust the contrast and the resolution of the display;
- 3.4.1.10 meet all usability and disability standards as set forth by the Election Law Article of the Annotated Code of Maryland and Title 33 of the Code of Maryland Regulations;
- 3.4.1.11 scan voted paper ballots;

- 3.4.1.12 record and tabulate the contest selections from each ballot scanned;
- 3.4.1.13 record and tabulate only those ballots styles specific to the current Election;
- 3.4.1.14 employ imaging technology to record contest selections from each ballot scanned;
- 3.4.1.15 be capable of scanning paper ballots of multiple lengths up to and including 18 inches in length;
- 3.4.1.16 be capable of scanning one-sided ballots, two-sided ballots, and multiple-page ballots while recording the event as one ballot cast;
- 3.4.1.17 scan and properly tabulate ballots cast in split precincts, where all voters residing in one precinct are not voting the same ballot style;
- 3.4.1.18 scan and properly tabulate ballots cast in combined precincts, where more than one precinct is voting at the same location on either the same ballot style or a different ballot style, such as in an early voting center;
- 3.4.1.19 maintain an audit log of each event occurring on the device that shall include:
 - 3.4.1.19.1 the date and time of the event;
 - ~~3.4.19.2 the option selected by the voter where applicable;~~
 - 3.4.19.3.2 the action performed by the unit;
 - 3.4.19.4.3 the tabulation input events; and
 - 3.4.19.5.4 the device serial number.
- 3.4.1.20 recognize a ballot with overvotes or undervotes and further:
 - 3.4.1.20.1 provide a message concerning this condition visible to the voter;
 - 3.4.1.20.2 provide the option to override the message and cast the ballot as marked; and
 - 3.4.1.20.3 provide the voter with the option for remedial action or correction.
- 3.4.1.21 record when write-in selections were chosen for contests where write-in candidates are permitted;
- 3.4.1.22 capture the image of the write-in names listed by the voter for contests where write-in candidates are permitted;
- 3.4.1.23 retain ballot images in a redundant memory location, where one location is a removable memory device (e.g. memory card, thumb drive), in the event of a power or device failure;
- 3.4.1.24 retain the electronic image of each voted paper ballot in a non-proprietary format;
- 3.4.1.25 retain the tabulated results in a redundant memory location, where one location is a removable memory device (e.g. memory card, thumb drive), in the event of a power or device failure;
- 3.4.1.26 be capable of recovering images and tabulated results upon restoration of power or service;
- 3.4.1.27 securely transfer encrypted voting data to the VS EMS through removable memory devices and one of either LAN or wireless transmission;
- 3.4.1.28 operate on standard 110/120V AC power;
- 3.4.1.29 contain an internal battery power source that, in the event of loss of AC power, permits the device to continue normal operations for a minimum of 2 consecutive hours;
- 3.4.1.30 have an internal, wireless or attached printer capable of generating a “Zero Report” and an “Election Summary Report” for the election loaded on each device;
- 3.4.1.31 produce the “Zero Report” and “Election Summary Report” with headers that contain the following header data elements:
 - 3.4.1.31.1 the name and type of the election;
 - 3.4.1.31.2 the date of the Election;

- 3.4.1.31.3 the name of the jurisdiction;
- 3.4.1.31.4 the precinct ID and name;
- 3.4.1.31.5 the version of firmware running on the PBS device;
- 3.4.1.31.6 the date and time that the report was generated; and
- 3.4.1.31.7 the serial number of the PBS device;
- 3.4.1.32 prohibit the loading or updating of firmware while the PBS device is set for election or in election mode;
- 3.4.1.33 be capable of both manually and automatically performing and reporting diagnostics
- 3.4.1.34 continually execute system diagnostics and immediately report issues on the touchscreen interface;
- 3.4.1.35 maintain and display a visible numeric count of the total number of ballots cast since the election was opened during the voting period (i.e. a "public counter");
- 3.4.1.36 permit recounts pursuant to Title 12 of the Election Law Article and Title 33, Subtitle 12 of COMAR;
- 3.4.1.37 be capable of withstanding transport conditions that may include extremely bumpy roads, exposure to extreme heat, cold, humidity and dust without incurring damage during transportation or becoming inoperable as a result of such transport;
- 3.4.1.38 be capable of withstanding frequent loading and unloading, stacking and unstacking, assembling, disassembling, reassembling, and other routine handling in the course of normal storage and operation;
- 3.4.1.39 have a carrying case or bag that provides the ability to effectively and efficiently transport the device by hand while also offering protection against damage;
- 3.4.1.40 display detailed upload status for each portable removable memory device (e.g. memory card) by polling location;
- 3.4.1.41 accept ballots in any of the four possible orientations (top side up, top side down, header in first, footer in first);
- 3.4.1.42 display the device's serial number both physically and within any applicable software, logs or reports;
- 3.4.1.43 identify and reject ballots that are not valid (e.g. voter issued incorrect ballot style, ballot unreadable);
- 3.4.1.44 prevent the modification of firmware and internal configurations while the PBS voting device is set for election or in election mode
- 3.4.1.45 securely encrypt election results prior to exporting to the VS EMS per the 2005 VVSG recommendations;

3.4.2 Ballot Marking Device

The proposed precinct ballot marking device shall:

- 3.4.2.1 be capable of receiving election configuration data from the VS EMS through removable memory devices and one of either LAN or wireless transmission;
- 3.4.2.2 be capable of manually performing pre-election testing of all major components of the device;
- 3.4.2.3 store the results of pre-election testing on internal as well as removable memory storage;
- 3.4.2.4 utilize a touchscreen interface to securely access the administrative functionality of the ballot marking device as required for the setup, operation and closing of the device;
- 3.4.2.5 display instructions to voters on the touchscreen interface;

- 3.4.2.6 allow the voter to switch the displayed content on the touchscreen interface between languages;
- 3.4.2.7 allow voter to magnify the displayed content on the touchscreen interface;
- 3.4.2.8 allow the voter to adjust the contrast and the resolution of the display;
- 3.4.2.9 meet all usability and disability standards as set forth by the Election Law Article of the Annotated Code of Maryland and Title 33 of the Code of Maryland Regulations;
- 3.4.2.10 mark the voter's selections on the ballot in a manner that does not fade, smear, or degrade over a 22 month period that begins upon the certification of election results;
- 3.4.2.11 operate on standard 110/120V AC power;
- 3.4.2.12 contain an internal battery power source that, in the event of loss of AC power, permits the device to continue normal operations for a minimum of 2 consecutive hours;
- 3.4.2.13 prevent the modification of firmware and internal configurations while the BMD voting device is set for election or in election mode;
- 3.4.2.14 be capable of both manually and automatically performing and reporting diagnostics
- 3.4.2.15 continually execute system diagnostics and immediately report issues on the touchscreen interface;
- 3.4.2.16 be capable of withstanding transport conditions that may include extremely bumpy roads, exposure to extreme heat, cold, humidity and dust without incurring damage during transportation or becoming inoperable as a result of such transport;
- 3.4.2.17 be capable of withstanding frequent loading and unloading, stacking and unstacking, assembling, disassembling, reassembling, and other routine handling in the course of normal storage and operation;
- 3.4.2.18 have a carrying case or bag that provides the ability to effectively and efficiently transport the device by hand while also offering protection against damage;
- ~~3.4.2.19 securely encrypt election results prior to exporting to the VS EMS per the 2005 VVSG recommendations; and~~
- 3.4.2.20 maintain an audit log of each event occurring on the device that shall include:
 - 3.4.2.20.1 the date and time of the event;
 - 3.4.2.20.2 the option selected by the voter where applicable;
 - 3.4.2.20.3 the action performed by the unit; and
 - 3.4.2.20.4 the device serial number.

3.4.3 HSS Device

The proposed HSS device shall:

- 3.4.3.1 receive election configuration data from the VS EMS through removable memory devices and one of either LAN or wireless transmission;
- 3.4.3.2 be capable of manually performing pre-election testing of all major components of the device;
- 3.4.3.3 store the results of pre-election testing on internal as well as removable memory storage;
- 3.4.3.4 include a user touchscreen interface to securely access the administrative functionality of the HSS ballot marking device as required for the setup, operation and closing of the device;
- 3.4.3.5 provide instructions to the user displayed on the user touchscreen interface;
- 3.4.3.6 scan single voted paper ballots;
- 3.4.3.7 record and tabulate the contest selections from each single ballot scanned;

- 3.4.3.8 record and tabulate only those ballots styles specific to the current election;
- 3.4.3.9 scan multiple voted paper ballots as batches;
- 3.4.3.10 record and tabulate the contest selections from each batch scanned;
- 3.4.3.11 be capable of high speed feeding and scanning of ballots from the feed tray until the tray is empty with no involvement of personnel;
- 3.4.3.12 scan and record the contest selections from batches of voted paper ballots;
- 3.4.3.13 be capable of scanning paper ballots of multiple lengths up to and including 18 inches in length;
- 3.4.3.14 accept ballots in any of the four possible orientations (top side up, top side down, header in first, footer in first);
- 3.4.3.15 be capable of scanning one-sided ballots, two sided ballots and multiple page ballots and recording the event as one ballot cast;
- 3.4.3.16 identify a batch that contains one or more ballots with overvotes;
- 3.4.3.17 identify a batch that contains one or more ballots with write-in names;
- 3.4.3.18 record that write-in selections were chosen for contests where write-in candidates are permitted;
- 3.4.3.19 capture the image of the write-in names listed by the voter for contests where write-in candidates are permitted;
- 3.4.3.20 have a ballot feed tray capable of holding a minimum of 500 voted ballots sheets for batch processing;
- 3.4.3.21 maintain an audit log of each event occurring on the device that shall include:
 - 3.4.3.21.1 the date and time of the event;
 - 3.4.3.21.2 the option selected by the voter where applicable;
 - 3.4.3.21.3 the action performed on the unit;
 - 3.4.3.21.4 the tabulation input events; and
 - 3.4.3.21.5 device serial number.
- 3.4.3.22 retain ballot images in a redundant memory location, where one location is a removable memory device (e.g. memory card, thumb drive), in the event of a power or device failure;
- 3.4.3.23 retain the tabulated results in a redundant memory location, where one location is a removable memory device (e.g. memory card, thumb drive), in the event of a power or device failure;
- 3.4.3.24 be capable of recovering images and tabulation upon restoration of power or service;
- 3.4.3.25 report contest results by batch;
- 3.4.3.26 securely encrypt the tabulated results from the device and securely send via LAN or wireless network transmission to the VS EMS;
- 3.4.3.27 produce the Zero Report and Election Summary Report with headers that contain the following header data elements:
 - 3.4.3.27.1 the name and type of the election;
 - 3.4.3.27.2 the date of the election;
 - 3.4.3.27.3 the name of the jurisdiction;
 - 3.4.3.27.4 the precinct ID and name;
 - 3.4.3.27.5 the version of firmware running on the HSS device;
 - 3.4.3.27.6 the date and time that the report was generated; and

- 3.4.3.27.7 the serial number of HSS device;
- 3.4.3.28 have an internal, wireless or attached printer capable of generating a Zero Report and an Election Summary Report for the election loaded on each device ;
- 3.4.3.29 securely transfer encrypted voting data to the VS EMS through removable memory devices and one of: either LAN or wireless transmission;
- 3.4.3.30 be capable of both manually and automatically performing and reporting diagnostics
- 3.4.3.31 continually execute system diagnostics and immediately report issues on the user ~~touchscreen~~ interface;
- 3.4.3.32 maintain and display during the vote counting sessions a visible numeric count of the total number of ballots scanned since the scanning was initiated;
- 3.4.3.33 permit recounts pursuant to Title 12 of the Election Law Article and Title 33, Subtitle 12 of COMAR;
- 3.4.3.34 prevent the modification of firmware and internal configurations while the HSS voting device is set for election or in election mode;
- 3.4.3.35 display the device's serial number(s) of tabulation both physically and within any applicable software, logs or reports;
- 3.4.3.36 identify and reject ballots that are not valid;
- 3.4.3.37 retain an electronic image of each voted paper ballot in a non-proprietary format;
- 3.4.3.38 allow the authorized user to rerun a batch of ballots, if necessary, without impacting previously tabulated results (i.e. will not double count ballots);
- 3.4.3.39 have the ability to logically delete (not physically) saved ballot batches from the HSS;
- 3.4.3.40 identify and segregate, for adjudication, ballots or ballot images that cannot be read;
- 3.4.3.41 identify and segregate, for adjudication, ballots or ballot images that are read as blank;
- 3.4.3.42 display on the user interface ~~touchscreen~~ the number of ballot pages processed; and
- 3.4.3.43 securely encrypt election results prior to exporting to the VS EMS per the 2005 VVSG recommendations.

3.4.4 Ballot Box

The ballot box shall:

- 3.4.4.1 accept up to 2000 ballot pages without disrupting the voting process or damaging the voted ballots;
- 3.4.4.2 accept ballots up to 18 inches long without disrupting the voting process or damaging the voted ballots;
- 3.4.4.3 secure the voted paper ballots in locked compartments;
- 3.4.4.4 provide poll workers the ability to open, re-lock and reseal secure storage compartments;
- 3.4.4.5 have wheels or other mechanisms that enable maneuvering into position;
- 3.4.4.6 have wheels or other mechanisms that shall be capable of locking to stabilize the ballot box;
- 3.4.4.7 have a separate, secure "emergency" storage compartment to accept voted ballots that cannot be scanned at that time (potentially due to scanner issues, ballot box capacity, etc.);
- 3.4.4.8 be capable of withstanding transport conditions that may include extremely bumpy roads, exposure to extreme heat, cold, humidity and dust without incurring damage during transportation or becoming inoperable as a result of such transport;

- 3.4.4.9 be capable of withstanding frequent loading and unloading, stacking and unstacking, assembling, disassembling, reassembling, and other routine handling in the course of normal storage and operation; and
- 3.4.4.10 have an insertion slot capable of accepting an unfolded 18 inch ballot.

3.4.5 VS EMS

The VS EMS shall:

- 3.4.5.1 allow system administrators to establish different levels of user permissions;
- 3.4.5.2 permit routine users access to the application without requiring administrative privileges to the operating system;
- 3.4.5.3 require all users to have unique login credentials including but not limited to a unique username and unique password;
- 3.4.5.4 secure the ballot layout and election configuration data to prevent unauthorized modification or copying of such data;
- 3.4.5.5 accept imports of election data from the SBE Election Management System (SBE EMS) on removable memory devices or either LAN or wireless network, for the purpose of defining election configurations. The specific data elements for election setup and ballot content from the SBE EMS include but are not limited to:
 - 3.4.5.5.1 names of candidates:
 - 3.4.5.5.1.1 for ballot production (ballot format); and
 - 3.4.5.5.1.2 for report production (report format);
 - 3.4.5.5.2 the name of the presidential candidate to which the convention delegate candidate is committed;
 - 3.4.5.5.3 the party affiliation of each candidate;
 - 3.4.5.5.4 the county of residence for candidates where applicable;
 - 3.4.5.5.5 the state of residence for candidates for U.S. President and Vice President contests;
 - 3.4.5.5.6 the text of ballot issues;
 - 3.4.5.5.7 the office title for the contests listed on the ballot including district name and number;
 - 3.4.5.5.8 the names of political parties needed for ballots;
 - 3.4.5.5.9 the voting location names and addresses;
 - 3.4.5.5.10 the election districts, wards, and precincts numbers, split precincts and consolidated precincts;
 - 3.4.5.5.11 the permissible number of selections for a contest and the text of the corresponding instructions to the voter (e.g. Vote for no more than two; Vote for no more than one from a county);
 - 3.4.5.5.12 the sequence of candidates for each contest;
 - 3.4.5.5.13 the sequence for listing of the political parties for ballots;
 - 3.4.5.5.14 the ballot style indicator;
 - 3.4.5.5.15 the voting option language;
 - 3.4.5.5.16 the voter registration totals by precinct for use in reporting;
 - 3.4.5.5.17 the voter registration totals by party for use in reporting;

- 3.4.5.5.18 all audio files required for the audio ballot for the entire election either as individual files or as a batch of audio files;
- 3.4.5.6 provide a method to import incremental changes to previously imported data elements (without impacting unchanged records and data elements);
- 3.4.5.7 allow manual data entry for election setup and ballot layout (in addition to automated entry noted above);
- 3.4.5.8 not require the manual re-entry of data elements imported from the SBE EMS upon completion;
- 3.4.5.9 securely encrypt election configuration data to be exported to PBS and BMD devices per the 2005 VVSG recommendations;
- 3.4.5.10 be capable of creating and defining SBE-approved ballot styles and contest rules;
- 3.4.5.11 be capable of translating the ballot layout and election configuration to multiple languages;
- 3.4.5.12 export election data elements to removable memory devices and either LAN or wireless network, including but not limited to:
 - 3.4.5.12.1 the sequence of candidates for each contest;
 - 3.4.5.12.2 the ballot issue;
 - 3.4.5.12.3 the contest title;
 - 3.4.5.12.4 the contest number;
 - 3.4.5.12.5 the office name and district, if applicable;
 - 3.4.5.12.6 the number of votes for a candidate or ballot issues;
 - 3.4.5.12.7 the number of votes against a ballot issue or other contest where applicable;
 - 3.4.5.12.8 the number of votes for candidates and/or issues by legislative, congressional or election district where applicable;
 - 3.4.5.12.9 the number of voters that voted, by party affiliation, where applicable;
 - 3.4.5.12.10 the number of registered voters at the precinct level by party affiliation;
 - 3.4.5.12.11 the type of canvass (e.g. precinct, early voting, absentee or provisional); and
 - 3.4.5.12.12 the type of election (e.g. Presidential Primary , Presidential General, Gubernatorial Primary, Gubernatorial General);
- 3.4.5.13 be capable of storing, maintaining and reloading configurations and data from previous elections;
- 3.4.5.14 export election configuration data from the VS EMS to the proposed PBS devices and ballot marking devices through removable memory devices and either LAN or wireless network;
- 3.4.5.15 accumulate election data for each election by:
 - 3.4.5.15.1 precinct;
 - 3.4.5.15.2 precinct combinations;
 - 3.4.5.15.3 district;
 - 3.4.5.15.4 vote center;
 - 3.4.5.15.5 jurisdiction; and
 - 3.4.5.15.6 statewide;
- 3.4.5.16 tabulate results for individual canvasses and integrate the results from selected or all canvasses into cumulative results;
- 3.4.5.17 store tabulated results from each absentee and provisional canvass as separate precincts;

- 3.4.5.18 save election data configurations with election results data on removable storage media for archiving purposes;
- 3.4.5.19 export data elements from the election configuration and ballot layout records in the following formats:
 - 3.4.5.19.1 Extensible Markup Language (.xml) (e.g. Oasis EML and IEEE 1622);
 - 3.4.5.19.2 Comma Separated Value (.csv); and
 - 3.4.5.19.3 Microsoft Excel Format (.xls);
- 3.4.5.20 permit the re-upload (updating of previous uploads) of election data results from an PBS device to the VS EMS;
- 3.4.5.21 be capable of replicating all election configuration and results data to a redundant system in the event of a hardware or software failure;
- 3.4.5.22 include redundant hot-standby components for automated fail-over in the event of a VS EMS failure;
- 3.4.5.23 be capable of exporting election results data in multiple widely used data formats including .mdb, .xls, .pdf, .xml, .html, .csv, .doc, and .txt;
- 3.4.5.24 accept transmitted uploads of election results data from the proposed PBS devices when deployed for elections at precincts, vote centers, regional collection centers and Local Board of Election (LBE) offices, using LAN or wireless transmission protocols;
- 3.4.5.25 accept direct uploads of election results data from the removable memory devices of the proposed PBS devices (which may be required when deployed for elections at precincts, vote centers, regional collection centers, and LBE offices); and
- 3.4.5.26 only upload results from removable memory devices specific to the current election.

Report Generation Requirements

The proposed VS EMS shall:

- 3.4.5.27 be capable of generating all reports in a format on standard letter size paper (8.5 x 11 inches);
- 3.4.5.28 be capable of generating election results reports in standard electronic formats for distribution including all of .doc, .xls, .pdf, .csv, .mdb, .html, and .txt;
- 3.4.5.29 permit users to design custom reports from election data via an integrated report writing tool (e.g. MS SQL Server Reporting Services);
- 3.4.5.30 be capable of sorting by any field in any report (e.g. alphabetically by candidate last name);
- 3.4.5.31 produce periodic reports on election night, without disrupting any other ongoing functions of the VS EMS, including:
 - 3.4.5.31.1 the number of precincts reporting;
 - 3.4.5.31.2 the number of precincts not reporting;
 - 3.4.5.31.3 the number of precincts partially reporting; and
 - 3.4.5.31.4 percentage of voter turnout;
- 3.4.5.32 be capable of producing reports that include the following data elements from the election data in the report header of all reports:
 - 3.4.5.32.1 type of election (e.g., Presidential Primary, Presidential General, Gubernatorial Primary, Gubernatorial General);
 - 3.4.5.32.2 date of election;
 - 3.4.5.32.3 the words "State of Maryland";

- 3.4.5.32.4 the name of the county and municipality;
- 3.4.5.32.5 the date and time the report was printed, generated from the VS EMS internal system clock;
- 3.4.5.32.6 the type of canvass the report is from (e.g., precinct, early voting, absentee or provisional);
- 3.4.5.32.7 the jurisdiction;
- 3.4.5.32.8 the precinct identifier, such as the district, ward and precinct number or the physical location of the precinct; and
- 3.4.5.32.9 the status of the election results reported as unofficial or official;
- 3.4.5.33 be capable of producing reports that include the following data elements from the election data in the body of the report:
 - 3.4.5.33.1 the name of each contest on the ballot (e.g., Governor, Delegate, President)
 - 3.4.5.33.2 the names of each candidate in each contest or race;
 - 3.4.5.33.3 the party affiliation of each candidate in each contest or race;
 - 3.4.5.33.4 the vote totals for each candidate in each contest or race;
 - 3.4.5.33.5 the total votes for each contest;
 - 3.4.5.33.6 the winning selection for each contest, indicated by bolding or some other mark;
 - 3.4.5.33.7 the title and number of each question on the ballot(e.g., “County Question A, State Question 1”);
 - 3.4.5.33.8 the possible selections for each question or contest, (e.g., “For”, “Against”, “Yes”, “No”, or a blank);
 - 3.4.5.33.9 the total number of precincts for the election;
 - 3.4.5.33.10 the total number of precincts reporting results for the election;
 - 3.4.5.33.11 the percent of reporting precincts versus the total number of precincts;
 - 3.4.5.33.12 the total number of registered voters;
 - 3.4.5.33.13 the total number of registered voters that voted in the election;
 - 3.4.5.33.14 the total percent of voter turnout;
 - 3.4.5.33.15 the number of overvotes in each contest or race;
 - 3.4.5.33.16 the number of undervotes in each contest or race;
 - 3.4.5.33.17 the total number of votes for all write-in candidates;
 - 3.4.5.33.18 the total number of votes for each write-in candidate;
- 3.4.5.34 be capable of producing “Canvass” reports including:
 - 3.4.5.34.1 results of individual canvasses;
 - 3.4.5.34.2 results of any combination of Absentee, Overseas and Provisional; and
 - 3.4.5.34.3 results of all canvasses;
- 3.4.5.35 be capable of producing “Election Results Reports” reports of election results filtered by:
 - 3.4.5.35.1 congressional district;
 - 3.4.5.35.2 legislative district;

- 3.4.5.35.3 custom districts (e.g. council district, commission, school board, county/jurisdiction, wards);
- 3.4.5.35.4 precinct including precinct splits;
- 3.4.5.35.5 candidate political party affiliation;
- 3.4.5.35.6 early voting by precinct for early voting centers; and
- 3.4.5.35.7 by the number of partisan and non-partisan ballots cast; and
- 3.4.5.36 produce a list, at any point in the process, showing which portable removable memory devices have been uploaded to the VS EMS, and which have not been uploaded to the VS EMS for systems that utilized such devices for uploading results.

Ballot Layout Requirements

The proposed VS EMS shall:

- 3.4.5.37 produce ballots that meet the requirements of Election Law Article, §9-201 et seq., Annotated Code of Maryland;
- 3.4.5.38 allow changes to font sizes and style;
- 3.4.5.39 allow for creation of two-sided and multi-page ballots;
- 3.4.5.40 generate sample ballots for each ballot style that will not be accepted or counted by a scanner;
- 3.4.5.41 generate a consolidated sample ballot containing all races, issues and questions;
- 3.4.5.42 be capable of generating all ballot artwork and all specimen ballot artwork (e.g. drawing columns, ovals, borders, font);
- 3.4.5.43 allow for different headers depending upon the type of ballot (i.e. instructions for paper ballot vs. ballot marking device);
- 3.4.5.44 allow header shading in multiple colors;
- 3.4.5.45 include a ballot style indicator;
- 3.4.5.46 import instruction style including;
 - 3.4.5.46.1 up to 20 lines of text;
 - 3.4.5.46.2 shapes such as an oval or arrow; and
 - 3.4.5.46.3 text color options;
- 3.4.5.47 allow for up to eleven lines of text for each ballot header;
- 3.4.5.48 allow for up to ten lines of text for each contest header;
- 3.4.5.49 allow for up to five lines of text for each candidate;
- 3.4.5.50 allow for each candidate's party affiliation;
- 3.4.5.51 be capable of designating the number of lines for write-in candidates (e.g. if a contest is a "Vote for Three" contest and there is only one filed candidate on the ballot, the ballot must have two lines for write-in candidates);
- 3.4.5.52 provide a user-definable space above the line of a write-in candidate;
- 3.4.5.53 allow for unvotable space with configurable text (e.g. remove oval and print "Nomination Vacant");
- 3.4.5.54 allow for the ballot to be one (1), two (2) or three (3) columns;
- 3.4.5.55 instruct voters on how to view contest details when the contest details span more than one (1) screen or page;

- 3.4.5.56 provide electronic versions of the ballots that are identical to the official ballots in all respects;
- 3.4.5.57 provide a ballot with only federal contests formatted for 8.5" x 11" paper;
- 3.4.5.58 allow for the import from external sources audio files in multiple languages (e.g. Spanish);
- 3.4.5.59 allow for the import of all audio files individually or by batch;
- 3.4.5.60 Support audio files in any of the following formats: .wav, mp3, .avi, or .mpg format; or support voice synthesizing;
- 3.4.5.61 allow for audio files to be imported individually without impacting previously imported audio files;
- 3.4.5.62 provide for the export of ballots as .pdf files;
- 3.4.5.63 provide the ability to generate and maintain an administrative database containing the definitions and descriptions of political subdivisions and offices by jurisdiction;
- 3.4.5.64 provide the capability to copy, edit, and delete previously defined elections;
- 3.4.5.65 provide a test mode which supports testing to validate the correctness of election programming for each voting device and ballot;
- 3.4.5.66 provide the capability for authorized users to create newly defined ballot layouts so as to facilitate error-free definition of ballot layouts for electronic voting equipment and paper ballot scanning equipment (e.g. the system should have the capability to report discrepancies between ballot layouts); and
- 3.4.5.67 allow authorized users to electronically adjudicate ballots to reflect voter intent, while retaining the originally marked ballot image (Note: Please explain the process of ballot adjudication using your system).

Training and Training Support

3.4.6 General Requirements

- 3.4.6.1 The Contractor shall provide a training approach to train SBE and LBE personnel and poll worker instructors that includes:
 - 3.4.6.1.1 a Training Plan template that includes a training methodology;
 - 3.4.6.1.2 a Training Schedule template;
- 3.4.6.2 Contractor training shall be conducted at six (6) statewide locations approved by SBE;
- 3.4.6.3 The Contractor shall provide up to five (5) days of hands on instruction of the Voting System hardware including PBS, HSS, Ballot Box and the BMD at each statewide location; and
- 3.4.6.4 The Contractor shall provide up to ten (10) days of instruction on the VS EMS at each statewide location.

3.4.7 PBS device including Ballot Box

General Operational Training

The Contractor shall provide comprehensive general operational training (with documentation) to SBE and LBE personnel on all functionality including but not limited to these areas:

- 3.4.7.1 hardware components and setup;
- 3.4.7.2 battery and charging;
- 3.4.7.3 display features and functionality;
- 3.4.7.4 performing logic and accuracy testing;
- 3.4.7.5 opening the polls for Early Voting and Election Day;

- 3.4.7.6 scanning voted ballots;
- 3.4.7.7 closing the polls for Early Voting and Election Day;
- 3.4.7.8 transmission of election results via modem, LAN or wireless network and removable media device for Early Voting and Election Day;
- 3.4.7.9 physical, device configuration and data transfer security;
- 3.4.7.10 network configuration of all devices; and
- 3.4.7.11 troubleshooting and review of common issues encountered by poll workers.

IT Training

In addition to the general training above, the Contractor shall provide an in-depth and technically focused training (with documentation) to IT personnel within the SBE and LBE on all functionality including but not limited to these areas:

- 3.4.7.12 routine maintenance;
- 3.4.7.13 administrative access and functionality;
- 3.4.7.14 removable memory devices;
- 3.4.7.15 diagnostics and failure messages;
- 3.4.7.16 audit procedures;
- 3.4.7.17 election reports;
- 3.4.7.18 performing system updates; and
- 3.4.7.19 safeguards to prevent tampering or theft and ensuring the integrity of election results.

Poll Workers: Train the Trainer

The Contractor shall provide training (with documentation) to a set of instructors that will in turn train poll workers and other LBE staff on all voting related operational functionality including but not limited to these areas:

- 3.4.7.20 hardware components used in the voting location during Early Voting and Election Day voting;
- 3.4.7.21 battery and charging;
- 3.4.7.22 display features and functionality;
- 3.4.7.23 how to prepare each component for Early Voting and Election Day including voting location requirements and recommended setup;
- 3.4.7.24 opening the polls for Early Voting and Election Day;
- 3.4.7.25 scanning voted ballots;
- 3.4.7.26 closing the polls for Early Voting and Election Day;
- 3.4.7.27 troubleshooting and review of common issues encountered by poll workers;
- 3.4.7.28 transmission of election results via modem, removable memory devices and LAN or wireless transmission for Early Voting and Election Day;
- 3.4.7.29 safeguards to prevent tampering or theft and ensuring the integrity of election results;
- 3.4.7.30 physical, device configuration and data transfer security;
- 3.4.7.31 network configuration of all devices.

3.4.8 Ballot Marking Device

General Operational Training

The Contractor shall provide comprehensive general operational training (with documentation) to SBE and LBE personnel on all functionality including but not limited to these areas:

- 3.4.8.1 hardware components and election setup;
- 3.4.8.2 battery and charging;
- 3.4.8.3 display features and functionality;
- 3.4.8.4 loading the election on the device;
- 3.4.8.5 perform pre-election configuration testing;
- 3.4.8.6 opening the polls for Early Voting and Election Day;
- 3.4.8.7 marking ballots and how the device meets usability and disability standards as set forth by the Election Law Article of the Annotated Code of Maryland and Title 33 of the Code of Maryland Regulations;
- 3.4.8.8 closing the polls for Early Voting and on Election Day;
- 3.4.8.9 physical, device configuration and data transfer security;
- 3.4.8.10 network configuration of all devices; and
- 3.4.8.11 troubleshooting and review of common issues encountered by users.

IT Training

In addition to the general training above, the Contractor shall provide an in-depth and technically focused training (with documentation) to IT personnel within the SBE and LBE on all functionality including but not limited to these areas:

- 3.4.8.12 routine maintenance;
- 3.4.8.13 administrative access and functionality;
- 3.4.8.14 removable memory devices;
- 3.4.8.15 diagnostics and failure messages;
- 3.4.8.16 performing system updates; and
- 3.4.8.17 safeguards to prevent tampering or theft and ensuring the integrity of election results.

Poll Workers: Train the Trainer

The Contractor shall provide training (with documentation) to a group of instructors that will train poll workers statewide and other LBE staff on all voting related operational functionality including these areas:

- 3.4.8.18 hardware components used in the precinct during Early Voting and Election Day voting;
- 3.4.8.19 battery and charging;
- 3.4.8.20 display features and functionality;
- 3.4.8.21 how to prepare each component for Early Voting and Election Day including voting location requirements and recommended setup;
- 3.4.8.22 opening the polls for Early Voting and Election Day;
- 3.4.8.23 marking ballots and how the device meets usability and disability standards as set forth by the Election Law Article of the Annotated Code of Maryland and Title 33 of the Code of Maryland Regulations;
- 3.4.8.24 closing the polls for Early Voting and Election Day;
- 3.4.8.25 troubleshooting and review of common issues encountered by poll workers;

- 3.4.8.26 transmission of election results via modem, LAN or wireless and removable media device for Early Voting and Election Day;
- 3.4.8.27 safeguards to prevent tampering or theft and ensuring the integrity of election results;
- 3.4.8.28 physical, device configuration and data transfer security; and
- 3.4.8.29 network configuration of all devices.

3.4.9 HSS Device

General Operational Training

The Contractor shall provide comprehensive general training (with documentation) to SBE and LBE personnel and selected trainers on all functionality including but not limited to:

- 3.4.9.1 a general overview of the device and its hardware components;
- 3.4.9.2 display features and functionality;
- 3.4.9.3 scanning ballots;
- 3.4.9.4 treatment of write in, undervote, and over vote ballots;
- 3.4.9.5 transmission of election results via modem, LAN or wireless and removable media device;
- 3.4.9.6 troubleshooting and review of common issues encountered by users;
- 3.4.9.7 physical, device configuration and data transfer security; and
- 3.4.9.8 network configuration of all devices.

IT Training

In addition to the general training above, the Contractor shall provide an in-depth and technically focused training (with documentation) to IT personnel within the SBE and LBE on all functionality including but not limited to these areas:

- 3.4.9.9 routine maintenance;
- 3.4.9.10 administrative access and functionality;
- 3.4.9.11 removable memory devices;
- 3.4.9.12 diagnostics and failure messages;
- 3.4.9.13 audit procedures;
- 3.4.9.14 election reports;
- 3.4.9.15 performing system updates; and
- 3.4.9.16 safeguards to prevent tampering or theft and ensuring the integrity of election results.

3.4.10 Voting System Election Management System

General Operational Training

The Contractor shall provide comprehensive general training (with documentation) to SBE and LBE personnel and selected trainers on all functionality including but not limited to these areas:

- 3.4.10.1 importing and exporting data;
- 3.4.10.2 storing, maintaining, and reloading data;
- 3.4.10.3 ballot styles and artwork;
- 3.4.10.4 ballot layout and editing;
- 3.4.10.5 election configuration;
- 3.4.10.6 election results and reporting;

- 3.4.10.7 physical, device configuration and data transfer security;
- 3.4.10.8 network configuration of all devices; and
- 3.4.10.9 troubleshooting and review of common issues encountered by users.

IT Training

In addition to the general training above, the Contractor shall provide an in-depth and technically focused training (with documentation) to IT personnel within the SBE and LBE on all functionality including but not limited to these areas:

- 3.4.10.10 administrative access and functionality;
- 3.4.10.11 security and permissions;
- 3.4.10.12 importing and exporting election configuration data;
- 3.4.10.13 importing and exporting election results data;
- 3.4.10.14 encrypting data;
- 3.4.10.15 removable storage media;
- 3.4.10.16 hardware specifications, configuration information, and operating system platforms; and
- 3.4.10.17 performing system updates.

3.5 Repair and Preventative Maintenance Requirements

3.5.1 General

- 3.5.1.1 The selected Contractor shall be responsible for repairing the VSS Components for the warranty period.
- 3.5.1.2 The selected Contractor shall be responsible for providing Preventative Maintenance of the VSS Components for the warranty period, if purchased by SBE.
- 3.5.1.3 The Contractor shall provide a process and tool for tracking all components that require upgrade, preventative maintenance or repair (see RFP Section 3.7.6).
- 3.5.1.4 When parts replacement is necessary for repair, the Contractor shall use new or fully refurbished parts that function as new.
- 3.5.1.5 The Contractor shall provide SBE with signed copies of repair orders, maintenance checklists and all other documents reflecting any work performed on any VSS Component (Note: SBE will maintain these documents in the history file for each component).
- 3.5.1.6 All repair and preventative maintenance shall be coordinated through the SBE Contract Manager.

3.5.2 Preventative Maintenance

- 3.5.2.1 The Offeror shall provide a process, procedures and schedule (see RFP Section 3.8) of all required Preventative Maintenance to be performed through the life of the contract.
- 3.5.2.2 The Offeror shall propose pricing for the Preventative Maintenance Package for all Components as per the Financial Proposal Form. The SBE reserves the right to purchase the proposed Preventative Maintenance.
- 3.5.2.3 The Agency may require additional Preventative Maintenance procedures to be performed via the Work Order process.
- 3.5.2.4 In the event that the Contractor proposes and the Agency accepts Preventative Maintenance services, and Contractor fails to perform any scheduled Preventative Maintenance service within the time period required by the Agency-approved schedule, without the prior written approval, the Agency may impose liquidated damages in the amount of up to Thirty Five Dollars (\$35.00) per VSS Component, per day for each day or fraction thereof, in excess of the scheduled date that the Preventative Maintenance is not performed.

3.5.3 Repair

- 3.5.3.1 All repairs shall be covered under the warranty (see RFP Section 3.11).
- 3.5.3.2 If the repair requires shipment to a Contractor's location, SBE will pay for the outbound shipping costs and Contractor shall pay for return shipping costs.
- 3.5.3.3 The Contractor shall complete any required repairs:
 - 3.5.3.3.1 during Election Cycles (from a period commencing 30 calendar days prior to Early Voting until all Elections during the cycle have been certified), within 48 hours of receipt of a Component returned to Contractor for repair,
 - 3.5.3.3.1.1 the Contractor shall repair and return ship via second day air, that component, or
 - 3.5.3.3.1.2 a new or fully refurbished like-new replacement component of the same make, model and version as originally purchased and certified by SBE; and
 - 3.5.3.3.2 for all other periods, the Contractor shall complete repairs within 30 calendar days or provide an equal or greater quality replacement until the original equipment is returned.

3.6 Delivery Requirements

- 3.6.1 All deliveries for this Contract shall be designated as "Inside Delivery" unless otherwise specified (i.e., the Contractor shall deliver the contents of an order to a specified room on a specified floor of the identified entity's building).
- 3.6.2 For delivery of any and all purchased components resulting from this solicitation, the Contractor shall:
 - 3.6.2.1 ship all orders Freight On Board (F.O.B.) Destination, freight "prepaid and allowed" to the SBE locations:
 - 3.6.2.1.1 SBE Central Warehouse (Initial Order);
 - 3.6.2.1.2 SBE Office/Warehouses; and
 - 3.6.2.1.3 24 LBE Offices/Warehouses;
 - 3.6.2.2 deliver all components of the Procurement in accordance with the instructions in the purchase order or other documentation;
 - 3.6.2.3 include a list of the serial numbers of all devices delivered with each delivery at the delivery location;
 - 3.6.2.4 within 24 hours of receipt of delivery by the SBE or its agents, Contractor shall submit to SBE a list of serial numbers in electronic format of all components delivered.
- 3.6.3 For delivery of any and all leased components resulting from this solicitation, the Contractor shall:
 - 3.6.3.1 ship all orders freight "prepaid and allowed" to the SBE locations:
 - 3.6.3.1.1 SBE Central Warehouse (Initial Order);
 - 3.6.3.1.2 SBE Office/Warehouses; and
 - 3.6.3.1.3 24 LBE Offices/Warehouses;
 - 3.6.3.2 deliver all components of the Procurement in accordance with the instructions in the purchase order or other documentation;
 - 3.6.3.3 include a list of the serial numbers of all devices delivered with each delivery at the delivery location;
 - 3.6.3.4 within 24 hours of receipt of delivery by the SBE or its agents, Contractor shall submit to SBE a list of serial numbers in electronic format of all components delivered.

3.7 Contractor Help Desk Support Requirements

The Contractor shall provide technical and ongoing support through the use of a help desk that:

- 3.7.1 is available from 8:00AM to 5:00PM local time, Monday through Friday;
- 3.7.2 is available from 5:00AM local time until 5 hours after the close of the polls during any statewide election, Early Voting period, and Mock Election;
- 3.7.3 shall provide exclusive access to the State of Maryland through all of the following:
 - 3.7.3.1 a toll-free telephone number,
 - 3.7.3.2 an e-mail address; and
 - 3.7.3.3 an interactive call logging application;
- 3.7.4 shall be staffed during the hours specified in RFP Sections 3.7.1 and 3.7.2. by specialists with technical and operational knowledge of all VSS Components;
- 3.7.5 shall have a technical specialist on call outside of the hours specified in RFP Sections 3.7.1 and 3.7.2 during the period from NTP through certification of canvass for the 2016 Presidential General Election;
- 3.7.6 shall utilize a call tracking and reporting mechanism that records issues, questions, and resolutions as they are reported and resolved;
- 3.7.7 shall respond to phone and e-mail inquiries within 15 minutes of receipt during the following events and periods:
 - 3.7.7.1 initial equipment delivery;
 - 3.7.7.2 UAT;
 - 3.7.7.3 Business Process Development and Design; and
 - 3.7.7.4 all statewide elections, Early Voting periods, and Mock Elections through the Base Period and Optional Periods;
- 3.7.8 shall respond to phone and e-mail inquiries from SBE within one (1) hour of receipt during all other periods not specified in RFP Section 3.7.7; and
- 3.7.9 shall provide a Monthly Summary Report including:
 - 3.7.9.1 all requests made for the month;
 - 3.7.9.2 requesting party;
 - 3.7.9.3 nature of request;
 - 3.7.9.4 resolution;
 - 3.7.9.5 response time per issue;
 - 3.7.9.6 resolution time per issue; and
 - 3.7.9.7 details and status of unresolved issues remaining.

3.8 Documentation Requirements

- 3.8.1 As part of its proposal, the Offeror shall provide unlimited access to electronic versions and physical copies of the following documentation:
 - 3.8.1.1 **Repair Plan** - outlining process and procedures for obtaining repairs to failed or defective components of the VSS. Process and procedures shall address obtaining repair service for components under warranty, components not under warranty, repair service provided as part of any Service Level Agreement and repair service requested through a time and material process;

- 3.8.1.2 **Preventative Maintenance Plan** - outlining process, procedures and a schedule for preventative maintenance for all VSS Components;
- 3.8.1.3 **Quality Assurance Plan** - to include the process for handling of units that fail inspection upon delivery or that fail UAT;
- 3.8.1.4 **Power Management Plan** - proposing processes and procedures for maximizing the uptime of devices deployed for an election and subject to power outages or interruptions. This shall also include best practices for providing uninterrupted voting activity for system devices involved in an election; and
- 3.8.1.5 **Training and Training Support Plan** - for training SBE, LBE, and other resources on all VSS Components. SBE plans to follow a train-the-trainer approach for future training needs.

3.8.2 The Contractor shall provide the following upon NTP:

- 3.8.2.1 **User's/Operator's Manual** - for each proposed VSS Component, to include the PBS device, the BMD, the ballot box, the HSS device and the VS EMS (including any hardware manuals for computers and printers delivered as part of the VS EMS);
- 3.8.2.2 **Technical Manuals** - for each proposed VSS Component, to include the PBS device, the BMD, the ballot box, the HSS scanning device and the VS EMS (including any hardware manuals for computers and printers delivered as part of the VS EMS);
- 3.8.2.3 **Preventative Maintenance/Repair Manuals** - for each proposed VSS Component, to include where appropriate, the PBS device, the BMD, the ballot box, the HSS device and the VS EMS;
- 3.8.2.4 **Pollworker User's Guide** - for each proposed VSS Component that is deployed to the voting location for use in the operation of Election Day and all Early Voting Activity; and
- 3.8.2.5 **Quick Reference Guides** - for each proposed VSS Component that is deployed to the voting location for use in the operation of Election Day and all Early Voting Activity.

3.9 Acceptance Testing

- 3.9.1 The Contractor's Project Manager and Subject Matter Expert shall support SBE during UAT of all VSS Components.

3.10 Licensing

The Contractor shall:

- 3.10.1 propose Enterprise licensing for all devices, components and software to SBE for use by SBE, its representatives and contractors;
- 3.10.2 identify all third party licensing required for the proposed VSS;
- 3.10.3 include third party licensing fees in its Financial Proposal; and
- 3.10.4 notify SBE of all expiration dates of third party licenses in its proposal.

3.11 Warranty Requirements

- 3.11.1 The Contractor shall provide a warranty on all VSS Components for ~~a period of four years or~~ the Base Period plus all **executed** Option Periods, ~~whichever is longer.~~
- 3.11.2 During the warranty period, the Contractor warrants that:
 - 3.11.2.1 All components of the delivered system shall operate in accordance with the specifications set forth in this RFP and as described in the Offeror's Proposal;
 - 3.11.2.2 All third party components delivered as part of the VSS shall operate in accordance with their own specifications as documented by the manufacturer or developer;

- 3.11.2.3 The Contractor shall repair or replace, at the option of and at no cost to SBE, any component of the proposed system that fails to perform during normal operation in accordance with the manufacturer's or developer's documentation and the requirements of this RFP; and
- 3.11.2.4 The Contractor shall repair or replace, at the option of and at no cost to SBE, any component of the VSS that is defective in material or workmanship.
- 3.11.3 The Contractor warrants that any replacement parts or components shall be new or fully refurbished, provided that fully refurbished parts and components shall perform like new and carry the same term of warranty specified for new parts.
- 3.11.4 All replacement parts or components shall come from the Contractor's stock and not from any stock maintained by the SBE or any LBE.

3.12 Required Project Policies, Guidelines and Methodologies

- 3.12.1 The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting information technology projects, which may be created or changed periodically.
- 3.12.2 The Contractor shall adhere to and remain abreast of current, new, and revised laws, regulations, policies, standards and guidelines affecting project execution. The following policies, guidelines, and methodologies can be found at: <http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx> under "Policies and Guidance." These may include, but are not limited to:
 - 3.12.2.1 the State's SDLC methodology: <http://doit.maryland.gov/sdlc/Pages/SDLCHome.aspx>
 - 3.12.2.2 the State Information Technology Security Policy and Standards.
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
- 3.12.3 The Contractor shall follow the project management methodologies that are consistent with the Project Management Institute's Project Management Body of Knowledge Guide. Contractor's staff and sub-contractors are to follow a consistent methodology for all activities. <http://www.pmi.org>
- 3.12.4 The Contractor shall follow the State of Maryland Information Technology Non Visual Access Regulatory Standards <http://doit.maryland.gov/policies/Pages/nva.aspx>

3.13 Key Personnel

- 3.13.1 The Contractor shall provide the following Key Personnel onsite for the durations noted for each as part of its Technical Proposal:
 - 3.13.1.1 Project Manager;
 - 3.13.1.2 Subject Matter Expert;
 - 3.13.1.3 Ballot Programmer; and
 - 3.13.1.4 Trainer;
- 3.13.2 The four (4) Key Personnel requested shall support SBE's implementation of the proposed VSS throughout the Base Period of the contract.
- 3.13.3 The four (4) Key Personnel will be provided workspace at SBE's Central Warehouse facility, to be acquired prior to NTP, and shall perform work at that facility, at SBE's Main Office, and at the LBE sites as required.
- 3.13.4 If the Contractor proposes personnel that list any professional certification or specific accreditation pertinent to this RFP, the Contractor must provide evidence of current certification or accreditation immediately upon request of SBE.
- 3.13.5 The Contractor shall not assign Key Personnel to other Contractor projects in any way that results in a conflict with their ability to meet the requirements of this solicitation.
- 3.13.6 Project Manager
The Project Manager shall:

- 3.13.6.1 be dedicated to the project full-time for the duration of the base period at a FP and T&M for the Option Periods;
- 3.13.6.2 report to the SBE's NVSR Senior Project Manager;
- 3.13.6.3 be onsite in Maryland as noted in RFP Section 3.13.3, from Monday through Friday during Normal State Business Hours each week during the base period;
- 3.13.6.4 be available to support SBE efforts as needed on weekends and holidays and outside of normal business hours when necessary during the base period;
- 3.13.6.5 support SBE's efforts in receiving, UAT and deployment activities comprising implementation of the selected VSS;
- 3.13.6.6 coordinate all Contractor activities necessary to ensure on-time delivery for all requirements detailed in this RFP; and
- 3.13.6.7 utilize standard and accepted Project Management methodologies as they relate to the duties and activities associated with deployment of the VSS and as requested by SBE.

The minimum qualifications for the Project Manager are:

- 3.13.6.8 Bachelor's Degree from an accredited college or university;
- 3.13.6.9 verifiable training in Project Management methodologies and approaches; and
- 3.13.6.10 at least five (5) years' experience in managing implementation projects.

3.13.7 Subject Matter Expert

The Subject Matter Expert shall:

- 3.13.7.1 be dedicated full-time to the project for the duration of the base period and T&M for the Option Periods;
- 3.13.7.2 report to the Contractor's Project Manager;
- 3.13.7.3 be onsite in Maryland as noted in RFP Section 3.13.3, from Monday through Friday during Normal State Business Hours each week during the base period;
- 3.13.7.4 have operational, configuration and maintenance expertise in all components of the proposed VSS;
- 3.13.7.5 be available to support SBE efforts as needed on weekends and holidays and outside of normal business hours when necessary during the base period;
- 3.13.7.6 support the SBE's efforts in receiving, UAT and other deployment activities required for implementation of the selected VSS; and
- 3.13.7.7 share knowledge of past practices for the selected VSS relative to development of policies and procedures, conducting mock elections, supporting voter outreach events and deployment of the system for statewide elections.

The minimum qualifications for the Subject Matter Expert are:

- 3.13.7.8 Bachelor's Degree from an accredited college or university;
- 3.13.7.9 at least five (5) years of experience working in election operations at a county, state or major city level, with an elections support organization or with a voting system vendor; and
- 3.13.7.10 at least three (3) years of experience working with all VSS Components, of which at least one year was with the specific products proposed to be implemented in Maryland.

3.13.8 Ballot Programmer

The individual designated as Ballot Programmer shall:

- 3.13.8.1 be dedicated full time to on-site programming all primary, general and mock elections for the duration the base period for the following:
 - 3.13.8.1.1 Mock Primary Election – a four (4) week period in the third calendar quarter of 2015;
 - 3.13.8.1.2 Presidential Primary Election – January 1, 2016 to April 30, 2016; and
 - 3.13.8.1.3 Presidential General Elections – August 1, 2016 to November 30, 2016;
- 3.13.8.2 assist SBE staff onsite with all ballot layout requirements, artwork, design, editing and issue resolution during the scheduled statewide election cycles specified in RFP Section 3.13.8.1;
- 3.13.8.3 be available while onsite to provide custom instruction and consulting as requested by SBE for specific ballot layout, design, artwork and issue resolution needs;
- 3.13.8.4 be available while onsite to assist the SBE upon request with all ballot layout requirements, artwork, design, editing and issue resolution during the election cycles for any and all elections that occur in the option periods one (1) and two (2);
- 3.13.8.5 be available by phone and e-mail, when not onsite in Maryland, to respond within one hour of receipt of a request by SBE for custom instruction and consulting for specific ballot layout, design, artwork and issue resolution needs;
- 3.13.8.6 be available if requested for additional time and/or services not specified in this section as part of the Work Order Process defined in RFP Section 3.26; and
- 3.13.8.7 perform all VSS-related activity throughout the contract per RFP Section 1.23 Substitution of Personnel.

The minimum qualifications for the Ballot Programmer are:

- 3.13.8.8 at least three (3) years' experience working with the proposed VS EMS providing ballot layout, artwork, and ballot design services to customers;
- 3.13.8.9 experience in providing ballot layout, artwork, and ballot design services for at least four (4) primary or general elections; and
- 3.13.8.10 experience in creating ballot layout, artwork, and ballot design services for specimen ballots for at least two (2) elections.

3.13.9 Trainer

The Trainer shall:

- 3.13.9.1 be dedicated full-time to the project for the duration of the base period and T&M for the Option Periods;
- 3.13.9.2 be onsite in Maryland as noted in RFP Section 3.13.3, from Monday through Friday during Normal State Business Hours each week during the base period;
- 3.13.9.3 be available to assist SBE staff onsite for all scheduled training events and scheduled training work sessions as needed for the duration of the base period;
- 3.13.9.4 provide onsite instruction to the designated groups in accordance with the Training and Training Support requirements (RFP Sections 3.4.6 through 3.4.10);
- 3.13.9.5 be available while onsite to assist SBE's efforts in updating the training approach, training content, training documentation and training plan for the VSS as needed, and
- 3.13.9.6 develop any project related documentation as assigned.

The minimum qualifications for the Trainer are:

- 3.13.9.7 at least two (2) years' experience in training external customers on the proposed VSS Components; and

- 3.13.9.8 at least two (2) years' experience in training election office staff members and poll workers on the proposed VSS Components.

3.14 Contractor VSS Services

3.14.1 The Contractor shall:

- 3.14.1.1 support Risk Management activities including:
 - 3.14.1.1.1 identification, logging and mitigation of VSS-related risks for the NVSR project;
 - 3.14.1.1.2 document and track known VSS-related issues impacting the voting event implementation;
 - 3.14.1.1.3 actively communicate VSS-related issue status; and
 - 3.14.1.1.4 pursue VSS-related issues resolution with appropriate stakeholders;
- 3.14.1.2 coordinate VSS related implementation deliverables and tasks with the NVSR and potential NVSR vendors, contractors and other SBE project teams;
- 3.14.1.3 review SBE's NVSR and VSS-related Agency documentation to ensure general adherence to requirements and identify any issues that require attention;
- 3.14.1.4 execute the project management processes as outlined in the NVSR Project Management Plan including but not limited to change management, risk management and quality control;
- 3.14.1.5 assist SBE with the development and update of election related documentation (user manuals, technical documentation, quick reference guides);
- 3.14.1.6 support the acceptance testing and deployment activities required for implementing the VSS;
- 3.14.1.7 assist SBE with the development and update of election related processes;
- 3.14.1.8 assist SBE with the development and update of election related documentation (user manuals, technical documentation, quick reference guide); and
- 3.14.1.9 shall conduct weekly status meetings with SBE at SBE's Office.

3.15 Deliverables

3.15.1 Deliverable Acceptance

- 3.15.1.1 The Contractor shall deliver the VSS Components in no more than four (4) deliveries.
- 3.15.1.2 The Contractor shall submit all deliverables to the Contract Manager for acceptance.
- 3.15.1.3 The Contractor shall memorialize each delivery in a written Deliverable Performance Acceptance Form (DPAF) which is ATTACHMENT P that sets forth the nature and condition of the deliverables, the medium of delivery, and the date of delivery. The Contract Manager will commence any required acceptance testing or reviews following receipt of the deliverables according to the agreed upon delivery schedule. Upon completion of such testing and reviews, the Contract Manager will endorse the DPAF as accepted or rejected and return to the Contractor.
- 3.15.1.4 In the event of rejection, the Contractor shall correct any deficiencies or non-conformities and resubmit the deliverable(s) within five (5) business days, or request in writing to the Contract Manager a justification for any time required beyond five (5) business days.

3.15.2 Minimum Deliverable Quality

All plans and documentation submitted by the Contractor shall:

- 3.15.2.1 be accurate, complete, grammatically correct and without spelling errors;
- 3.15.2.2 be concise, logically constructed and easily understandable by the intended users;
- 3.15.2.3 contain terminology typically used by SBE and the Maryland Election community where customizable for the State of Maryland and SBE;

- 3.15.2.4 contain, when appropriate, screen shots, illustrations and other specific visual and graphic representations where customizable for the State of Maryland and SBE; and
- 3.15.2.5 be consistent in style and formatting with documentation currently maintained and in use by the SBE where customizable for the State of Maryland and SBE.

3.16 Invoicing

3.16.1 General

3.16.1.1 All invoices shall include:

- 3.16.1.1.1 SBE as the Requesting Agency;
- 3.16.1.1.2 deliverable description;
- 3.16.1.1.3 the Contractor's Federal Tax Identification Number;
- 3.16.1.1.4 associated Contract Agreement number,
- 3.16.1.1.5 Contractor name;
- 3.16.1.1.6 remittance address;
- 3.16.1.1.7 date of invoice;
- 3.16.1.1.8 invoice number;
- 3.16.1.1.9 period of performance covered by the invoice;
- 3.16.1.1.10 amount due;
- 3.16.1.1.11 Contractor point of contact with telephone number; and
- 3.16.1.1.12 Contractor point of contact signature.

An invoice submitted without the required information will not be deemed a proper invoice and will not be processed for payment until the Contractor provides the required information.

- 3.16.1.2 The Contractor shall submit the original of each invoice and supporting documentation to Accounts Payable at the SBE Office. For time and material invoices resulting from Work Orders, the Contractor shall include a signed copy of the Work Order.
- 3.16.1.3 Invoices for final payment shall be clearly marked as "FINAL" and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract Agreement. In no event shall any invoice be submitted later than 60 calendar days from the Contract Agreement termination date.
- 3.16.1.4 Invoice payments to the Contractor shall be governed by the terms and conditions defined in this Contract.
- 3.16.1.5 The Contractor shall not submit an invoice without including a DPAF endorsed by the Contract Manager indicating acceptance. Invoicing and payment shall be based on deliverable completion and SBE acceptance (Note: Invoices for partial delivery will be rejected).
- 3.16.1.6 SBE reserves the right to withhold Contract payment in the event the Contractor does not provide SBE with all required deliverables within the time frame specified in the Contract or in the event that the Contractor otherwise materially breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract. Any action on the part of The Agency, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article § 15-215 through 15-223 and with COMAR 21.10.02.

3.16.2 Invoice Submission Schedule

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

- 3.16.2.1 services for key personnel shall be invoiced quarterly and within five (5) business days of the last day of the invoice month;
- 3.16.2.2 each VSS invoice shall include a copy of the respective SBE written and executed acceptance of deliverables;
- 3.16.2.3 VSS Components purchased shall be invoiced within five (5) business days of SBE acceptance of each delivery;
- 3.16.2.4 invoices for T&M resulting from Work Orders shall be invoiced within five (5) business days of receipt of a signed DPAF indicating acceptance or other approval by SBE; and
- 3.16.2.5 all Lease invoices shall be submitted on a quarterly basis.

3.17 Contractor Reporting

- 3.17.1 A weekly project status report shall be submitted to the NVSR Senior Project Manager at least two (2) days in advance of the weekly NVSR meeting and shall contain, at a minimum, the following information:
 - 3.17.1.1 contract Agreement number, reporting period and “Status Report” to be included in the e-mail subject line;
 - 3.17.1.2 work accomplished during the weekly period;
 - 3.17.1.3 problem areas, including scope creep or deviation from the work plan;
 - 3.17.1.4 planned activities for the next reporting period;
 - 3.17.1.5 schedule of time out of the office or expected work outside of normal hours;
 - 3.17.1.6 an accounting report for the current reporting period and a cumulative summary of the totals for both the current and previous reporting periods. The accounting report shall include amounts invoiced-to-date and paid-to-date and be delivered to the NVSR Senior Project Manager;
 - 3.17.1.7 an individual status report for each of the four (4) Key Personnel to the NVSR Senior Project Manager displaying:
 - 3.17.1.7.1 name of individual;
 - 3.17.1.7.2 project name;
 - 3.17.1.7.3 period of performance;
 - 3.17.1.7.4 list of activities or tasks performed within the project;
 - 3.17.1.7.5 corresponding hours for each activity or task within each project for that week;
 - 3.17.1.7.6 original signature of the individual and signature date; and
 - 3.17.1.7.7 contractor supervisor signature and date.
- 3.17.2 The Contractor shall provide a weekly shipping and delivery report to the NVSR Senior Project Manager including:
 - 3.17.2.1.1 deliverable progress, as a percentage of completion;
 - 3.17.2.1.2 device Shipping and Schedule;
 - 3.17.2.1.3 shipping Receiving Status– details of devices in all stages of delivery;
 - 3.17.2.1.4 number In transit; and
 - 3.17.2.1.5 number Delivered.
- 3.17.3 The Contractor shall provide written response to each UAT results report issued by SBE.
- 3.17.4 The Contractor shall submit MBE participation forms in accordance with MBE rules if an MBE subcontracting arrangement has been made for this contract as follows:

- 3.17.4.1 the Contractor shall prepare and submit monthly reporting of MBE participation required in accordance with the terms and conditions of this Contract by the 15th day of each month;
- 3.17.4.2 the Contractor shall provide a completed MBE Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) and MBE Prime Contractor Report (Attachment D-4B) to MBE at the same time the invoice copy is sent;
- 3.17.4.3 the Contractor shall ensure that each MBE subcontractor provides a completed Subcontractor Paid/Unpaid MBE Invoice Report (Attachment D-5);
- 3.17.4.4 subcontractor reporting shall be sent directly from the subcontractor to SBE. SBE will monitor both the Contractor's and Sub-Contractor's efforts to achieve the MBE participation goal and compliance with reporting requirements; and
- 3.17.4.5 all completed forms, copies of invoices and checks paid to MBE shall be emailed directly to the Procurement Officer and Contract Manager.

3.18 Change Process

- 3.18.1 **State's Unilateral Right** - Pursuant to § 13-218 of the State Finance and Procurement Article of the Annotated Code of Maryland, the State has the unilateral right to order in writing changes in the work within the scope of the Contract.
- 3.18.2 **Proposed Changes** - The Contractor shall submit Change Requests (CRs) to request any changes to the Scope of Work as required by this RFP, Base Contract Amount (Price Proposal), or baseline project schedule.
- 3.18.3 **Change Request Process** - The Contractor shall submit all CRs in writing to the Contract Manager. The CR shall include the impact to any design or requirements documents, total Base Contract Amount, and baseline project schedule. All CRs require the written approval of the Contract Manager. The Contract Manager will provide the final disposition of the CR in writing to the Contractor.
 - 3.18.3.1 **Change Request Invoices** - The Contractor shall invoice SBE for work performed on any approved CR.
 - 3.18.3.2 **Change Orders** - If the Contractor is required to perform additional work, or there is a work reduction due to unforeseen scope changes, the Contractor and Contract Manager shall negotiate a mutually acceptable price modification based on the Contractor's proposed rates in the Contract and scope of the work change. No scope of work modifications shall be performed until a change order is executed by the Procurement Officer and approved by The Department of Information Technology.
 - 3.18.3.3 **Travel** - Travel to SBE's main office is required. This travel will be for project tasks such as project kick-off, project management planning, configuration requirements gathering sessions, monthly status meetings, data conversion, site preparation, system installation, training, UAT, maintenance, support, help desk and election activities. There will be no travel reimbursements outside the FP proposed for the Contract.

3.19 Escrow

- 3.19.1 Upon NTP, the Contractor shall immediately establish an escrow account with an escrow agent approved by SBE:
 - 3.19.1.1 The Contractor shall compile an Escrow Package for delivery into the escrow account. This package shall:
 - 3.19.1.1.1 include the source code for all software components of the selected VSS. There shall be two versions of the source code – one that is human readable and one that is machine readable;
 - 3.19.1.1.2 include all proprietary information relative to the source code and its creation;

- 3.19.1.1.3 include technical documentation enabling SBE to create, install, compile, maintain and/or modify the source code without the aid of the Contractor, any other person or any other materials;
- 3.19.1.1.4 include maintenance tools including test programs and program specifications;
- 3.19.1.1.5 include proprietary or third party system utilities, including compiler and assembler;
- 3.19.1.1.6 include descriptions of the system/program generation;
- 3.19.1.1.7 include descriptions and locations of programs not owned by the Contractor but required for use and support of the solution; and
- 3.19.1.1.8 include descriptions to accompany the compiler and assembler.
- 3.19.1.2 The escrow account shall remain active for the term of the contract and through any extended warranty periods and option periods;
- 3.19.1.3 The escrow agreement between the Contractor and the escrow agent shall:
 - 3.19.1.3.1 authorize SBE to receive full access to and delivery of the Escrow Package;
 - 3.19.1.3.2 require the escrow agent to provide SBE with the Escrow Package within seven calendar days of a written request from SBE; and
 - 3.19.1.3.3 require the escrow agent to provide the Escrow Package at no cost and in the format specified by SBE;
- 3.19.1.4 Within 30 days of NTP, the Contractor shall submit the Escrow Package to the escrow agent **required by RFP Section 2.2.5;**
- 3.19.1.5 Within seven (7) calendar days of a Source Code Delivery Event, the escrow agent shall provide SBE, at no cost, full access to and delivery of all components of the Escrow Package in the format specified by SBE.

3.20 Source Code Delivery Event

Source Code Delivery Event is defined to mean that the Contractor has:

- 3.20.1 become insolvent;
- 3.20.2 made a general assignment for the benefit of creditors;
- 3.20.3 filed a voluntary petition of bankruptcy;
- 3.20.4 suffered or permitted the appointment of a receiver for its business or assets;
- 3.20.5 became subject to any proceeding of bankruptcy or insolvency law, whether foreign or domestic;
- 3.20.6 discontinued support of the VSS or failed to support the VSS in accordance with this contract;
- 3.20.7 at SBE's determination, been unable or failed to correct material error(s) in the source code for any reason or otherwise to carry out, in any material respect, the maintenance or support obligations set forth in this solicitation; or
- 3.20.8 been terminated for default.

3.21 End of Contract Transition

- 3.21.1 The Contractor shall provide a Transition Plan that outlines efforts to ensure a quality, smooth, efficient, and timely transition of the operational and support knowledge of the proposed system to SBE or SBE's agents.
- 3.21.2 The Transition Plan shall be submitted to SBE for review no later than six (6) months from the termination of the Contract.

- 3.21.3 Upon approval by SBE, the Contractor shall work with SBE and its agents to successfully execute the efforts as outlined in the Transition Plan.
- 3.21.4 At Contract termination, the Contractor shall package, ship, and return all leased VSS Components to the Contractor's desired location.

3.22 Security Requirements

3.22.1 Employee Identification

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

3.22.2 Information Technology

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

3.22.3 Criminal Background Check

- 3.22.3.1 The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Contract Manager with completed checks on all new employees prior to assignment. The Contractor may not assign an employee with a criminal record unless prior written approval is obtained from the Contract Manager.

3.23 Insurance Requirements

- 3.23.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from, or arising out of, Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees, or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage, and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 3.23.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum limits of \$1,000,000 per occurrence.
- 3.23.3 The Contractor shall maintain Automobile and/or Commercial Truck Insurance as appropriate with Liability, Collision, and Personal Injury Protection (PIP) limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
- 3.23.4 The Contractor shall maintain Employee Theft Insurance with minimum limits of \$1,000,000 per occurrence.
- 3.23.5 Within five (5) Business Days of recommendation for Contract award, the Contractor shall provide the Contract Manager with current certificates of insurance, and shall update such certificates from time to time but no less than annually in multi-year contracts, as directed by the Contract Manager. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:

- 3.23.5.1 Workers' Compensation – The Contractor shall maintain such insurance as necessary and/or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- 3.23.5.2 Commercial General Liability as required in RFP Section 3.23.1.
- 3.23.5.3 Errors and Omissions/Professional Liability as required in RFP Section 3.23.2
- 3.23.5.4 Automobile and/or Commercial Truck Insurance as required in RFP Section 3.23.3.
- 3.23.5.5 Employee Theft Insurance as required in RFP Section 3.23.4.
- 3.23.6 The State shall be listed as an additional insured on the policies with the exception of Worker's Compensation Insurance and Professional Liability Insurance. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manager, by certified mail, not less than 45 days' advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Manager receives a notice of non-renewal, the Contractor shall provide the Contract Manager with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.23.7 The Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Manager with the same documentation as is required of the Contractor.

3.24 Problem Escalation Procedure

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

The Contractor shall provide contact information to the Contract Manager, as well as to other State personnel, as directed should the Contract Manager not be available.
- 3.24.2 The Contractor shall provide the PEP no later than ten (10) Business Days after notice of Contract award or after the date of the NTP, whichever is earlier. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
 - 3.24.2.1 The process for establishing the existence of a problem;
 - 3.24.2.2 The maximum duration that a problem may remain unresolved at each level in the Contractor's organization before automatically escalating the problem to a higher level for resolution;
 - 3.24.2.3 Circumstances in which the escalation will occur in less than the normal timeframe;
 - 3.24.2.4 The nature of feedback on resolution progress, including the frequency of feedback to be provided to the State;
 - 3.24.2.5 Identification of, and contact information for, progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
 - 3.24.2.6 Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays, etc.) and on an emergency basis; and
 - 3.24.2.7 A process for updating and notifying the Contract Manager of any changes to the PEP.

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

3.25 Retainage

- 3.25.1 Ten percent (10%) of each invoice for purchased hardware deliveries shall be held by SBE as retainage. The Contractor shall invoice for the retained funds as of the date of invoice no earlier than thirty days (30) after the 2016 General Election.
- 3.25.2 If the Contractor fails to meet the requirements as defined in the Contract, the Contractor shall rectify the performance problem or complete the specification to the satisfaction of the Contract Manager within thirty (30) days at no cost to SBE, as described in the Contract. If the Contract Manager is not satisfied within this timeframe, the Contractor forfeits the retainage.
- 3.25.3 The Contractor shall submit a separate invoice for the total retained funds as of the date of the invoice.

3.26 Work Order

Other tasks may be identified by the Contract Manager during the duration of the contract. As determined by the Contract Manager, these unique tasks may be performed on a “work order” basis.

- 3.26.1 When this occurs, the Work Order process may include:
 - 3.26.1.1 a written statement of work from the Contract Manager;
 - 3.26.1.2 a written proposal from the Contractor describing the work to be accomplished, milestone schedule, costs, testing and fault remediation processes. Once a Work Order is priced and agreed to by SBE and the Contractor it becomes a fixed-price deliverable with a not-to-exceed value;
 - 3.26.1.3 SBE giving written approval to start the work order;
 - 3.26.1.4 testing by SBE prior to acceptance of the deliverable;
 - 3.26.1.5 a work order tracking system, either existing in SBE or proposed by the Contractor; and
 - 3.26.1.6 some work orders may require at least minimal System Development Life Cycle management, and will be documented in the requirements for the Work Order. (See <http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx>)

3.27 SOC (Service Organization Controls) TYPE II REPORT

Any VSS solution which requires that the Contractor acquire and store voter ballot data on their own computer systems and network (such as their own data center facility or a Software-as-a-Service ‘cloud’) will be required to fulfill the following clause which demands the performance of an annual SOC2 Type II audit. VSS solutions that do not require the Contractor to acquire and/or store voter ballot data on their own computer systems do not need to fulfill the SOC 2 audit requirement

The Contractor shall have an annual audit performed by an independent audit firm of its handling of the Agency’s critical functions and/or sensitive information, (collectively referred to as the “Information Functions and/or Processes”). Such audits shall be performed in accordance with audit guidance: Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Agency, to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- 3.27.1 The type of audit to be performed in accordance with the Guidance is a SOC 2 Type II Report. The SOC 2 Type II Report shall be completed annually at the following intervals: Reports should be submitted annually by April 1 for preceding calendar year. With the Presidential Primary occurring in April of 2016, the report should be submitted June 1, 2016 for the 2015 calendar year.

Work When Performed	Report submission deadline
Jan 1 - Dec 31, 2015	June 1, 2016
Jan 1 - Dec 31, 2016	April 1, 2017
Jan 1 - Dec 31, 2017	April 1, 2018
Jan 1 - Dec 31, 2018	April 1, 2019

- 3.27.2 The SOC 2 Type II Report shall report on a description of the Contractor's system and the suitability of the design and operating effectiveness of controls of the Information Functions and/or Processes relevant to the following trust principles: Security, Availability, Processing Integrity, and Confidentiality as defined in the Guidance.
- 3.27.3 The SOC 2 Type II Report shall include work performed by subcontractors that provide essential support to the Contractor for the Information Functions and/or Processes for the services provided to the Agency under the Contract (this is defined as the 'Inclusive Method' in the Guidance referenced above). The Contractor shall ensure the performance of the SOC 2 Type II Audits include its subcontractor(s).
- 3.27.4 All SOC 2 Type II Audits, including the SOC 2 Type II Audits of Contractor's subcontractors, shall be performed at the Contractor's expense.
- 3.27.5 The Contractor shall promptly provide a complete copy of the final SOC 2 Type II Report to the Agency's Contract Manager upon completion of each SOC 2 Audit engagement.
- 3.27.6 The Contractor shall provide to the Agency's Contract Manager, within 30 calendar days of the issuance of the final SOC 2 Type II Report, a documented corrective action plan which addresses each audit finding or exception contained in the SOC 2 Type II Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- 3.27.7 If the Contractor currently has an annual information security assessment performed that includes the operations, systems, and repositories of the Information Functions and/or Processes services being provided by the Contractor to the Agency under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Agency will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current audits are acceptable in lieu of the SOC 2 Type II Report(s).
- 3.27.8 If the Contractor fails during the Contract term to obtain an annual SOC 2 Type II Report timely, the Agency shall have the right to retain an independent audit firm to perform an audit engagement to issue a SOC 2 Report of the Information Functions and/or Processes being hosted by the Contractor. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and provide reasonable support to the independent audit firm in the performance of the engagement. Specifically, under the Guidance for the SOC 2 audit, management of the service organization is required to provide a description of the service organization's system including the control objectives and/or what controls are in place. In addition, management of the service organization is required to provide the service auditor with a written assertion about the fairness of the presentation of management's description of the service organization's system, the suitability of the design of the controls included in the description and, in a type 2 engagement, the operating effectiveness of those controls. These deliverables are in addition to the time the service organization's staff may expend in supporting the auditors, answering questions and/or special requests for data. The Agency will invoice the Contractor for the expense of the SOC 2 Type II Audit(s), or deduct the cost from future payments to the Contractor.

3.28 New Technology

During the term of the Contract, the Agency may desire to incorporate new products or technologies that are within the scope of the Contract but were not available in the marketplace at the time the Contract began. Such new products and technologies may offer significant advantages to the State in terms of economy, efficiency, quality and effectiveness and therefore it may be in the State's best interest to take advantage of such new products or technologies in a manner consistent with applicable law and the Contract.

The Agency may request demonstrations of new products before allowing them to be offered as potential VSS Components. The direct expense for such demonstrations is the sole responsibility of the Contractor. The VSS Components proposed by the Offeror shall have been tested and successfully met the requirements in RFP Section 3.3. If the new component requires certification by Maryland, SBE may require the Contractor to submit the prevailing certification fee.

- 3.28.1 The Contractor may add additional types of VSS Components throughout the term of the Contract. To add a VSS Component, the Contractor shall submit Change Order to the Procurement Officer for each new VSS Components proposed, including all specifications and price. Upon approval of the Change Order by the Procurement Officer, the proposed VSS Components will be delivered to SBE.
- 3.28.2 If the new VSS Components are intended to replace existing VSS Components, the Contractor shall remove the replaced VSS Components in accordance with RFP Section 3.29. The Agency shall be reimbursed or credited for the amortized costs of VSS Components (leased or purchased) exchanged for products with newer technology.

3.29 Equipment Disposal

- 3.29.1 The Contractor shall perform proper disposition of Information Technology equipment within the guidelines provided by DGS. A new State law effective October 1, 2012 (HB 448, Chapter 372) requires State agencies awarding contracts for services to recycle electronic products to award the contract to a recycler that is R2 or e-Stewards certified. This information is located on the DGS web site:
<http://www.dgs.maryland.gov/Procurement/Green/Guidelines/disposal.html>
<http://www.dgs.maryland.gov/ISSSD/InventoryControlManual.pdf>
- 3.29.2 The State's Information Security Policy (Section 6.5 Media Protection) <http://doit.maryland.gov/Publications/DoITSecurityPolicy.pdf> discusses proper precautions to protect confidential information stored on media. Agencies can use the ~~flowchart in Appendix B of the security policy document~~ to assist them in making sanitization decisions commensurate with the security categorization of the confidentiality of information contained on their media.

3.30 Submission of Equipment for Demonstration Purposes

- 3.30.1 The Offeror shall be notified at least seven (7) calendar days in advance of the scheduled date for oral discussions and presentations. Offerors will arrange for the delivery of equipment to be used for the presentation with the SBE Procurement Officer.
 - 3.30.1.1 The Offeror shall submit the equipment that is identical in all ways to the equipment that it is proposing in its response to this solicitation.
 - 3.30.1.2 This equipment shall remain in the custody of SBE for the evaluation and testing until a contract award has been recommended.
- 3.30.2 Offerors shall submit the following equipment for demonstration and evaluation:
 - 3.30.2.1 Two precincts and one central counting system, EMS
 - 3.30.2.2 All other equipment, documentation and supplies, including sample ballots and accessories needed to operate the scanning systems according to the Offerors specifications
- 3.30.3 Any unsuccessful Offeror shall, at its expense, remove all equipment submitted for consideration within ten (10) business days of being notified that the Offeror will not be recommended for the contract award.

SECTION 4 – PROPOSAL FORMAT

4.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

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

Offerors must respond to all requirements identified in this RFP. Offerors who fail to do so may be deemed not reasonably susceptible of being selected for award.

4.2 Proposals

4.2.1 Volume I – Technical Proposal and Volume II – Financial Proposal shall be sealed separately from one another. It is preferred, but not required, that the name, e-mail address, and telephone number of the Offeror be included on the outside of the packaging for each volume. Each Volume shall contain an unbound original, so identified, and seven (7) copies. Unless the resulting package will be too unwieldy, the State's preference is for the two (2) sealed Volumes to be submitted together in a single package including a label bearing:

The RFP title and number,
Name and address of the Offeror, and
Closing date and time for receipt of Proposals

To the Procurement Officer prior to the date and time for receipt of Proposals (see RFP Section 1.5 and 1.11)

- 4.2.2 An electronic version of both Volumes I - Solicitation no. D38B4400019 - Technical Proposal in MS Word format, and Volume II - Solicitation no. D38B4400019 - Financial Proposals in MS Excel format must also be submitted electronic media. Electronic media shall be a CD, DVD or Thumb drive and must bear the RFP name and number, name of the Offeror, and the technical or financial volume number (Volume I or Volume II).
- 4.2.3 A second electronic version of Volume I and Volume II in searchable Adobe .pdf format shall be submitted on CD or DVD for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see RFP Section 1.14).
- 4.2.4 All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

4.3 Delivery

Offerors may either mail or hand-deliver Proposals.

- 4.3.1 For U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, The Agency recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by The Agency. An Offeror using first class mail will not be able to prove a timely delivery at the mailroom, and it could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit.
- 4.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.

- 4.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

4.4 Volume I – Technical Proposal

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

4.4.1 Format of Technical Proposal

Inside a sealed package described in RFP Section 4.2, the unbound original, seven (7) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. RFP Section 4.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 4.4.2.1 “Title Page and Table of Contents,” RFP Section 4.4.2.2 “Claim of Confidentiality,” RFP Section 4.4.2.3 “Transmittal Letter,” RFP Section 4.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 3.2.1 Response . . . ; “Section 3.2.2 Response . . .,” etc.). This Proposal organization will allow State officials and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

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

4.4.2.1 Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

4.4.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 1.14 “Public Information Act Notice”). The entire Proposal cannot be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

4.4.2.3 Transmittal Letter (Submit under TAB B)

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

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the Offeror;
- Solicitation Title and Solicitation Number that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual’s Social Security Number (SSN);
- Offeror’s eMM number;
- Offeror’s MBE certification number (if applicable);
- Acceptance of all State RFP and Contract terms and conditions (see Section 1.24). If any exceptions are taken, they are to be noted in the Executive Summary (see Section 4.4.2.4); and

- Acknowledgement of all addenda to this RFP.

4.4.2.4 Executive Summary (Submit under TAB C)

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

If the Offeror has taken no exceptions to the requirements of this RFP, the Executive Summary shall so state.

4.4.2.5 Minimum Qualifications Documentation (If applicable, submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in Section 2 "Minimum Qualifications."

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

4.4.2.6.1 The Offeror shall address each Scope of Work requirement (Section 3) in its Technical Proposal and describe how its proposed services, including the services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to a Scope of Work (Section 3) requirement shall include an explanation of how the work will be done. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

4.4.2.6.2 The Offeror shall give a definitive description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology and techniques to be used by the Offeror in providing the required services as outlined in RFP Section 3, Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.

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

4.4.2.6.4 The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by SBE's Contract Manager should problems arise under the Contract and explain how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures must be submitted as indicated in RFP Section 3.24.

4.4.2.7 The Offeror shall provide the following documentation to SBE with the proposal:

4.4.2.7.1 Repair Plan - outlining process and procedures for obtaining repairs to failed or defective components of the VSS. Process and Procedures shall address obtaining repair service for components under warranty, components not under warranty, repair service provided as part of any Service Level Agreement and repair service requested through a time and material process;

4.4.2.7.2 Quality Assurance Plan - - to include the process for handling of units that fail inspection upon delivery or that fail UAT;

- 4.4.2.7.3 Power Management Plan - proposing processes and procedures for maximizing the uptime of component deployed for an election and subject to power outages or interruptions. This plan shall also include best practices for providing uninterrupted voting activity for system components involved in an election;
- 4.4.2.7.4 A Training and Training Support Plan - for training SBE, LBE, and other resources on all VSS Components;
- 4.4.2.7.5 Access instructions for accessing online versions of the items in 4.4.2.7;
- 4.4.2.7.6 System Diagram (see RFP Section 3.2.19);
- 4.4.2.7.7 Sample documentation containing standard agreement terms, to include: sample lease, any other standard agreements such as service agreements, subscription agreements; and
- 4.4.2.7.8 Sample Lease Agreement document detailing the terms and conditions of a VSS lease if selected by the State.

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

- 4.4.2.8.1 The Offeror shall identify the number and types of personnel proposed in addition to Key Personnel to be utilized under the Contract.
- 4.4.2.8.2 The Offeror shall describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan. The Offeror shall include individual resumes for the key personnel, including key personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.
- 4.4.2.8.3 The Offeror shall provide an Organizational Chart outlining personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

4.4.2.9 Offeror Qualifications and Capabilities (Submit under TAB G)

The Offeror shall include information on past experience with similar projects and/or services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- a. The number of years the Offeror has provided the similar services;
- b. The number of clients/customers and geographic locations that the Offeror currently serves;
- c. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under this Contract;
- d. The Offeror's process for resolving billing errors; and
- e. An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

4.4.2.10 References (Submit under TAB H)

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this RFP. References used to meet any Offeror Minimum Qualifications (see Section 2) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided services within the past five (5) years and shall include the following information:

- a. Name of client organization;

- b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- c. Value, type, duration, and description of services provided.

The Agency reserves the right to request additional references or utilize references not provided by an Offeror. References must be accessible and knowledgeable regarding the Offeror's performance.

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

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

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

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

4.4.2.12 Financial Capability (Submit under TAB J)

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

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

- a. Dunn and Bradstreet Rating;
- b. Standard and Poor's Rating;
- c. Lines of credit;
- d. Evidence of a successful financial track record; and
- e. Evidence of adequate working capital.

4.4.2.13 Certificate of Insurance (Submit under TAB K)

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.23. See Section 5.6 for the required insurance certificate submission for the recommended Offeror.

4.4.2.14 Subcontractors (Submit under TAB L)

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE subcontracting goal, if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. See Section 3.17.4 for additional Offeror requirements related to Subcontractors.

4.4.2.15 Legal Action Summary (Submit under TAB M)

This summary shall include:

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

4.4.2.16 Economic Benefit Factors (Submit under TAB N)

The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A(3).

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

Please note that in responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- a. generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- b. descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; or
- c. tax revenues from Maryland based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;
- The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated

personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;

- Subcontract dollars committed to Maryland small businesses and MBEs; and
- Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

If the Offeror elects to engage an MBE firm as part of its proposal response, include the details in this section.

4.4.3 Additional Required Technical Submissions (Submit under TAB O)

The following documents shall be completed, signed, and included in the Technical Proposal, under TAB O that follows the material submitted in response to Section 4.4.2.

- a. Completed Proposal Affidavit (Attachment B).
- b. Completed Maryland Living Wage Requirements Affidavit of Agreement (Attachment G-1).
- c. Completed Conflict of Interest Affidavit and Disclosure (Attachment I) see RFP Section 1.36.
- d. Completed Mercury Affidavit (Attachment L) see RFP Section 1.40.
- e. Completed Location of the Performance of Services Disclosure (Attachment N) see RFP Section 1.42.

4.5 Volume II – Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format specified in RFP Section 4.2 the Offeror shall submit an original unbound copy, seven (7) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in **Attachment F using the Financial Proposal Form**.

The Offeror's proposed prices shall be Fully Loaded Prices. No taxes or assessments or license fees or permits of any type will be paid in addition to the prices proposed on the Financial Proposal Form.

All prices proposed shall be FP for the entire term of the Contract, to include the Option Periods, if exercised.

The Agency will utilize one of the two options below to procure VSS Components. Offerors are required to submit Financial Proposals for both Contract Types:

- Lease (including a payment schedule)
- Purchase (~~payment schedule based upon accepted deliveries [see RFP section 3.15]~~)

Note: Only one Technical Proposal shall be submitted.

All Offerors shall provide an amortization schedule with the Financial Proposal for each VSS Component for the entire Contract Period including Option Periods. The Agency will be reimbursed or credited for the amortized costs of VSS Components exchanged for products with newer technology at any point during the active Contract Period.

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SECTION 5 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE

5.1 Evaluation Committee

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

5.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below **in descending order of importance**.

5.2.1 Offeror's overall Technical Response to RFP Requirements and Work Plan (see RFP Section 4.4.2.6).

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

5.2.2 PBS Device (see RFP Section 3.4.1).

5.2.3 Ballot Marking Device (see RFP Section 3.4.2).

5.2.4 HSS Device (see RFP Section 3.4.3).

5.2.5 VS EMS (see RFP Section 3.4.5).

5.2.6 ~~5.2.2~~ Experience and Qualifications of Proposed Staff (see RFP Section 4.4.2.8).

5.2.7 ~~5.2.3~~ Offeror Qualifications and Capabilities, including proposed Subcontractors (see RFP Sections 4.4.2.9 – 4.4.2.14).

5.2.8 ~~5.2.5~~ Plan and approach to New Technology (see RFP Section 3.28).

5.2.9 ~~5.2.6~~ Repair and Preventative Maintenance (see RFP Section 3.5)

5.2.9.1 Repair Plan (see RFP 3.8.1 & 3.8.1.1).

5.2.9.2 Preventative Maintenance Plan (see RFP Section 3.8.1 & 3.8.1.2)

5.2.10 Training (see RFP Section 3.4.6 – 3.4.10)

5.2.10.1 ~~5.2.57~~ Training Support Plan (see Sections 3.8.1 & 3.8.1.5).

5.2.11 Ballot Box (see RFP Section 3.4.4).

5.2.12 ~~5.2.8~~ Economic Benefit Factors to State of Maryland (see RFP Section 4.4.2.16).

Evaluators will have access to SBE information that has been prepared and submitted as part of the State Certification Process.

5.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (a responsible Offeror determined to have submitted an acceptable Proposal) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment F** - Financial Proposal Form. Each Financial Form presented will be evaluated separately against the Offeror's Technical Proposal.

5.4 Reciprocal Preference

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

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

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

5.5 Selection Procedures

5.5.1 General

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

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

5.5.2 Selection Process Sequence

5.5.2.1 A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1**) is included and is properly completed, if there is an Offeror-initiated MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and Subcontractor Participation Schedule (**Attachment M-1**) is included and is properly completed, if there is a VSBE goal.

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

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

5.5.2.4 The Financial Proposals of each Qualified Offeror will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.

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

5.5.3 Award Determination

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

5.6 Documents Required upon Notice of Recommendation for Contract Award

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

- a. Contract (**Attachment A**),
- b. Contract Affidavit (**Attachment C**),
- c. Non-Disclosure Agreement (**Attachment J**) see RFP Section 1.37,
- d. Performance Bond (**Attachment S**),
- e. **All insurance documents detailed in 3.23.**

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RFP ATTACHMENTS

ATTACHMENT A – Contract

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

ATTACHMENT B – Proposal Affidavit

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

ATTACHMENT C – Contract Affidavit

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

ATTACHMENT D – Minority Business Enterprise Forms

If required (see Section 1.33), these Attachments include the MBE subcontracting goal statement, instructions, and MBE Attachments D-1 through D-6. Attachment D-1 must be properly completed and submitted with the Offeror's Technical Proposal or the Proposal will be deemed not reasonably susceptible of being selected for award and rejected. Within 10 Working Days of receiving notification of recommendation for Contract award, the Offeror must submit Attachments D-2 and D-3 and, if the Offeror has requested a waiver of the MBE goal, usually Attachment D-6.

ATTACHMENT E – Pre-Proposal Conference Response Form

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

ATTACHMENT F – Financial Proposal Instructions and Form

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

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

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

ATTACHMENT H – Federal Funds Attachment

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

ATTACHMENT I – Conflict of Interest Affidavit and Disclosure

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

ATTACHMENT J – Non-Disclosure Agreement

If required (see Section 1.37), this Attachment must be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT K – HIPAA Business Associate Agreement

If required (see Section 1.38), this Attachment is to be completed and submitted within five (5) Business Days of receiving notification of recommendation for award. However, to expedite processing, it is suggested that this document be completed and submitted with the Technical Proposal.

ATTACHMENT L – Mercury Affidavit

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

ATTACHMENT M – Veteran-Owned Small Business Enterprise Forms

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

ATTACHMENT N – Location of the Performance of Services Disclosure

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

ATTACHMENT O – Department of Human Resources (DHR) Hiring Agreement

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

ATTACHMENT P – Deliverable Performance Acceptance Form

It is required that this form be completed and signed by Contract Manager, prior to the Contractor submitting each invoice for product or services rendered.

ATTACHMENT Q – Documentation Requirements

This is a list of required documents to be produced by the Contractor in support of the project.

ATTACHMENT R – Estimated Device Amounts

~~These are estimated device amounts to be used in the solution development and pricing proposal.~~ **Refer to the Financial Proposal Form for number of units.**

ATTACHMENT S – Performance Bond

This is the required form for a performance bond that shall be provided by the Contractor, and shall be received by the agency, within five (5) Business Days of receiving notification of recommendation for award.

ATTACHMENT A – CONTRACT

(CONTRACT TITLE)

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

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

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contract Manager” means the Agency employee identified in Section 1.6 of the RFP as the Contract Manager.
- 1.3 “Contractor” means (Contractor’s name) whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address).
- 1.4 “Agency” means the State Board of Elections (SBE).
- 1.5 “Financial Proposal” means the Contractor’s Financial Proposal dated (Financial Proposal date).
- 1.6 “Procurement Officer” means the Agency employee identified in Section 1.5 of the RFP as the Procurement Officer.
- 1.7 “RFP” means the Request for Proposals for the VSS Solicitation # D38B4400019, and any addenda thereto issued in writing by the State.
- 1.8 “State” means the State of Maryland.
- 1.9 “Technical Proposal” means the Contractor’s Technical Proposal dated (Technical Proposal date).

2. Scope of Contract

- 2.1 The Contractor shall provide deliverables, programs, goods, and services specific to the Contract awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

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

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

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

section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

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

3. Period of Performance.

- 3.1 The term of this Contract begins on the date the Contract is signed by the Agency following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required. The Contractor shall provide services under this Contract as of the Go-Live date contained in the written Notice to Proceed. From this Go-Live date, the Contract shall be for a period of approximately two (2) years and three (3) months beginning **(anticipated Contract start date)** and ending on March 31, 2017.
- 3.2 Further, this Contract may be extended for two (2) option periods of one year each at the sole discretion of The Agency and at the prices quoted in the Financial Proposal for Option periods.
- 3.3 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

4. Consideration and Payment

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Agency shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Financial Proposal Form (Attachment F). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$ **(Not-to-Exceed amount)**.

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

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Agency's receipt of a proper invoice for services provided by the Contractor, acceptance by the Agency of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification or Social Security Number for a Contractor who is an individual which is **(Contractor's FEIN or SSN)**. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 as from time-to-time amended, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any

invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.4 Payment of an invoice by the Agency is not evidence that services were rendered as required under this Contract.

4.4 Contractor's eMarylandMarketplace vendor ID number is (Contractor's eMM number).

5. Rights to Records

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

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

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

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

6. Exclusive Use

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

7. Patents, Copyrights, and Intellectual Property

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

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

- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.
- 7.4 Notwithstanding anything to the contrary in this Contract, to the extent (i) work performed or provided by the Contractor in connection with this Contract (the Work Product) or (ii) Pre-Existing Intellectual Property (other than a computer's operating system, supported internet browser, browser accessibility software or hardware if needed by the user, and software required to access a commonly-available data transmission tool or export format) is required to access, install, build, compile or otherwise use the Work Product (such Pre-Existing Intellectual Property individually and collectively referred to herein as "Third-party Intellectual Property," which shall be the sole property of Contractor or its third-party licensors, as applicable), Contractor hereby grants, on behalf of itself and any third-party licensors, to the State a royalty-free, paid-up, non-exclusive, unrestricted, unconditional, irrevocable, worldwide right and license, with the right to sublicense, to use, execute, reproduce, display, perform, distribute copies of internally, modify and prepare derivative works based upon, such Third-party Intellectual Property as may be necessary for the State to use the Work Product for the purposes for which such Work Product was designed and intended. "Pre-Existing Intellectual Property" means any program, utility or tool owned by Contractor or its third-party licensors that was created by Contractor or its third-party licensors independently from its performance of this Contract and not solely using funds from this Contract.
- 7.5 Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State.
- 7.6 Contractor, on behalf of itself and its Subcontractors, hereby agrees not to incorporate, link, distribute or use any third-party software in such a way that: (a) creates, purports to create or has the potential to create, obligations with respect to any State software (including any deliverable hereunder), including without limitation the distribution or disclosure of any source code; or (b) grants, purports to grant, or has the potential to grant to any third-party any rights to or immunities under any State intellectual property or proprietary rights. Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall incorporate, link, distribute or use, in conjunction with the Work Product, any code or software licensed under the GNU General Public License ("GPL"), Lesser General Public License ("LGPL"), Affero GPL ("AGPL"), European Community Public License ("ECPL"), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause any State software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or any other open source software (or any modifications thereto) to become subject to the terms of the GPL, LGPL, AGPL, ECPL, Mozilla or such other open source license.
- 7.7 Without limiting the generality of the foregoing, neither Contractor nor any of its Subcontractors shall use any software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its Subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third-party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any software or technology shall be construed as being inconsistent with the intent to not cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any Open Source License.

8. Confidentiality

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

9. Loss of Data

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

10. Indemnification

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.
- 10.3 The State 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 performance under this Contract.
- 10.4 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

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

12. Disputes

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

13. Maryland Law

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

14. Nondiscrimination in Employment

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

15. Contingent Fee Prohibition

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

16. Non-availability of Funding

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

incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Cause

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

18. Termination for Convenience

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

19. Delays and Extensions of Time

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

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

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

The Contractor shall comply with Md. Code Ann., Election Law Article, §§ 14-101 through 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more for the life of the contract, shall, file with the State Board of Elections a statement disclosing contributions of \$500 or more made during the reporting period to an office holder or a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (a) at the time of award by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (b) twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

24. Documents Retention and Inspection Clause

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

25. Compliance with Laws

The Contractor hereby represents and warrants that:

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

26. Cost and Price Certification

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

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

27. Subcontracting; Assignment

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

28. Liability

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

- a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
- b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

29. Parent Company Guarantee (If Applicable)

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

30. Commercial Nondiscrimination

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

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

31. Prompt Pay Requirements

- 31.1 If the 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:
- a. Not process further payments to the contractor until payment to the subcontractor is verified;
 - b. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - c. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - d. Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - e. Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- a. Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - b. An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Agency, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- a. Affect the rights of the contracting parties under any other provision of law;
 - b. Be used as evidence on the merits of a dispute between the Agency and the contractor in any other proceeding; or
 - c. Result in liability against or prejudice the rights of the Agency.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise (MBE) program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Agency may, consistent with COMAR 21.11.03.13, take the following measures:
- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - b. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;

- ii. Inspecting the jobsite; and
- iii. Interviewing subcontractors and workers.
- iv. Verification shall include a review of:
 - (a) The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- c. If the Agency determines that the Contractor is not in compliance 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.
- d. If the Agency determines that the 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:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- e. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Contract Manager and Procurement Officer

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

33. 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: Whitney Faust
Procurement Officer
151 West St. Suite 200
Annapolis, MD 21401

If to the Contractor: _____

34. Miscellaneous

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

35. Living Wage

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

36. Liquidated Damages

- 36.1 General - It is agreed by the Agency and Contractor that:

- a. If the Contractor does not provide or perform the requirements referred to or listed in this provision, damage to the Agency will result.
- b. Proving such damage will be costly, difficult, and time consuming.
- c. In the event that the Contractor proposes and the Agency accepts Preventative Maintenance services, and Contractor fails to perform any scheduled Preventative Maintenance service within the time period required by the Agency-approved schedule, without the prior written approval, the Agency may impose liquidated damages in the amount of up to Thirty Five Dollars (\$35.00) per VSS Component per day for each day or fraction thereof in excess of the scheduled date that the preventative maintenance is not performed.
- d. Liquidated damages shall become due within thirty (30) calendar days after written notification by the Agency. The Agency may, at its sole discretion, deduct liquidated damages from payments due to the Contractor. The Contractor's surety shall be liable under the Performance Bond for liquidated damages assessed against the Contractor.
- e. Nothing in this provision shall be construed as relieving the Contractor from performing all Contract requirements, whether listed herein or not, nor is the Agency's right to enforce or to seek other remedies from failure to perform any other Contract duty hereby diminished.
- f. Remedies of the Agency specified in this section or elsewhere in the Contract for breach or failure of performance by the Contractor shall in no way limit any other remedies available to the Agency under the Contract; under any statute or regulation; or at law or in equity including, without limitation, all remedies of a buyer under the Uniform Commercial Code. All rights, powers and remedies shall be cumulative and concurrent. Any failure of the Agency to exercise a remedy shall not be a waiver of any breach or non-performance by the Contractor nor shall it prevent the Agency from later exercising that or any other remedy.
- g. The Contract will be used by the Agency to monitor Contractor performance and will provide the basis for determining liquidated damages.

- 36.2 Liquidated Damages Assessment: Collections, Withholds

- a. Once the Agency has determined that liquidated damages are to be assessed, the Agency shall notify the Contractor of the assessment. At the Agency's discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within thirty (30) calendar days of receipt of the assessment notice unless directed otherwise by the Agency. If the Agency determines that any damage was caused in part by the Agency, the Agency may reduce damage assessment against the Contractor proportionately.

- b. Any liquidated damages assessment may also be collected, at the Agency's discretion, by withholding the funds from any payment due the Contractor after the date of assessment.

36.3 Conditions for Termination of Liquidated Damages

As determined appropriate by the Agency, the following are the conditions under which the Contractor may obtain relief from the continued assessment of liquidated damages which have been imposed.

- a. Except as waived by the Agency, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Agency verifying the correction of the condition for which liquidated damages were imposed.
- b. The necessary level of documentation to verify corrections will be determined by the Agency, who is the sole judge of the accuracy of any documentation provided.
- c. The Contractor shall certify that each defect is corrected.

36.4 Severability of Individual Liquidated Damages Clauses

If any portion of any provision on liquidated damages in this Contract is determined to be unenforceable in one or more of its applications, the remaining portion remains in effect in all applications not determined to be invalid that are severable from the invalid applications. If any portion of this liquidated damages provision is determined to be unenforceable in total, the other portions shall remain in full force and effect.

37 End of Contract

Upon the expiration or termination of the Contract, all documents, listings, graphics, data and all other materials developed as a result of the Contract shall be delivered to and become the property of the Agency. In addition, the Contractor shall furnish, within fifteen (15) days after receipt of the Notice of Termination, such reports and projects as may be required, based on work already completed.

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

CONTRACTOR

STATE OF MARYLAND

State Board of Elections

By: _____

By: Linda H. Lamone, State Administrator of
Elections

Date

Date

Witness

Witness

Date

Date

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

Assistant Attorney General

Witness

Date

Date

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

ATTACHMENT B – PROPOSAL AFFIDAVIT

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

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

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

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

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

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

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

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

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

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

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

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

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

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

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

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, 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. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

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

I FURTHER AFFIRM THAT:

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

M. ACKNOWLEDGEMENT

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

of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT C – CONTRACT AFFIDAVIT

A. AUTHORITY

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

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENT SUBJECT MATTER EXPERTS 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 Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

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

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

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

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

(h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;

(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Proposal Affidavit dated _____, 201____, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____

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

_____ (signature of Authorized Representative and Affiant)

ATTACHMENT D – MINORITY BUSINESS ENTERPRISE FORMS

ATTACHMENT D-1A MBE

MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE

INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.
4. Please refer to the MDOT MBE Directory at www.mdot.state.md.us to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit www.naics.com. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm's NAICS Code is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.
5. **NOTE: New Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the MBE participation goal (overall), including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to GOMA's website (www.goma.maryland.gov) for the MBE Prime Regulations Q&A for illustrative examples.

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the contract equal to the distinct, clearly-defined portion of the work of the contract that the certified MBE performs with its own forces toward fulfilling the contract goal, and not more than one of the contract subgoals, if any.
7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.
9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule MUST at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a bidder/offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the bidder/offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (Attachment __-1A) or the bid will be deemed not responsive, or the proposal determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

Subgoals (if applicable)

Total African American MBE Participation:	_____ %
Total Asian American MBE Participation:	_____ %
Total Hispanic American MBE Participation:	_____ %
Total Women-Owned MBE Participation:	_____ %

Overall Goal

Total MBE Participation (include all categories): _____ %

MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE

This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

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

- 1. MBE Participation (PLEASE CHECK ONLY ONE)** [Agency should insert the participation goal and subgoal amounts from the PRG and Subgoal Worksheet in the blanks below and delete any of the subgoals that do not apply to this solicitation and then delete this sentence of instruction.]

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent and all of the following subgoals:

_____ percent for African American-owned MBE firms

_____ percent for Hispanic American-owned MBE firms

_____ percent for Asian American-owned MBE firms

_____ percent for Women-owned MBE firms

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

OR

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

2. Additional MBE Documentation

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

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment __-1C)
- (b) Outreach Efforts Compliance Statement (Attachment __-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments __-3A and 3B);

- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

3. Information Provided to MBE firms

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

4. MBE Participation Schedule

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

Prime Contractor	Project Description	Project/Contract Number

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

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

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

MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification	Percentage of Total Contract to be performed by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification	Percentage of Total Contract to be performed by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification	Percentage of Total Contract to be performed by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____% Description of the Work to be Performed: _____ _____ _____
MBE Firm Name: _____ MBE Certification Number: _____ (If dually certified, check only one box.) ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification	Percentage of Total Contract to be provided by this MBE: _____% Description of the Work to be Performed: _____ _____ _____

Continue on separate page if needed

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

WAIVER GUIDANCE

GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

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

I. Definitions

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

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

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

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

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

II. Types of Actions Agency will Consider

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

A. Identify Bid Items as Work for MBE Firms

1. Identified Items of Work in Procurements

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

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

2. Identified Items of Work by Bidders/Offerors

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

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

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements

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

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

2. MBE Firms Identified by Bidders/Offerors

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

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

C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The bidder/offeror should:
 - (a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;
 - (b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; and
 - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. “All” Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the bidder/offeror provides written solicitations.
3. “Electronic Means” includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
 - (a) by telephone using the contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; or
 - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:
 - (a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
 - (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate With Interested MBE Firms

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

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
 - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

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

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

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

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

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

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

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

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

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

6. The "average of the other subcontractors' quotes received" by the bidder/offeror refers to the average of the quotes received from all subcontractors. Bidder/offeror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.

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

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

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

E. Assisting Interested MBE Firms

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

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

III. Other Considerations

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

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

IV. Documenting Good Faith Efforts

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

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

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

B. Outreach/Solicitation/Negotiation

1. The record of the bidder's/offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment 2).**

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

(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment 1-C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

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

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

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

D. Other Documentation

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

Exhibit A

MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
(Name of Minority firm)
located at _____
(Number) (Street)

(City) (State) (Zip)
was offered an opportunity to bid on Solicitation No. _____
in _____ County by _____
(Name of Prime Contractor's Firm)

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

Signature of Minority Firm's MBE Representative

Title

Date

MDOT Certification #

Telephone #

.....

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

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

Signature of Prime Contractor

Title

Date

ATTACHMENT D-1C MBE

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE __ OF __

Prime Contractor	Project Description	Solicitation Number

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

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

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

PAGE __ OF __

Prime Contractor	Project Description	Solicitation Number

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

Identified Items of Work	Was this work listed in the procurement?	Does bidder/offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why?
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

☐ Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE __ OF __

Prime Contractor	Project Description	Solicitation Number

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

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

☐ Please check if Additional Sheets are attached.

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE __ OF __

Prime Contractor	Project Description	Solicitation Number

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

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

☐ Please check if Additional Sheets are attached.

ATTACHMENT D-2 MBE

OUTREACH EFFORTS COMPLIANCE STATEMENT

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

In conjunction with the bid/proposal submitted in response to Solicitation No. _____, I state the following:

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

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

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

4. Please Check One:

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

5. Please Check One:

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

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

PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT __-1A) WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

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

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

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

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

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

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

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

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

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

MBE PRIME CONTRACTOR

Signature of Representative: _____

Printed Name and Title: _____

Firm's Name: _____

Federal Identification Number: _____

Address: _____

Telephone: _____

Date: _____

ATTACHMENT E – PRE-PROPOSAL CONFERENCE RESPONSE FORM

**Solicitation Number D38B4400019
Voting System Solution**

A Pre-Proposal Conference will be held at 10:00 A.M., on July 31, 2014, at 151 West Street, Suite 200, Annapolis MD. Please return this form by July 28, 2014, advising whether or not you plan to attend.

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

Whitney Faust
SBE
151 West Street, Suite 200, Annapolis MD
E-mail: Whitney.Faust@Maryland.gov
Fax #: 410.974.2019

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 1.7 “Pre-Proposal Conference”):

Signature

Title

Name of Firm (please print)

ATTACHMENT F – FINANCIAL PROPOSAL INSTRUCTIONS

The Agency will utilize one of the two options below to procure VSS Components. Offerors are required to submit Financial Proposals for both Contract Types:

- Lease
- Purchase

Note: One Technical Proposal will be submitted.

All Offerors shall provide an amortization schedule with the Financial Proposal for each VSS Component for the entire Contract Period including Option Periods. The Agency will be reimbursed or credited for the amortized costs of VSS Components exchanged for products with newer technology at any point during the active Contract Period.

In order to assist Offerors in the preparation of their Financial Proposals and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Forms have been prepared. The Financial Proposal Form is available on eMM. This form contains two (2) tabs, one for each Contract Type (Lease and Purchase). Offerors shall submit their Financial Proposals on the Financial Proposal Forms in accordance with the instructions on the Financial Proposal Forms and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

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

- A) Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Price, if appropriate, with **\$0.00**.
- E) The Offeror shall fill in all required blank cells of the Financial Proposal Form, which are shaded yellow.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12, and may cause the Proposal to be rejected.
- H) Offerors must submit pricing for each option period. Any option to renew will be exercised at the sole discretion of the State and will comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices shall be Fully Loaded Prices.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Agency does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.
- L) The Financial Proposal Form is a separate document on the eMM. The Offeror shall submit all pricing information via this form. Complete the Financial Proposal Form as instructed in the Financial Proposal Form. Do not amend, alter or leave blank any items on the Financial Proposal Form. The Offeror must submit pricing for each option period. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

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

the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

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

Maryland Living Wage Requirements Affidavit of Agreement

(submit with Proposal)

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract Is Exempt from the Living Wage Law

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

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

If the Contract Is a Living Wage Contract

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

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

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

- ☐ The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- ☐ The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

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

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

(submit with Proposal)

ATTACHMENT H - FEDERAL FUNDS ATTACHMENT

This solicitation does not include a Federal Funds Attachment.

ATTACHMENT I – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

(submit with Proposal)

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

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

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

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

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

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

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

ATTACHMENT J – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through State Board of Elections (the “Agency”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the solicitation for the Voting System Solution Solicitation # D38B4400019; and

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

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

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor’s Personnel are attached hereto and made a part hereof as ATTACHMENT J-1. Contractor shall update ATTACHMENT J-1 by adding additional names (whether Contractor’s personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or who will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.
5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor’s Personnel or the Contractor’s former

Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).

6. Contractor shall, at its own expense, return to the Agency all copies of the Confidential Information in its care, custody, control or possession upon request of the Agency or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement, in no event less restrictive than as set forth in this Agreement, and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
 - a. This Agreement shall be governed by the laws of the State of Maryland;
 - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
 - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
 - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
 - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;
 - f. The Recitals are not merely prefatory but are an integral part hereof; and
 - g. The effective date of this Agreement shall be the same as the effective date of the Contract entered into by the parties.

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

Contractor: _____

State Board of Elections

By: _____ (SEAL)

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

NON-DISCLOSURE AGREEMENT - ATTACHMENT J-1

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

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

NON-DISCLOSURE AGREEMENT – ATTACHMENT J-2

CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

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

_____, 20____ (“Contractor”) dated _____, 20____ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation.

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

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____
(Signature)

TITLE: _____
(Authorized Representative and Affiant)

ATTACHMENT K – HIPAA BUSINESS ASSOCIATE AGREEMENT

This solicitation does not include a HIPPA Business Associate Agreement

ATTACHMENT L – MERCURY AFFIDAVIT

(submit with Proposal)

AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:

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

MERCURY CONTENT INFORMATION:

☐ The product(s) offered do not contain mercury.

OR

☐ The product(s) offered do contain mercury.

In an attachment to this Mercury Affidavit:

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

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

Print Name: _____
Authorized Representative and Affiant

ATTACHMENT M – VETERAN-OWNED SMALL BUSINESS ENTERPRISE

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

ATTACHMENT N – LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE

(submit with Proposal)

Pursuant to Md. Ann. Code, State Finance and Procurement Article, § 12-111, and in conjunction with the Proposal submitted in response to Solicitation No. _____, the following disclosures are hereby made:

1. At the time of Proposal submission, the Offeror and/or its proposed subcontractors:

____ have plans

____ have **no** plans

to perform any services required under the resulting Contract outside of the United States.

2. If services required under the contract are anticipated to be performed outside the United States by either the Offeror or its proposed subcontractors, the Offeror shall answer the following (attach additional pages if necessary):

a. Location(s) services will be performed:

b. Reasons why it is necessary or advantageous to perform services outside the United States:

The undersigned, being an authorized representative of the Offeror, hereby affirms that the contents of this disclosure are true to the best of my knowledge, information, and belief.

Date: _____

Offeror Name: _____

By: _____

Name: _____

Title: _____

Please be advised that the Agency may contract for services provided outside of the United States if: the services are not available in the United States; the price of services in the United States exceeds by an unreasonable amount the price of services provided outside the United States; or the quality of services in the United States is substantially less than the quality of comparably priced services provided outside the United States.

ATTACHMENT O – DHR HIRING AGREEMENT

This solicitation does not require a DHR Hiring Agreement.

ATTACHMENT P – DELIVERABLE PERFORMANCE ACCEPTANCE FORM

**STATE OF MARYLAND
State Board of Elections**

Deliverable Performance Acceptance Form (DPAF)

Dear *CONTRACT MANAGER*:

The product identified below has been delivered by *Contractor Name* . If acceptable, please sign this form and return to *Contractor Name* (ATTN: First Name, Last Name). Should the product not be acceptable, please provide details in the space provided below and return the form unsigned to the *Contractor Name* Contract Manager (ATTN: Paul Aumayr).

AGENCY NAME: MARYLAND STATE BOARD OF ELECTIONS

PROJECT NAME: Voting System Solution

CONTRACT NUMBER:

PRODUCT DELIVERED:

DELIVERABLE PRICE:

CONTRACTOR PM:

DELIVERY DATE:

DAPF DUE DATE:

ACCEPTANCE SIGNATURE:

SBE Program Manager

Date

Comments:

ATTACHMENT Q – DOCUMENTATION REQUIREMENTS

Document Name	Due days from NTP	No. of Copies		Docs Avail Now? Yes/No/NA	Doc Version and Date	Customizable? Yes/No/NA
		Print	E-Copy			
User's Manual PBS Device	10	25	1			
User's Manual Precinct Ballot Marking Device	10	25	1			
User's Manual Ballot Box	10	25	1			
User's Manual Central Counting Scan Device	10	25	1			
User's Manual Election Management System	10	25	1			
Technical Manual PBS Device	10	2	1			
Technical Manual Precinct Ballot Marking Device	10	2	1			
Technical Manual Ballot Box	10	2	1			
Technical Manual Central Counting Scan Device	10	2	1			
Technical Manual Election Management System	10	2	1			
Preventative Maintenance/Repair Manual PBS Device	30	2	1			
Preventative Maintenance/Repair Manual Precinct BMD	30	2	1			
Preventative Maintenance/Repair Manual Ballot Box	30	2	1			
Preventative Maintenance/Repair Manual HSS Device	30	2	1			
Pollworker User's Guide PBS Device	30	5	1			
Pollworker User's Guide Precinct Ballot Marking Device	30	5	1			
Pollworker User's Guide Ballot Box	30	5	1			
Quick Reference Guide PBS Device	30	5	1			
Quick Reference Guide Precinct Ballot Marking Device	30	5	1			
Quick Reference Guide Ballot Box	30	5	1			

ATTACHMENT R - ESTIMATED DEVICE AMOUNTS

~~This is the estimated device count for SBE.~~

Device	# per Early Voting Site	Est # of Early Voting Sites	# per Election Day Site	Est # of Election Day Sites	LBEs	SBE
Precinct-Based Scanner	2	83	1	1989	216	10
High-Speed Scanners	0	83	0	0	27	1
Ballot Marking Devices	2	83	1	1989	216	5
VS EMS Servers	0	0	0	0	48	2

Refer to Financial Proposal Form for number of units.

ATTACHMENT S – PERFORMANCE BOND

PERFORMANCE BOND

Principal

Business Address of Principal

Surety

Obligee

STATE OF MARYLAND

a corporation of the State of
and authorized to do business in the State of Maryland
Administration.....

By and through the following

Penal Sum of Bond (express in words and figures)
Date of Contract

.....20.....
Description of Contract

Date Bond Executed

.....20.....
Contract Number:

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans,

Specifications, and Special Provisions, or any of them or to any other items incorporated into the contract shall hereinafter be referred to as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extension thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract; unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions contained in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no charge, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

In Presence of: _____

Individual Principal

Witness.....as to
.....(SEAL)

In Presence of: _____

Co-Partnership Principal

.....(SEAL)

(Name of Co-Partnership)

.....as to
By:.....(SEAL)

.....as to
.....(SEAL)

.....as to
.....(SEAL)

Corporate Principal

.....
Attest: (Name of Corporation)
AFFIX

.....as to
By:..... CORPORATE
Corporate Secretary President SEAL

.....
(Surety)
AFFIX
Attest:(SEAL)
By:..... CORPORATE
Signature SEAL
Title:

Bonding Agent's Name:.....
.....

(Business Address of Surety)

Agent's Address.....

Approved as to legal form and sufficiency

this day of 20.....

.....
Asst. Attorney General