

Solicitation #: SRA 25-03



STATE OF MARYLAND

STATE RETIREMENT AGENCY (SRA)

REQUEST FOR PROPOSALS (RFP)

**BOARD COMPENSATION CONSULTING AND EXECUTIVE
SEARCH SERVICES**

RFP NUMBER SRA 25-03

ISSUE DATE: JANUARY 22, 2025

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

MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO RESPOND TO THIS SOLICITATION.

Solicitation #: SRA 25-03

**STATE OF MARYLAND
STATE RETIREMENT AGENCY (SRA)
KEY INFORMATION SUMMARY SHEET**

Request for Proposals	Services-Board Compensation Consulting and Executive Search Services
Solicitation Number:	SRA 25-03
RFP Issue Date:	January 22, 2025
RFP Issuing Office:	State Retirement Agency (SRA)
Procurement Officer:	Jane Noble 120 East Baltimore Street, Baltimore, MD 21202
Email:	jnoble@sra.state.md.us
Phone Number:	410-625-5660
Proposals are to be sent to:	Submit on emma.maryland.gov under Solicitation Number BPM047630 To submit a proposal, offerors must first register on emma.maryland.gov. We recommend registering in advance to become acquainted with the site.
No Bid/Proposal Notice Feedback Form	*If you are not submitting a proposal for this solicitation, please submit Attachment 1 with your reasons why.
Pre-Proposal Conference:	No Pre-Proposal Conference has been scheduled
Questions Due Date and Time:	February 5, 2025, by 5:00pm Local Time
Proposal Due (Closing) Date and Time:	February 13, 2025, by 5:00pm Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid/proposal decision is made (see Attachment 1 - No Bid Notice/Vendor Feedback Form).
MBE OR DBE Subcontracting Goal:	N/A
VSBE Subcontracting Goal:	N/A

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Procurement Method:	A Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.
Multiple or Alternate Bids:	Multiple Proposals will be accepted.
Contract Type:	Executive Search Services: Fixed Percentage of First Year Base Salary Board Compensation Consulting Services: Firm Fixed Price
Contract Duration:	Executive Search: Four (4) year base period with two (2) one-year option periods. Board Compensation Consulting: Four (4) year base period with two (2) one-year option periods.
Primary Place of Performance:	Truist Building, 120 East Baltimore Street, Baltimore, MD 21202
SBR Designation:	No
Federal Funding:	No

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1 Minimum Qualifications

1.1 Offeror Minimum Qualifications

There are no Offeror Minimum Qualifications for this procurement.

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

2.1.1 This Request for Proposals (RFP) is issued to procure the goods or services, as specified in this Section 2, from a contract between the selected offeror(s) and the State of Maryland ("State"). The Maryland State Retirement Agency ("SRA" or the "Agency") is issuing this Request for Proposals (RFP) to obtain board compensation consulting services and executive search services as further described in this RFP.

It is the State's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror(s) and the State.

This solicitation has the potential for two (2) separate contract awards. An Offeror can submit a proposal for either Board Compensation Consulting Services, or Executive Search Services, or both. See RFP **Section 6.5 Selection Procedures** for more contract information.

The purpose of this solicitation is to obtain Board compensation consulting services and executive search services.

- A. The Board compensation consultant will work with the Executive Director to (1) develop and make recommendations to the Board of Trustees for the Maryland State Retirement and Pension System ("Board") to assist the Board in establishing a salary scale and determining the qualifications and compensation for the Chief Investment Officer ("CIO") and all other positions within the Investment Division of the Agency based upon the objective criteria adopted by the Board; (2) review the existing organizational structure and classification system of the Investment Division and make recommendations for improvements to meet the objectives of the Board; (3) conduct a comprehensive compensation study, and recommend annual salary increases for investment staff who are not otherwise eligible for annual increases from the State of Maryland.
- B. The Agency also desires to obtain a single qualified executive search firm to locate, interview, and assist in presenting candidates to serve in senior executive roles of the Agency, including but not limited to senior roles in the Investment Division of the Agency, such as the Chief Investment Officer (CIO), Deputy Chief Investment Officer (DCIO), Managing Directors, Senior Governance Officer, and other senior staff. The firm may also be asked to conduct a search for a Director of Diversity, Equity, and Inclusion for the Agency.

An Offeror proposing to provide board compensation consulting services must meet the requirements applicable to that service requested in the solicitation. An Offeror proposing to provide executive search services must meet the requirements applicable to that service requested in the solicitation.

A Contract award does not ensure a Contractor will receive all, or any, State business under the Contract.

2.2 Background and Purpose

The Maryland State Retirement Agency is the administrator of the Maryland State Retirement and Pension System (System), a multi-employer public employee retirement system. The System was established under Division II of the State Personnel and Pensions Article of the Annotated Code of Maryland (SPP) and Internal Revenue Code Section 401(a) to provide retirement allowances and other benefits to State employees, teachers, and other State and local employees. The Agency has a two-fold mission: (1) to administer benefits of the System's participants and (2) to ensure that sufficient assets are available to fund the benefits when due. This entails:

- 2.2.1 Effectively communicating with all retirement plan participants to inform and educate them about planning and preparing for all aspects of their future retirement;
- 2.2.2 Accurately and timely paying retirement allowances to the System's retirees and their beneficiaries, and refunds to those who withdraw from the plans;
- 2.2.3 Prudently investing System assets in a well-diversified manner to optimize long-term returns while controlling risk; and,
- 2.2.4 Efficiently collecting the required employer and member contributions necessary to fund the System.

The Agency has more than 200 employees based at 120 E. Baltimore Street, Baltimore, Maryland. The value of the assets of the System is approximately \$68 billion as of June 30, 2024, making it one of the larger public retirement funds in the country.

Responsibility for the System's administration and operations is vested in a 15-member Board of Trustees ("Board"). The Executive Director and CIO are appointed by, and serve at the pleasure of, the Board. The Agency includes the following Divisions:

- 2.2.5 Communications Division – In addition to media relations, the Division handles internal communications, and assists in the review and publication of official documents and communications.
- 2.2.6 Finance Division – Under the Division are four main units: Budget, Procurement, and Contracts; Financial Accounting Operations; General Accounting; Records Management. The Division is responsible for monitoring the receipt of employee and employer contributions due from State agencies and universities, local boards of education, and other participating governmental units, in addition to performing more basic Finance functions, such as: accounting; budgeting; procurement; and accounting for fixed assets.
- 2.2.7 Information Systems – The Division designs, maintains, and supports automated management information systems, including the Maryland Pension Administration System which calculates and processes retirement and pension benefits for retirees and beneficiaries, as well as contributions from current members.
- 2.2.8 Investment Division – The Division invests the Pension Trust Fund assets utilizing both internal fund managers and internal investment professional to manage risk and enhance returns on behalf of beneficiaries.
- 2.2.9 Benefits/Retirement Administration – The Division provides retirement counseling, benefits processing, and data control, while also paying benefits to retirees and administering employee contributions.

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Other Agency divisions that contribute management oversight, compliance, and expertise include: Executive; Business Operations, Internal Audit; and Legislative Affairs. The Agency's organizational structure can be viewed at: https://sra.maryland.gov/sites/main/files/file-attachments/org_chart.pdf?1609426604.

The Investment Division is a unit of the Agency, and currently consists of a team of 47, of which 35 are investment professionals. At the direction of the Board, the Investment Division manages the \$68 billion in plan assets. Currently, approximately 85% of plan assets are managed externally, and the remainder are managed directly by staff. The System expects that the portion of assets managed internally will continue to grow over the next several years. More information about the System can be found in its Annual Comprehensive Financial Report on the System's website at <http://www.sra.state.md.us>. More information regarding the CIO and the Investment Division can also be viewed online at <https://law.justia.com/codes/maryland/2022/state-personnel-and-pensions/division-ii/title-21/subtitle-1/section-21-118-1/> and <https://law.justia.com/codes/maryland/2022/state-personnel-and-pensions/division-ii/title-21/subtitle-1/section-21-122/>.

The Board is responsible for determining the qualifications and compensation for the CIO and other positions within the Investment Division, subject to certain statutory requirements set forth in Md. Code Ann., State Personnel and Pensions Article ("SPP"), §§ 21-118.1 and 21-122. Among other requirements, the Board is required to adopt objective criteria for setting the qualifications and compensation of the CIO and staff within the Investment Division, including any financial incentives that the Board may elect to provide. SPP § 21-122(g) established an Objective Criteria Committee ("OCC") to make recommendations to the Board regarding objective criteria for the compensation and financial incentive for the CIO and positions within the Investment Division. The Board retained a consultant to assist the OCC in making its recommendations. Following review and recommendation by the OCC in February 2024, the Board adopted objective criteria for setting the qualifications and compensation (including financial incentives) for the CIO and staff within the Investment Division. Per SPP § 21-122(g), the consultant retained to advise the OCC may not separately provide consulting services for the Board or the staff of the Investment Division.

2.3 Contractor Responsibilities and Tasks

The Offeror must provide a statement that it is not in bankruptcy, conservatorship, receivership, or in the possession of a regulatory agency.

Board Compensation Consulting Responsibilities and Tasks

2.3.1 The Contractor will assist the Board in establishing the qualifications and compensation for the CIO and employees of the Investment Division, in accordance with all statutory requirements and based upon the objective criteria that have been adopted by the Board. Consultant will also provide an analysis of the compensation structure of the Agency with a separate analysis of the Investment Division compared to an appropriate peer set and recommend a position structure and compensation ranges for Investment Division staff to the Board.

- A. For the Investment Division, the Contractor may incorporate data previously obtained by the Agency to provide the Investment Division compensation study. For both the Agency and the Investment Division, the Contractor shall incorporate comparative qualifications, compensation, and financial incentives of employees serving in similar positions and discharging similar duties at comparable public pension funds.

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- B. The Contractor shall apply its established process and criteria in creating a peer group of comparable public pension funds.
 - C. The Contractor shall provide a preliminary written report to the Agency's Executive Director and provide a final written report to the Investment Committee, Administrative Committee, and/or Board with its findings and recommendations.
 - D. During the life of the contract, the Contractor shall recommend annual inflation adjustments to the salary scale for the CIO and staff within the Investment Division.
- 2.3.2 The Contractor shall assist the Executive Director, in consultation with the CIO, in assessing the current Investment Division organizational structure.
- A. The Contractor shall review the current organizational structure, classification system, and job descriptions of all positions in the Investment Division and identify possible ways to improve the sustainability of the unit and mitigate human capital risk issues.
- 2.3.3 The Contractor shall assist the Executive Director in assessing the current non-Investment Division organizational structure.
- A. The Contractor shall review the current organizational structure, classification system, and job descriptions of all positions in the Agency, exclusive of the Investment Division, and identify possible ways to improve the sustainability of the Agency and mitigate human capital risk issues.

Executive Search Services

- 2.3.4 During the duration of the contract, the Contractor shall assist the Search Team, which will consist of the Executive Director of the Agency and the Search Team established for the recruitment, in developing an ideal candidate profile, job description and strategy for carrying out the recruitment process, including outreach to encourage applicants from diverse backgrounds to apply.
- 2.3.5 Throughout the search process the Contractor shall: (a) on a bi-weekly basis provide written progress reports to the Search Team that detail actions taken and whether Contractor is in compliance with the Contractor's Work Plan as described in Section 5.3.2.(F) of this RFP, and hold conference calls with the Search Team, and (b) maintain contact with the Executive Director to report progress and to assure the Agency that work required pursuant to this RFP is progressing in a satisfactory manner and direction.
- 2.3.6 The Contractor shall identify potential contacts and conduct personal outreach recruiting, including posting the position through national channels.
- 2.3.7 The Contractor shall handle all paperwork and record keeping procedures related to the executive search described in this RFP, including directly receiving and processing candidate applications, resumes, nominations, and other search related paperwork.
- 2.3.8 With the approval of the Contract Monitor, the Contractor shall prepare and place advertisements for the position in appropriate public/private pension, financial management, and related publications, websites such as Indeed.com, or similar websites and other sources identified by the Contractor. All advertisements must include a statement that "The Maryland State Retirement Agency is an Equal Opportunity Employer."

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- 2.3.9 The Contractor shall provide procedures, which must be pre-approved by the Contract Monitor, for conducting semi-finalist interviews and review resumes for background, credentials, and experience and follow-up with telephone interviews to clarify each candidate's experience. After the resumes are reviewed and the telephone interviews are completed, the Contractor shall prepare a written summary of not more than fifteen of the most professionally attractive candidates to submit to the Contract Monitor.
- 2.3.10 For each search, the Contractor shall evaluate the five "finalist" candidates that the Search Team has chosen by: (a) conducting face-to-face personal interviews; (b) conducting in-depth background checks including, without limitation, verification of education credentials, facts, figures and performance data provided by the candidate, and a National Crime Investigative Center (NCIC) and local background check; and, (c) assessing the candidate's overall investment and management ability through at least two initial professional reference checks with individuals who are or have been in a position to evaluate the candidate's performance on the job. Through these interviews and reference checks, the Contractor shall ascertain and report to the Search Team the candidate's strengths relative to the ideal candidate profile prepared by the Offeror in consultation with the Contract Monitor.
- 2.3.11 The Contractor shall use a process approved by the Contract Monitor to schedule interviews with the Search Team and the five "finalist" candidates.
- 2.3.12 The Contractor shall prepare and provide report summaries on the five "finalist" candidates, in a confidential manner, to the Contract Monitor and the Search Team. Such summaries must include an evaluation of candidate credentials, interview feedback, background checks and other relevant information.
- 2.3.13 The Contractor shall be available for consultation and direction throughout entire confirmation process.
- 2.3.14 The Contractor shall notify rejected applicants in writing by mailing a rejection letter to each rejected applicant.
- 2.3.15 The Contractor shall perform an additional one-time search for a replacement candidate (the "Supplemental Search"), if, for any reason, the original candidate proposed by the Offeror and engaged by the Agency or the Board, leaves the employment of the Agency within one year after the candidate's start date with the Agency. No additional compensation will be payable to the Contractor for the performance of the Supplemental Search.

2.4 Experience and Personnel

2.4.1 Preferred Offeror Experience

The following experience is expected with respect to the Board Compensation Consulting Services and will be evaluated as part of the Technical Proposal:

- A. It is preferred that the Board Compensation Consulting Services Offeror have at least five years of experience in collecting and maintaining data relating to the qualifications, compensation, and financial incentives of investment employees serving in similar positions and discharging similar duties at comparable public pension funds, financial services and/or investment firms.

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- B. It is preferred that the Board Compensation Consulting Services Offeror have at least five years of experience in developing objective benchmarks of investment performance to be met or exceeded by an individual to be eligible for financial incentives.
- C. It is preferred that the Board Compensation Consulting Services Offeror have at least five years of experience in assessing best practices in organizational structures, classification systems, job descriptions, and performance evaluation processes of comparable investment and/or financial service divisions.
- D. It is preferred that the Board Compensation Consulting Services Offeror have performed compensation consulting services similar to the scope of services in this RFP for at least three different clients in the last eight years.

The following experience is expected with respect to the Executive Search Services and will be evaluated as part of the Technical Proposal:

- A. The Agency prefers an Executive Search Offeror to be a national or regional professional executive search firm that specializes in, or has at least five recent years' experience in, recruiting investment professionals for public retirement systems, private pension plans, endowments, foundations, investment management firms or financial services firms as further described in Section 2, Scope of Work, of this RFP. The Offeror shall provide a minimum of three references from organizations for whom the Offeror has provided within the last eight years similar executive search services as required by this RFP, including contact names, addresses, telephone numbers, and valid email addresses.
- B. It is preferred that the Executive Search Offeror successfully concluded executive search services for Chief Investment Officers, or other senior leadership positions, for at least three public retirement systems, private pension plans, endowments, foundations, investment management firms or financial services firms.
- C. It is preferred that the Executive Search Offeror assign at least one (1) executive search professional to this Contract who has a minimum of eight (8) recent years of experience as an executive search professional. The Offeror shall submit resumes for each executive search professional that it will assign to the Contract.

2.4.2 Personnel Experience

The following experience is expected with respect to Board Compensation Consulting Services and will be evaluated as part of the Technical Proposal:

- A. It is preferred that the Board Compensation Consulting Offeror provide a minimum of three references from comparable organizations/funds for whom the Offeror has provided within the last eight years compensation consulting services similar to the scope of services in this RFP.
- B. It is preferred that the assigned personnel possess at least five years of experience in evaluating the qualifications, compensation, and financial incentives of investment employees serving in similar positions and discharging similar duties at comparable public pension funds, investment firm or financial services firm.

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- C. It is preferred that the assigned personnel possess at least five years of experience in assessing best practices in organizational structures, classification systems, job descriptions, and performance evaluation processes of comparable investment or financial service divisions.

2.5 Substitution of Personnel

2.5.1 Continuous Performance of Key Personnel

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

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

2.5.2 Definitions

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

- A. **Extraordinary Personal Event** - means leave under the Family Medical Leave Act; an incapacitating injury or illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
- B. **Incapacitating** - means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual's position in the RFP or the Contractor's Technical Proposal.

2.5.3 Contractor Personnel General Substitution Provisions

The following provisions apply to the circumstances of Contractor Personnel substitution described in **Section 2.5.4**.

- A. The Contractor shall demonstrate to the Contract Monitor's satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- B. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
 - 1. A detailed explanation of the reason(s) for the substitution request;
 - 2. The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
 - 3. The official resume of the current personnel for comparison purposes; and
 - 4. Evidence of any required credentials.

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- C. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

2.5.4 Replacement Circumstances

A. Directed Personnel Replacement

1. The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, State Retirement Agency policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 2.5.4.A.2.
2. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five days, or in the timeframe set forth by the Contract Monitor in writing.
3. Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
4. Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
5. If the Contract Monitor determines to direct substitution under 2.5.4.A.1, if at all possible, at least fifteen (days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary, and in the State's best interests, to remove the Contractor Personnel with less than fifteen days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen days, including immediate removal.
6. In circumstances of directed removal, the Contractor shall, in accordance with paragraph 2.5.4.A.1 of this section, provide a suitable replacement for approval within fifteen days of the notification of the need for removal, or the actual removal, whichever occurs first.

B. Key Personnel Replacement

1. To replace any Key Personnel in a circumstance other than as described in **2.5.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 2.5.3** to the Contract Monitor at least fifteen days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

C. Key Personnel Replacement Due to Sudden Vacancy

1. The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 2.5.4.B.1**.
2. Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 2.5.3** within fifteen 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.

D. Key Personnel Replacement Due to an Indeterminate Absence

1. If any Key Personnel has been absent from his/her job for a period of ten days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under **Section 2.5.3**.
2. However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

2.5.5 Substitution Prior to and Within 30 Days After Contract Execution

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

3 Standard Terms and Conditions

3.1 Contract Initiation Requirements

Once all approvals have been obtained and the Contract is fully executed, the Procurement Officer may schedule a kickoff meeting to be held prior to commencement of Contract performance.

3.2 End of Contract Transition

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

3.3 Invoicing

Submission of an invoice constitutes the Contractor's verification that the information in the invoice is accurate as of the time of submission.

An invoice not satisfying the requirements of a Proper Invoice (as defined in COMAR 21.06.09) will not be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:

- A. Contractor name and address;
- B. Remittance address;
- C. Federal taxpayer identification (FEIN) number, social security number, as appropriate;
- D. Invoice period (i.e. time period during which services covered by invoice were performed);
- E. Invoice date;
- F. Invoice number;
- G. State assigned Contract number;
- H. State assigned (Blanket) Purchase Order number(s);
- I. Goods or services provided;
- J. Amount due; and
- K. Any additional documentation required by regulation or the Contract.

Invoices that contain both fixed price and labor hour or time and material items shall clearly identify each item as either fixed price, and labor hour, or time and material billing.

The State reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide all required deliverables within the time frame specified in the Contract or otherwise fails to satisfy the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes, and transportation taxes. The Contractor, however, is not exempt from such sales and use taxes and may be liable for the same.

Invoices for final payment shall be clearly marked as "FINAL" and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

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3.3.1 Invoice Submission Schedule

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

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

3.3.2 Travel Reimbursement

- A. There shall be no reimbursement for Routine Travel. Contractor shall not be reimbursed for Non-Routine Travel without prior Contract Monitor approval.
- B. Routine Travel is defined as travel within a 50-mile radius of the State Retirement Agency’s base location, as identified herein the RFP, or the Contractor’s facility, whichever is closer to the consulting or work site. There will be no payment for labor hours for travel time or reimbursement for any travel expenses for work performed within these radiuses or at the Contractor’s facility.
- C. Non-routine Travel is defined as travel beyond the 50-mile radius of the State Retirement’s base location, as identified herein the RFP, or the Contractor’s facility, whichever is closer to the consulting or work site. Non-routine travel will be reimbursed according to the State’s travel regulations and reimbursement rates, which can be found at: www.DBM.maryland.gov - search: Fleet Management. If Non-Routine travel is conducted by automobile, the first 50 miles of such travel will be treated as Routine Travel and will not be reimbursed. The Contractor may bill for labor hours expended in non-routine traveling beyond the identified 50-mile radius, only if so specified in the RFP or Work Order.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

Inapplicable because there is no MBE goal for this RFP.

3.4.2 Liquidated Damages other than MBE

This section is inapplicable to this RFP.

3.5 Problem Escalation Procedure

No later than ten Business Days after notice of recommended award or after the date of the Notice to Proceed, whichever is earlier, the Contractor must provide, and thereafter, 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 and must include:

- A. Contact information;
- B. The process for establishing the existence of a problem;
- C. Names, titles, and contact information for progressively higher levels of personnel in the Contractor’s organization who would become involved in resolving a problem;
- D. For each individual listed in the Contractor’s PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor’s PEP;

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- E. Expedited escalation procedures and any circumstances that would trigger expediting them;
- F. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the Agency;
- G. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
- H. A process for updating and notifying the Contract Monitor of any changes to the PEP.
- I. The PEP must be updated within ten Business Days after any change in circumstance which changes the PEP but not less than annually within ten Business Days after the start of each Contract year.

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

3.6 Work Orders

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3.7 Payments by Electronic Funds Transfer

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

Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf

3.8 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, **Section 31** "Prompt Pay Requirements" (see **Exhibit 2 - Sample Contract**). Additional information is available on GOSBA's website at:

<http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>

3.9 Federal Funding Acknowledgement

This Contract does not contain federal funds.

3.10 Conflict of Interest Affidavit and Disclosure

The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment I**) and submit it with its Proposal.

By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.

Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Bid in violation of this provision shall be classified as “not responsible.”

3.11 Non-Disclosure Agreement

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

3.12 Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All Bidders should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations website for Maryland Healthy Working Families Act Information: <https://dllr.state.md.us/paidleave/>.

3.13 The State of Maryland’s Commitment to Purchasing Environmentally Preferred Products and Services (EPPs)

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

3.14 Insurance Requirements

Insurance Requirements are not applicable to this proposal.

3.15 Non-Compete Clause Prohibition

The State of Maryland seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements of **Section 2.4 Experience and Personnel** working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.

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4 Proposal Submission Information and Instructions

4.1 eMaryland Marketplace Advantage (eMMA)

eMMA is the electronic commerce system for the State of Maryland. The RFP, Pre-Proposal Conference (Conference) summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.

To receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to emma.maryland.gov, click on "New Vendor? Register Now" to begin the process, and then follow the prompts.

4.2 Electronic Means

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

- A. Submission of Bond documents determined by the State to require original signatures; or
- B. 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.

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

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

4.3 Pre-Proposal Conference

If a Conference will be held, the date, time, and location is indicated on the **Key Information Summary Sheet**. Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE participating goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.

It is highly recommended that all Prime Contractors bring their intended subcontractors to the Conference/Site Visit to ensure that all parties understand the RFP requirements and the socio-economic goals for this solicitation.

MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.

In order to assure adequate accommodations at the Conference, please email the completed **Attachment 2** for those expected to attend the Conference to the Procurement Officer no later than the time and date indicated on the **Key Information Summary Sheet**. In addition, if there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five Business Days prior to the Conference date. Reasonable effort will be made to provide such special accommodation.

4.4 Questions

All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title for this RFP, must be submitted in writing via e-mail or eMMA to the Procurement Officer no later than the date and time specified in the **Key Information Summary Sheet**. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.

4.4.1 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments and posted on eMMA.

4.4.2 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the State unless it issues an amendment to the solicitation in writing.

4.5 Proposal Due (Closing) Date and Time

Proposals must be received by the Procurement Officer no later than the Proposal due date and time indicated on the **Key Information Summary Sheet** to be considered. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after that date will not be considered. Requests for extension of this date or time shall not be granted.

For Proposals accepted via email, the time stamp to indicate receipt of the Proposal by the State, is the posted date and time in the Procurement Officer's email inbox.

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

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

Potential Offerors not responding to this solicitation are requested to submit the "No Bid/Proposal Notice/Vendor Feedback" form **Attachment 1**, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

4.6 Economy of Preparation

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

4.7 Public Information Act Notice

The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP **Section 5.3.2. Table A, Tab B** "Claim of Confidentiality"). This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

4.8 Oral Presentation

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

4.9 Duration of Proposals

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.10 Revisions to the RFP

- 4.10.1 All revisions to the RFP before the due date for Proposals will be published in an addendum to the RFP and posted on eMMA and reasonable effort will be made to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It is the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.
- 4.10.2 Offerors shall acknowledge receipt of all addenda to this RFP issued before the Proposal due date in the Transmittal Letter accompanying the Offeror's Technical Proposal.
- 4.10.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4.10.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.
- 4.10.5 Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

4.11 Cancellations

- 4.11.1 This RFP may be cancelled as provided in COMAR 21.06.02.02.
- 4.11.2 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.
- 4.11.3 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.11.4 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.11.5 If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be canceled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

4.12 Incurred Expenses

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

4.13 Protest/Disputes

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

4.14 Offeror Responsibilities

- 4.14.1 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work. Offerors must be able to provide all goods and services and meet all of the requirements requested.
- 4.14.2 If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified using Attachment D or Attachment E as appropriate. Guidance for completing the Attachments is provided in the appropriate Appendix or Appendices to this RFP (see “Appendix 4 - MBE Participation Goal” and “Appendix 5 - VSBE Participation Goal”).
- 4.14.3 If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror’s Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.14.4 A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror’s experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent’s participation as determined by the State.

4.15 Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Exhibit 2 – Sample Contract**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror’s Proposal. The State reserves the right to accept or reject any exceptions.**

4.16 Compliance with Laws/Arrearages

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

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

4.17 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 123 Market Place Baltimore, MD 21202. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

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

4.18 False Statements

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

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.

A person may not aid or conspire with another person to commit an act under this section.

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

5 Proposal Submission Information and Instructions

5.1 Two Part Submission

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

- A. Volume I – Technical Proposal
 - i. Technical Proposal shall be submitted by the due date and time stated on the Key Information Summary Sheet, page 2 of the RFP.
- B. Volume II – Financial Proposal
 - i. Financial Proposal shall be submitted by the due date and time stated on the Key Information Summary Sheet, page 2 of the RFP.

5.2 Proposal Delivery and Packaging

- 5.2.1 Proposals delivered by courier, postal service, facsimile, or email shall not be considered.
- 5.2.2 Pricing information shall not be included in the Technical Proposal. Pricing information shall not be included on the media submitted in the Technical Proposal.
- 5.2.3 Proposals shall only be accepted via the State’s internet-based electronic procurement system, eMMA.
- 5.2.4 The Procurement Officer must receive all electronic Proposal materials by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.
- 5.2.5 Offerors shall provide their Proposals in two separate envelopes through eMMA following the Quick Reference Guides (QRG) labeled “5 - eMMA QRG Responding to Solicitations (RFP)” for double envelope submissions.
- 5.2.6 Two Part (Double Envelope) Submission:
 - A. Technical Proposal consisting of:
 - 1. Technical Proposal in searchable Adobe PDF format, and
 - 2. a second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see **Section 4.7**), and
 - B. Financial Proposal consisting of:
 - 1. Financial Proposals for Compensation Consulting and all supporting material shall be submitted in ”xlsx” format,
 - 2. Financial Proposals for Executive Search and all supporting material shall be submitted in ”docx” format,
 - 3. Financial Proposal in searchable Adobe PDF format,
 - 4. a second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see **Section 4.7**).

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5.3 Volume I - Technical Proposal

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

- 5.3.1 In addition to the instructions below, responses in the Offeror's Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., "Section 2.2.1 Response . . . ; "Section 2.2.2 Response . . ."). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").
- 5.3.2 Attachments, Documents, and Information Required with the Technical Proposal (Table A)
- 5.3.3 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:

Attachments A through E = Proposal will be rejected if the required Attachment is not submitted or is inaccurate or incomplete.

Attachments F through R = Proposal may be rejected if the required Attachment is not submitted or is inaccurate or incomplete.

TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Tab A		<p>Title Page and Table of Contents</p> <p>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.</p>
Tab B		<p>Claim of Confidentiality (If Applicable)</p> <p>Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 4.7 "Public Information Act Notice"). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included. Otherwise, note under TAB B - "Not applicable".</p>

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TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Tab C	F	<p>Bidder/Offeror Information Sheet</p> <p>https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-F.-Bidder-Offeror-Information-Sheet.pdf</p>
Tab D		<p>Executive Summary & Acknowledgement of all addenda to this RFP.</p> <p>The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.</p> <p>In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see Section 4.16 “Offeror Responsibilities”).</p> <p>The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Exhibit 2), or any other exhibits, appendices, supplementals, or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. Exceptions to terms and conditions, including requirements, may result in having the Proposal determined to be unacceptable or classified as not reasonably susceptible of being selected for award or the Offeror determined to be not responsible.</p>
Tab E		<p>Minimum Qualifications</p> <p>The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP Section 1. If references are required in RFP Section 1, those references shall be included in Attachment L.</p>
Tab F		<p>Offeror Technical Response to RFP Requirements and Proposed Work Plan</p>

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TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		<p>The Offeror shall address each RFP requirement (RFP Section 2) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in Section 2 in order and shall contain a cross reference to the requirement.</p>
		<p>The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP Section 2, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.</p>
		<p>Implementation Schedule - Offeror shall provide the proposed implementation schedule with its Proposal.</p>
		<p>The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in Section 3.5.</p>
		<p>Non-Compete Clause Prohibition – To evidence compliance with the non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and</p>

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TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		<p>agents shall not be restricted from working with or for any successor contractor that is awarded the State business.</p> <p>Other information as requested for Tab F in the Supplemental.</p>
<p>Tab G</p>		<p>Experience and Qualifications of Proposed Staff</p> <p>The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Experience criteria in Section 2.4. Specifically, the Offeror shall:</p>
		<p>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.</p>
		<p>Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.</p>
		<p>Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). If proposed personnel are included, offerors should be aware of restrictions on substitution of Key Personnel prior to RFP award (see Substitution Prior to and Within 30 Days After Contract Execution in Section 2.5.5).</p>
		<p>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.</p>

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TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
		If proposing differing personnel work hours than identified in the RFP, describe how and why it proposes differing personnel work hours.
Tab H		<p style="text-align: center;">Offeror Qualifications and Capabilities</p> <p>The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in Section 2.4.1. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:</p> <ul style="list-style-type: none"> • The number of years the Offeror has provided the similar goods and services; • The number of clients/customers and geographic locations that the Offeror currently serves; • The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under the Contract; • The Offeror's process for resolving billing errors; and • An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.
Tab I	L	<p style="text-align: center;">Reference Checks</p> <p style="text-align: center;">(Each reference shall be from a customer for whom the Bidder has provided goods or services within the past eight years.)</p>
Tab J	M	List of Current or Prior State Contracts

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TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Tab K		<p>Financial Capability. (Submit under TAB K) The Offeror must include in its Bid a commonly-accepted method to prove its fiscal integrity.</p> <p>If available, the Bidder <u>shall include</u> Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).</p> <p>In addition, the Bidder may supplement its response to this Section by including one or more of the following with its response:</p> <ul style="list-style-type: none"> • Dun & Bradstreet Number and Rating; • Standard and Poor's Rating; • Lines of credit; • Evidence of a successful financial track record; and • Evidence of adequate working capital.
Tab L		Not Applicable
Tab M	P	<p style="text-align: center;"><u>Prime Contractor List of ALL Subcontractors Anticipated/Used During Contract</u></p> <p>The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.</p>

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TABLE A - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Tab N	N	<p style="text-align: center;">Legal Action Summary</p> <p>This summary shall include:</p> <ul style="list-style-type: none"> • A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action; • A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years; • A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and <p>In instances where litigation is ongoing and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.</p>
Tab O		<p style="text-align: center;">Economic Benefit Factors</p> <ul style="list-style-type: none"> • If Section 6.2.4 Economic Benefit to State of Maryland are required as an evaluation criterion, see Appendix 8 for guidance.

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<p>Tab P</p>	<p>A</p>	<p>Bid/Proposal Affidavit A Bid submitted by the Bidder must be accompanied by a completed Bid/Proposal Affidavit. https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-A.-Bid-Proposal-Affidavit.pdf</p>
	<p>C</p>	<p>Not Applicable</p>
	<p>D</p>	<p>Not Applicable</p>
	<p>E</p>	<p>Not Applicable</p>

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Tab Q	G	Not Applicable
	H	Not Applicable
Tab Q	I	<p>Conflict of Interest Affidavit and Disclosure</p> <p>https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-I.-Conflict-of-Interest-Affidavit.pdf</p> <p><i>Note: If this solicitation will result in the “selection of a contractor who will assist a unit in the formation, evaluation, selection, award, or execution of another State contract” the Bidder shall provide this Affidavit and other times as requested by the Procurement Officer.</i></p>
	J	Not Applicable
	K	Not Applicable
	O	Not Applicable
	Q	Not Applicable
	R	Not Applicable

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5.4 Volume II – Financial Proposal

TABLE A (Continued) - Attachments and Documents Required with the Proposal

Proposal TAB	Attachment #	Attachment Name / Tab Section and Description
Financial Proposal submitted separately from Technical Proposal	B	<p>The Price Form (as specified within eMMA)</p> <p><u>Do not alter this Price Form</u> or leave blank any items on the Price Form or include additional clarifying or contingent language on or attached to the Price Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the State.</p> <p>The Price Form must be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Price Form.</p> <p>(See Appendix 2 for specific Price Form Instructions.)</p>

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6 Evaluation and Selection Process

6.1 Evaluation Committee

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

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

6.2 Technical Proposal Evaluation Criteria

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

6.2.1 Offeror's Technical Response to Requirements and Work Plan

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

6.2.2 Experience and Qualifications of Proposed Staff

6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors

6.2.4 Economic Benefit to State of Maryland (See Appendix 8. Economic Benefit Factors)

6.3 Financial Proposal Evaluation Criteria

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

6.4 Reciprocal Preference

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

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
- C. The other state gives a preference to its resident businesses through law, policy, or practice; and
- D. The preference does not conflict with a federal law or grant affecting the procurement Contract.

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

6.5 Selection Procedures

6.5.1 General

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

6.5.2 Selection Process Sequence

- C. A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (Attachment E-1) is included and is properly completed, if there is a VSBE goal.
- D. 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.
- E. 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.
- F. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- G. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. **Offerors may only perform limited substitutions of proposed personnel as allowed in Section 2.5 (Substitution of Personnel).**

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6.5.3 Award Determination

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

6.6 Documents Required upon Notice of Recommendation for Contract Award RFP Attachments (Table B)

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in **TABLE B - Documents Required upon Notice of Recommendation for Contract Award** below.

TABLE B - Documents Required upon Notice of Recommendation for Contract Award	
Attachment	Attachment Name
D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B Not Applicable
E	VSBE Forms E-1B, E-2, E-3 Not Applicable
S	Non-Disclosure Agreement (Contractor) https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-S.-Non-Disclosure-Agreement-Contractor.pdf
T	HIPAA Business Associate Agreement Not Applicable
U	Contract Affidavit https://procurement.maryland.gov/wp-content/uploads/sites/12/2024/07/Attachment-U.-Contract-Affidavit.pdf

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V	DHS Hiring Agreement Not Applicable
W	Performance Bond Not Applicable
X	Payment Bond Not Applicable
Y	Date Use Agreement Not Applicable

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7 RFP Appendices and Exhibits

The Appendices and Exhibits listed below in Tables C and D are reference documents needed to assist the offerors in preparing their proposals in response to this solicitation. If a specific Appendix or Exhibit is not required for this solicitation, it is listed in the tables as “Not applicable” or “N/A”.

7.1 Appendices (Table C)

TABLE C - APPENDICES	
Appendix #	Appendix Name
1	Abbreviations and Definitions
2	Price Form Instructions
3	N/A
4	N/A
5	N/A
6	N/A
7	N/A
8	N/A

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7.2 Exhibits (Table D)

TABLE D - Exhibits	
Exhibit #	Exhibit Name
1	N/A
2	Sample Contract
3	N/A

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Exhibit 2. Sample Contract

THIS CONTRACT (the “Contract”) is made by and between _____ (the “Contractor”) whose principal business address is _____ and whose principal office in Maryland is _____, whose Federal Employer Identification Number or Social Security Number is _____, and whose eMaryland Marketplace Advantage vendor ID number is _____ **and Parental Guarantor, if applicable**] and the STATE OF MARYLAND, acting through the MARYLAND STATE RETIREMENT AGENCY (“SRA” or the “Agency”) as of the date as executed by the State below.

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

1. Definitions

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

- 1.1 “Bid” means the Contractor’s Bid dated _____.
- 1.2 “IFB” means the Invitation for Bids for Board Compensation Consulting and Executive Search Services, Solicitation # SRA 25-03, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.3 “COMAR” means Code of Maryland Regulations.
- 1.4 “Contractor” means the entity first named above whose principal business address is _____ and whose principal office in Maryland is _____, whose Federal Employer Identification Number or Social Security Number is _____, and whose eMaryland Marketplace Advantage vendor ID number is _____.
- 1.5 “Financial Proposal” means the Contractor’s **[pick one: Financial Proposal or Best and Final Offer (BAFO)]** dated _____.
- 1.6 “RFP” means the Request for Proposals for Board Compensation Consulting and Executive Search Services, Solicitation # SRA 25-03, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.7 “State” means the State of Maryland.
- 1.8 “Technical Proposal” means the Contractor’s Technical Proposal dated _____, as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

2. Scope of Contract

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

Exhibit A – The IFB/RFP, including all applicable appendices and supplementals.

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[[If the procurement has components of information technology within a services contract, the Procurement Officer should determine which supplemental contains the overriding requirements and list the supplementals in the order of hierarchy below. For other supplementals, delete these bullets.]]

If more than one supplemental applies to this contract, they are considered in the following order:

Exhibit B – The Contract Affidavit, executed by the Contractor and dated _____.

Exhibit C – The Bid/The Technical Proposal

Exhibit D – The Financial Proposal

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

2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

3.1 The term of this Contract begins on the date the Contract is signed by the Agency following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until _____ ("Initial Term").

3.2 In its sole discretion, the Agency shall have the unilateral right to extend the Contract for two (2), successive years – with two (2) one-year renewal options (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).

3.3 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.

3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

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

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 in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

For Board Compensation Consulting Services: The total payment under the fixed price Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

For Executive Search Services: The total payment shall be calculated as a percentage of the first year base salary, as submitted by the Contractor in its Financial Proposal.

4.2 The Contractor shall e-mail the original of each invoice and signed authorization to invoice to the Contract Monitor and Martin Noven at e-mail address: mnoven@sra.state.md.us. Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 37 days after the Agency's receipt of a proper invoice from the Contractor as required by IFB section 3.3.

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

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

The State is not liable for interest:

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

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

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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.

5. Rights to Records

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

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

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

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

5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

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

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6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Agency or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

7. Patents, Copyrights, and Intellectual Property

7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.

7.2 Except for (1) information created or otherwise owned by the Agency or licensed by the Agency from third parties, including all information provided by the Agency to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Agency will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.

7.4 Without limiting Contractor’s obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.

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7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.

7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

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

7.8 The Contractor shall not affix (or permit any third party to affix), without the Agency's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Agency shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract.

8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this

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Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

9. Information Technology

9.1 Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.marvland.gov - keyword: Security Policy.

9.2 The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

The Contractor shall:

9.3 Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information;

9.4 Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and

9.5 The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State, and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at:

<https://doit.maryland.2:ov/policies/Pa2:es/default.aspx>

10. Security Incident Response

10.1 The Contractor shall notify the State Retirement Agency in accordance with Section 3.6.8 when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:

- A) notify the State Retirement Agency within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or the electronic correspondence to the Contract Monitor, State Retirement Agency chief information officer and State Retirement Agency chief information chief security
- B) notify the State Retirement Agency within two (2) hours if there is a threat Contractor's Solution as it pertains to the use, disclosure, and security of State data; and
- C) provide after written Contractor's notice to the discovery State of Retirement unauthorized Agency use or within disclosure one (1) of State Business data and thereafter all information the State (or State Retirement Agency) requests concerning such unauthorized use or disclosure.

10.2 Contractor's notice shall identify:

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- A) the nature of the unauthorized use or disclosure;
 - B) the State data used or disclosed,
 - C) who made the unauthorized use or received the unauthorized disclosure;
 - D) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
 - E) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
 - F) The Contractor shall provide such other information, including a written report, as reasonably requested by the State.
- 10.3. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law, or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law, or contained in the Contract.
- 10.4. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the State (or State Retirement Agency) and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

11. Data Breach Responsibilities

- 11.1 If the Breach Contractor Responsibilities reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
- A) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
 - B) Cooperate with the State to investigate and resolve the data breach;
 - C) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
 - D) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- 11.2 If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.

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12. Loss of Data

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

13. Indemnification and Notification of Legal Requests

13.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.

13.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.

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

14. Non-Hiring of Employees

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

15. 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

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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.

16. Maryland Law Prevails

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

16.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.

16.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

17. Nondiscrimination in Employment

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

18. Contingent Fee Prohibition

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

19. Non-Availability of Funding

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

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as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

20. Termination for Default

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

21. Termination for Convenience

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

22. Delays and Extensions of Time

22.1 Time is an essential element of the Contract.

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

22.3 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.

23. 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.

24. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland

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Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

25. Financial Disclosure

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

26. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period.

The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

27. Retention of Records

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

28. Right to Audit

28.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.

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28.2 Upon three Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Agency may conduct these audits with any or all of its own internal resources or by securing the services of a third-party accounting or audit firm, solely at the Agency's election. The Agency may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

28.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the Agency has the right to audit such subcontractor(s).

29. Compliance with Laws

29.1 The Contractor hereby represents and warrants that:

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

30. Cost and Price Certification

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

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

31. Subcontracting; Assignment

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

32. Limitations of Liability

32.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:

- a. For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 “Patents, Copyrights, Intellectual Property”** of this Contract;
- b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- c. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor’s liability shall be unlimited.

32.2 Contractor’s indemnification obligations for Third party claims arising under Section 10 (“Indemnification”) of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor’s indemnification 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.

32.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors are agents of Contractor and Contractor is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

33. Commercial Nondiscrimination

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

33.2 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate

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in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

33.3 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Agency, in all subcontracts.

34. Prompt Pay Requirements

34.1 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 to the Contractor;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

34.2 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.

34.3 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 **section 31**, may not:

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

34.4 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 MBE program.

34.5 To ensure compliance with certified MBE subcontracting 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. This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;

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- ii. Inspecting the jobsite; and
- iii. Interviewing subcontractors and workers.

Verification shall include a review of:

- i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
 - ii. 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.
- (b) 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.
- (c) 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.
- (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

35. Living Wage

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

36. Use of Estimated Quantities

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

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37. Risk of Loss; Transfer of Title

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

38. Effect of Contractor Bankruptcy

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

39. Miscellaneous

39.1 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.

39.2 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.

39.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.

36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

40. Contract Monitor and Procurement Officer

40.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The Agency may change the Contract Monitor at any time by written notice to the Contractor.

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40.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Agency may change the Procurement Officer at any time by written notice to the Contractor.

41. 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:

Martin Noven

120 East Baltimore Street, 16FL Baltimore, MD 21202

Phone Number: 410-625-5555

E-Mail: mnoven@sra.state.md.us

With a copy to:

Jane Noble

STATE RETIREMENT AGENCY (SRA)

120 East Baltimore Street, 16FL Baltimore, MD 21202

Phone Number: 410-625-5660

E-Mail: jnoble.sra.state.md.us

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: _____

Parent Company Guarantor

Contact: _____

Attn: _____

42. 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, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

SIGNATURES ON NEXT PAGE

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

Contractor: <<ContractorName>>	State of Maryland STATE RETIREMENT AGENCY (SRA)
By: <<Contractor Signer>>	By: Martin Noven Executive Director
Date:	Date:
PARENT COMPANY (GUARANTOR) (if applicable)	
By:	
Date:	
Witness/Attest:	

Approved for form and legal sufficiency this ___ day of _____, 20__. _____ Assistant Attorney General	
APPROVED BY BPW: _____ (Date) (BPW Item #)	