

**REQUEST FOR PROPOSALS**  
**FOR**  
**AUDITING AND ACCOUNTING**  
**SERVICES**

**#2015-04**

**From:**

**Maryland State Lottery and Gaming Control Agency  
Montgomery Park Business Center  
1800 Washington Boulevard, Suite 330  
Baltimore, MD 21230**

**Issue Date: April 6, 2015**

**Due Date: May 1, 2015**

**NOTICE:** Prospective Offerors who have received this document from <http://emaryland.buyspeed.com> or from a source other than the Procurement Officer, and who wish to assure receipt of any amendments or other materials related to this RFP, should immediately contact the Procurement Officer and provide their name and e-mail or mailing address so that information relative to this Request For Proposals can be sent to them.

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

## KEY INFORMATION SUMMARY SHEET

**Title of RFP:** Auditing and Accounting Services

**RFP Number:** 2015-04

**RFP Issue Date:** April 6, 2015

The Maryland State Lottery and Gaming Control Agency ("MLGCA") is soliciting proposals from qualified Certified Public Accounting ("CPA") firms to provide auditing, accounting and management services as described more fully in this RFP. Offerors are invited to subcontract with other vendors to provide all of the requirements of the RFP, but Offerors must submit proposals encompassing all of the services required in the RFP and may not submit proposals for only certain services specified in the RFP.

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**Procurement Method:** Competitive Sealed Proposals (COMAR 21.05.03)

**Contract Term:** Approximately three (3) year term, with three (3) one-year Renewal Options. (Anticipated Term is approximately July 1, 2015–June 30, 2018)

**Proposals to be Submitted to:** Maryland State Lottery and Gaming Control Agency  
Montgomery Park Business Center  
1800 Washington Boulevard, Suite 330  
Baltimore MD 21230

ATTN: Robert W. Howells, Procurement Officer  
Tel: 410-230-8789  
Fax: 410-230-8727  
e-mail: Robert.howells@maryland.gov

**Communications:** The Procurement Officer listed above is the only source of information regarding this RFP. If you receive this information from another source, contact the Procurement Officer immediately.

**Pre-Proposal Conference:** April 16, 2015 at 2:00 p.m. (Local Time)  
Maryland State Lottery and Gaming Control Agency

**Deadline for Receipt Of Proposals:** May 1, 2015 by 2:00 p.m. (Local Time)

**MBE Participation Goal:** An MBE subcontracting goal of **25%** has been established for the Contract resulting from this RFP.

State of Maryland  
Notice to Offerors/Contractors

In order to help us improve the quality of State solicitations, and make our procurement processes more responsive and business friendly, we ask that you provide comments and suggestions regarding the enclosed RFP. Please return your comments with your proposal. If you have chosen not to submit a proposal for this project, please e-mail ([Robert.howells@maryland.gov](mailto:Robert.howells@maryland.gov)) or fax (410-230-8727) this completed form to the attention of Robert W. Howells. Thank you for your assistance.

Contract Number: 2015-04; Title: Auditing and Accounting Services

- I. If you have chosen not to respond, please indicate the reasons below:
- Other commitments preclude our participation at this time.
  - The subject of the solicitation is not something we ordinarily provide.
  - We are inexperienced in the work/commodities required.
  - The specifications are unclear, too restrictive, etc. (Explain in Remarks section)
  - The scope of work is beyond our present capacity.
  - Doing business with Maryland Government is simply too complicated. (Explain in Remarks section).
  - We cannot be competitive. (Explain in Remarks section)
  - Time for completion of the proposal is insufficient.
  - Start up time is insufficient.
  - Bonding/Insurance requirements are restrictive. (Explain in Remarks section)
  - Proposal requirements, other than specifications, are unreasonable or too risky. (Explain in Remarks section)
  - MBE requirements. (Explain in Remarks section)
  - Prior experience with State of Maryland contracts was unprofitable or otherwise unsatisfactory. (Explain in Remarks section)
  - Payment schedule too slow.
  - Other: \_\_\_\_\_
- II. If you have submitted a proposal, but wish to offer suggestions or express concerns, please use the Remarks section below.

**Remarks:**

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Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone/e-mail: \_\_\_\_\_

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

E-mail Address \_\_\_\_\_

## TABLE OF CONTENTS

<b>SECTION I. INTRODUCTION/OBJECTIVE</b>	<b>1</b>
<b>1.1 SUMMARY STATEMENT</b>	<b>1</b>
<b>1.2 OFFEROR MINIMUM REQUIREMENTS</b>	<b>3</b>
<b>1.3 GLOSSARY OF TERMS USED IN THIS REQUEST FOR PROPOSALS(RFP)</b>	<b>3</b>
<b>1.4 TRADEMARK NOTICE</b>	<b>8</b>
<b>SECTION II. MLGCA BACKGROUND</b>	<b>9</b>
<b>SECTION III. GENERAL SOLICITATION TERMS AND CONDITIONS</b>	<b>14</b>
<b>3.1 ISSUING OFFICE/PROCUREMENT OFFICER</b>	<b>14</b>
<b>3.2 CONTRACT DURATION AND TYPE</b>	<b>15</b>
<b>3.3 e-MARYLAND MARKETPLACE ("eMM")</b>	<b>15</b>
<b>3.4 SCHEDULE</b>	<b>16</b>
<b>3.5 PRE-PROPOSAL CONFERENCE</b>	<b>16</b>
<b>3.6 QUESTIONS</b>	<b>17</b>
<b>3.7 PROPOSAL SUBMISSION</b>	<b>18</b>
<b>3.8 ORAL PRESENTATIONS/SITE VISITS DURING EVALUATION</b>	<b>19</b>
<b>3.9 DURATION OF OFFER</b>	<b>20</b>
<b>3.10 OWNERSHIP OF MATERIAL</b>	<b>20</b>
<b>3.11 PROPOSAL DISCLOSURE PROHIBITION</b>	<b>20</b>
<b>3.12 METHOD OF PROCUREMENT</b>	<b>21</b>
<b>3.13 REVISIONS TO THE RFP</b>	<b>21</b>
<b>3.14 INFORMATION NOT CONTAINED IN THE RFP</b>	<b>21</b>
<b>3.15 CANCELLATION OF THE RFP; REJECTION OF ALL PROPOSALS</b>	<b>21</b>
<b>3.16 PROPOSAL ACCEPTANCE; DISCUSSIONS</b>	<b>21</b>
<b>3.17 INCURRED EXPENSES AND ECONOMY OF PREPARATION</b>	<b>22</b>
<b>3.18 PUBLIC INFORMATION ACT NOTICE</b>	<b>22</b>
<b>3.19 OFFEROR/CONTRACTOR RESPONSIBILITIES</b>	<b>22</b>
<b>3.20 PROTESTS</b>	<b>22</b>

<b><u>3.21</u></b>	<b><u>MINORITY BUSINESS ENTERPRISE SUBCONTRACT PARTICIPATION</u></b>	<b><u>23</u></b>
<b><u>3.22</u></b>	<b><u>PROPOSAL AFFIDAVIT</u></b>	<b><u>30</u></b>
<b><u>3.23</u></b>	<b><u>CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE</u></b>	<b><u>31</u></b>
<b><u>3.24</u></b>	<b><u>CONTRACT AFFIDAVIT</u></b>	<b><u>31</u></b>
<b><u>3.25</u></b>	<b><u>RECIPROCAL PREFERENCE - RESIDENT OFFEROR</u></b>	<b><u>31</u></b>
<b><u>3.26</u></b>	<b><u>ARREARAGES</u></b>	<b><u>32</u></b>
<b><u>3.27</u></b>	<b><u>VERIFICATION OF REGISTRATION AND TAX PAYMENT</u></b>	<b><u>32</u></b>
<b><u>3.28</u></b>	<b><u>PAYMENTS BY ELECTRONIC FUNDS TRANSFER</u></b>	<b><u>32</u></b>
<b><u>3.29</u></b>	<b><u>MULTIPLE OR ALTERNATE PROPOSALS</u></b>	<b><u>33</u></b>
<b><u>3.30</u></b>	<b><u>FALSE STATEMENTS</u></b>	<b><u>33</u></b>
<b><u>3.31</u></b>	<b><u>ANTI-BRIBERY</u></b>	<b><u>33</u></b>
<b><u>3.32</u></b>	<b><u>NONDISCRIMINATION</u></b>	<b><u>33</u></b>
<b><u>3.33</u></b>	<b><u>LIVING WAGE REQUIREMENT</u></b>	<b><u>34</u></b>
<b><u>3.34</u></b>	<b><u>PROMPT PAYMENT REQUIREMENT</u></b>	<b><u>35</u></b>
<b><u>3.35</u></b>	<b><u>LOCATION OF PERFORMANCE OF SERVICES</u></b>	<b><u>35</u></b>
<b><u>SECTION IV. MANDATORY CONTRACTUAL PROVISIONS</u></b>		<b><u>36</u></b>
<b><u>4.1</u></b>	<b><u>SCOPE OF THE CONTRACT</u></b>	<b><u>36</u></b>
<b><u>4.2</u></b>	<b><u>CONTRACT TERM</u></b>	<b><u>37</u></b>
<b><u>4.3</u></b>	<b><u>COMPENSATION AND METHOD OF PAYMENT</u></b>	<b><u>38</u></b>
<b><u>4.4</u></b>	<b><u>CONTRACT MODIFICATION</u></b>	<b><u>41</u></b>
<b><u>4.5</u></b>	<b><u>NON-HIRING OF OFFICIALS AND EMPLOYEES</u></b>	<b><u>41</u></b>
<b><u>4.6</u></b>	<b><u>DISPUTES</u></b>	<b><u>41</u></b>
<b><u>4.7</u></b>	<b><u>MARYLAND LAW PREVAILS</u></b>	<b><u>42</u></b>
<b><u>4.8</u></b>	<b><u>NONDISCRIMINATION IN EMPLOYMENT</u></b>	<b><u>42</u></b>
<b><u>4.9</u></b>	<b><u>CONTINGENT FEE PROHIBITION</u></b>	<b><u>43</u></b>
<b><u>4.10</u></b>	<b><u>MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS</u></b>	<b><u>44</u></b>
<b><u>4.11</u></b>	<b><u>TERMINATION FOR DEFAULT</u></b>	<b><u>44</u></b>
<b><u>4.12</u></b>	<b><u>TERMINATION FOR CONVENIENCE</u></b>	<b><u>44</u></b>

<b><u>4.13 DELAYS AND EXTENSIONS OF TIME</u></b>	<b><u>45</u></b>
<b><u>4.14 SUSPENSION OF WORK</u></b>	<b><u>45</u></b>
<b><u>4.15 PRE-EXISTING REGULATIONS</u></b>	<b><u>45</u></b>
<b><u>4.16 PAYMENT OF STATE OBLIGATIONS</u></b>	<b><u>46</u></b>
<b><u>4.17 FINANCIAL DISCLOSURE</u></b>	<b><u>47</u></b>
<b><u>4.18 POLITICAL CONTRIBUTION DISCLOSURE</u></b>	<b><u>47</u></b>
<b><u>4.19 RETENTION OF RECORDS</u></b>	<b><u>47</u></b>
<b><u>4.20 COMPLIANCE WITH LAWS / WARRANTIES</u></b>	<b><u>47</u></b>
<b><u>4.21 COST AND PRICE CERTIFICATION</u></b>	<b><u>48</u></b>
<b><u>4.22 SUBCONTRACT,ASSIGNMENT,PROHIBITION ON AFFILIATED ENTITY</u></b>	<b><u>48</u></b>
<b><u>4.23 INDEMNIFICATION AND RESPONSIBILITY FOR CLAIMS &amp; LIABILITY</u></b>	<b><u>48</u></b>
<b><u>4.24 NO WAIVER OF RIGHT</u></b>	<b><u>50</u></b>
<b><u>4.25 CHANGE IN FINANCIAL CONDITION</u></b>	<b><u>50</u></b>
<b><u>4.26 BANKRUPTCY</u></b>	<b><u>50</u></b>
<b><u>4.27 TAXES</u></b>	<b><u>50</u></b>
<b><u>4.28 LIABILITY FOR LOSS OF DATA OR RECORDS</u></b>	<b><u>51</u></b>
<b><u>4.29 PROPERTY RIGHTS/USUFRUCT</u></b>	<b><u>51</u></b>
<b><u>4.30 RIGHTS IN PRODUCTS</u></b>	<b><u>52</u></b>
<b><u>4.31 ROYALTIES</u></b>	<b><u>52</u></b>
<b><u>4.32 INTELLECTUAL PROPERTY PROTECTION</u></b>	<b><u>53</u></b>
<b><u>4.33 RIGHT TO REJECT OR SUBSTITUTE PERSONS PROPOSED</u></b>	<b><u>54</u></b>
<b><u>4.34 CONFLICT OF INTEREST</u></b>	<b><u>55</u></b>
<b><u>4.35 CONFIDENTIALITY</u></b>	<b><u>56</u></b>
<b><u>4.36 SET-OFF</u></b>	<b><u>56</u></b>
<b><u>4.37 DRUG AND ALCOHOL FREE WORKPLACE</u></b>	<b><u>56</u></b>
<b><u>4.38 DISSEMINATION OF INFORMATION</u></b>	<b><u>56</u></b>
<b><u>4.39 LOTTERY AND VLT PLAY AND PRIZE PAYMENT RESTRICTIONS</u></b>	<b><u>56</u></b>
<b><u>4.40 CONTRACTOR COOPERATION</u></b>	<b><u>57</u></b>
<b><u>4.41 CHANGES, ALTERATIONS OR MODIFICATIONS IN THE SERVICES</u></b>	<b><u>57</u></b>
<b><u>4.42 VARIATIONS IN ESTIMATED QUANTITIES</u></b>	<b><u>58</u></b>

<b>4.43</b>	<b>LIQUIDATED DAMAGES</b>	<b>58</b>
<b>4.44</b>	<b>BOND REQUIREMENTS</b>	<b>61</b>
<b>4.45</b>	<b>INSURANCE REQUIREMENTS</b>	<b>64</b>
<b>4.46</b>	<b>MINORITY BUSINESS ENTERPRISE COMPLIANCE</b>	<b>66</b>
<b>4.47</b>	<b>GOOD FAITH</b>	<b>68</b>
<b>4.48</b>	<b>NEWS/PRESS RELEASES</b>	<b>68</b>
<b>4.49</b>	<b>SEVERABILITY</b>	<b>68</b>
<b>4.50</b>	<b>ADVERSE INTEREST</b>	<b>68</b>
<b>4.51</b>	<b>NON-EXCLUSIVE RIGHTS</b>	<b>68</b>
<b>4.52</b>	<b>CONTRACT AFFIDAVIT</b>	<b>69</b>
<b>4.53</b>	<b>COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)</b>	<b>69</b>
<b>4.54</b>	<b>COMPLIANCE WITH LIVING WAGE REQUIREMENTS</b>	<b>69</b>
<b>4.55</b>	<b>RELATIONSHIP OF THE PARTIES</b>	<b>69</b>
<b>4.56</b>	<b>PROMPT PAYMENT</b>	<b>70</b>
<b>4.57</b>	<b>NOTICES</b>	<b>72</b>
<b>4.58</b>	<b>ENTIRE AGREEMENT</b>	<b>73</b>
<b>SECTION V. TECHNICAL SPECIFICATIONS/SCOPE OF WORK</b>		<b>75</b>
<b>5.1</b>	<b>GENERAL</b>	<b>75</b>
<b>5.2</b>	<b>SPECIFICATIONS</b>	<b>75</b>
<b>SECTION VI. FINANCIAL PROPOSAL</b>		<b>82</b>
<b>6.1</b>	<b>GENERAL</b>	<b>82</b>
<b>6.2</b>	<b>CONTRACT PRICES</b>	<b>82</b>
<b>6.3</b>	<b>INSTRUCTIONS FOR APPENDIX F-FINANCIAL PROPOSAL SHEET</b>	<b>83</b>
<b>6.4</b>	<b>BASIS FOR AWARD</b>	<b>83</b>
<b>SECTION VII. INFORMATION REQUIRED IN OFFEROR'S PROPOSAL</b>		<b>84</b>
<b>7.1</b>	<b>TWO VOLUME SUBMISSION</b>	<b>84</b>
<b>7.2</b>	<b>PROPOSALS</b>	<b>84</b>
<b>7.3</b>	<b>VOLUME I – TECHNICAL PROPOSAL</b>	<b>85</b>
<b>7.4</b>	<b>VOLUME II – FINANCIAL PROPOSAL</b>	<b>93</b>

<b><u>7.5 SUBMISSION DEADLINE</u></b>	<b><u>93</u></b>
<b><u>SECTION VIII. EVALUATION AND SELECTION PROCEDURE</u></b>	<b><u>94</u></b>
<b><u>8.1 QUALIFYING PROPOSAL</u></b>	<b><u>94</u></b>
<b><u>8.2 EVALUATION COMMITTEE</u></b>	<b><u>94</u></b>
<b><u>8.3 TECHNICAL EVALUATION</u></b>	<b><u>94</u></b>
<b><u>8.4 CRITERIA FOR TECHNICAL EVALUATION</u></b>	<b><u>94</u></b>
<b><u>8.5 FINANCIAL EVALUATION</u></b>	<b><u>95</u></b>
<b><u>8.6 DISCUSSIONS</u></b>	<b><u>95</u></b>
<b><u>8.7 BEST AND FINAL OFFER</u></b>	<b><u>95</u></b>
<b><u>8.8 FINAL RANKING AND RECOMMENDATION FOR AWARD</u></b>	<b><u>96</u></b>
<b><u>8.9 DEBRIEFING OF UNSUCCESSFUL OFFERORS</u></b>	<b><u>96</u></b>
<b><u>SECTION IX. APPENDICES</u></b>	<b><u>97</u></b>
<b><u>APPENDIX A - PROPOSAL AFFIDAVIT</u></b>	<b><u>99</u></b>
<b><u>APPENDIX B - CONTRACT AFFIDAVIT</u></b>	<b><u>106</u></b>
<b><u>APPENDIX C - PRE-PROPOSAL CONFERENCE RESPONSE FORM</u></b>	<b><u>110</u></b>
<b><u>APPENDIX D - MINORITY BUSINESS ENTERPRISE INSTRUCTIONS/FORMS</u></b>	<b><u>111</u></b>
<b><u>ATTACHMENT D-1A MBE Utilization and Fair Solicitation Affidavit &amp; Schedule</u></b>	<b><u>114</u></b>
<b><u>ATTACHMENT D-1B Waiver Guidance</u></b>	<b><u>118</u></b>
<b><u>ATTACHMENT D-1C Good Faith Efforts Documentation to Support Waiver</u></b>	<b><u>125</u></b>
<b><u>ATTACHMENT D-2 Outreach Efforts Compliance Statement</u></b>	<b><u>129</u></b>
<b><u>ATTACHMENT D-3A MBE Subcontractor Project Participation Certification</u></b>	<b><u>130</u></b>
<b><u>ATTACHMENT D-3B MBE Prime Project Participation Certification</u></b>	<b><u>132</u></b>
<b><u>ATTACHMENT D-4A Prime Contractor Paid/Unpaid MBE Invoice Report</u></b>	<b><u>133</u></b>
<b><u>ATTACHMENT D-4B MBE Prime Contractor Report</u></b>	<b><u>134</u></b>
<b><u>ATTACHMENT D-5 Subcontractor Paid/Unpaid MBE Invoice Report</u></b>	<b><u>135</u></b>
<b><u>APPENDIX E - VENDOR ELECTRONIC FUNDS TRANSFER (EFT)</u></b>	<b><u>136</u></b>
<b><u>APPENDIX F - FINANCIAL PROPOSAL SHEET</u></b>	<b><u>138</u></b>
<b><u>APPENDIX G - CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE</u></b>	<b><u>142</u></b>
<b><u>APPENDIX H - LITIGATION/PROTEST BOND</u></b>	<b><u>143</u></b>



<b><u>APPENDIX I - PROPOSAL BOND</u></b>	<b><u>144</u></b>
<b><u>APPENDIX J - PERFORMANCE BOND</u></b>	<b><u>146</u></b>
<b><u>APPENDIX K - LIVING WAGE REQUIREMENTS</u></b>	<b><u>149</u></b>
<b><u>APPENDIX L – AUTHORIZATION FOR RELEASE OF INFORMATION</u></b>	<b><u>153</u></b>
<b><u>APPENDIX M – LOCATION OF THE PERFORMANCE OF SERVICES</u></b>	<b><u>154</u></b>
<b><u>APPENDIX N – SAMPLE/SPECIAL PURPOSE FINANCIAL STATEMENTS</u></b>	<b><u>155</u></b>
<b><u>APPENDIX O – SAMPLE/YEAR END AUDITED FINANCIAL STATEMENT</u></b>	<b><u>155</u></b>
<b><u>APPENDIX P – SAMPLE/AGREED UPON PROCEDURES AUDIT REPORT</u></b>	<b><u>155</u></b>

## **SECTION I. INTRODUCTION/OBJECTIVE**

### **1.1 SUMMARY STATEMENT**

**1.1.1** The Maryland State Lottery and Gaming Control Agency (“MLGCA”) is issuing this Request for Proposals (“RFP”) to invite qualified Certified Public Accounting (“CPA”) firms to submit proposals to provide auditing, accounting and management services as described in this Request for Proposals (“RFP”).

**1.1.2** The primary responsibilities of the Contractor shall be to audit, on a monthly basis, special-purpose financial statements prepared by the MLGCA as well as to audit the year-end financial statements that are prepared by the MLGCA in accordance with Generally Accepted Accounting Principles (“GAAP”). The primary functions of the monthly special-purpose audited financial statements are to identify and certify the allocation of income and to present the assets, liabilities and net position of the MLGCA. The year-end GAAP financial statements are for inclusion in the State of Maryland Comprehensive Annual Financial Report (“CAFR”) and are required to be completed by the due date specified by the State, which is usually on or around October 1<sup>st</sup> of each year. The Contractor shall be responsible for auditing the year-end financial statements in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the Government Auditing Standards, issued by the Comptroller General of the United States. The MLGCA also prepares its own CAFR for submission to the Government Finance Officers Association (“GFOA”). The Lottery has received its certificate of achievement for Excellence In Financial Reporting from the GFOA for the past 10 years and is hoping to receive its certification again for fiscal year 2014.

The MLGCA’s financial statements reflect the activity of Lottery and gaming operations.

The Lottery utilizes the Microsoft Dynamics General Ledger Accounting Package to produce its monthly financial statements. The majority of the sales and expense information from Lottery operations is automatically uploaded, on a daily basis, into the General Ledger. However, other financial data, such as administrative expenses, certain prize payments and cash receipts are manually entered by the MLGCA. Lottery games currently offered are described in Section 2.3. Financial data from gaming operations, which includes video lottery terminal (VLT) revenue and table game revenue, is manually entered into the General Ledger by the MLGCA.

**1.1.3** The MLGCA has contracted with an independent contractor to operate and maintain its Lottery Central Monitoring and Control System. Financial data is received from the contractor on a daily basis. The MLGCA's Information Technology Division ("IT") utilizes a real time Internal Control System ("ICS") to verify and confirm the financial data prior to it being uploaded to the General Ledger. The contractor has an annual SOC 1 audit performed on its operations, which includes a heavy emphasis on information technology related controls.

The MLGCA has contracted with an independent contractor to operate and maintain its Gaming Central Monitoring and Control System for the VLT operations. VLT financial data is received from this Central System and used for financial statement purposes. The MLGCA compares the VLT financial data obtained from this system to VLT data received from the casinos. Once the data is reconciled, the MLGCA manually enters the financial data into the General Ledger. The Central System contractor has an annual SOC 1 audit performed on its operations, which includes a heavy emphasis on information technology related controls.

Table Game revenue is certified by the casinos and manually entered into the General Ledger by MLGCA. MLGCA auditors audit the table game certifications completed by the casinos.

**1.1.4** Other responsibilities of the Contractor, as more specifically detailed in this RFP, include reviewing a specified percentage of Lottery drawings each month, performing an annual review of the Mega Millions® and Megaplier® games based on agreed upon procedures established by the participating Mega Millions® states, performing an annual review of the Powerball® and Power Play® games based on agreed upon procedures established by the participating Powerball® states, performing a biennial audit of the MLGCA's IT Division, as well as providing management services as directed by the MLGCA. Section V of the RFP provides specifications for all of the services required by the Lottery.

**1.1.5** Offerors are invited to subcontract with other vendors to provide all of the requirements of the RFP, but Offerors must submit proposals encompassing all of the services required in the RFP and may not submit proposals for only a portion of the services specified in the RFP.

**1.1.6** The MLGCA reserves the right to cancel this RFP and/or reject all proposals when this action is determined to be fiscally advantageous to the State or otherwise in its best interest.

**1.1.7** The MLGCA intends to make a single contract award as a result of this RFP.

**1.1.8** The MLGCA's existing Contract (#2009-14) for Auditing and Accounting Services expires on June 30, 2015. The Contract resulting from this RFP will be for a term of approximately three (3) years, tentatively beginning on or about July 1, 2015 and extending through June 30, 2018. The MLGCA shall have, at its sole discretion, the unilateral right to extend the Contract for three (3) additional one (1) year renewal periods, for a total Contract term of approximately six (6) years.

## **1.2 OFFEROR MINIMUM REQUIREMENTS**

The Minimum Requirements apply to all Offerors. Offerors must meet the Minimum Requirements or their proposals will not be further considered.

### **1.2.1 CPA LICENSE**

The Offeror shall be a CPA firm holding a valid active license from the State of Maryland, Department of Labor, Licensing and Regulation.

### **1.2.2 EXPERIENCE**

The Offeror, or the Account Team Principals, shall have a minimum of five (5) years experience doing business for firms or government agencies with assets and operating budgets of Fifty Million Dollars (\$50,000,000.00) or more.

### **1.2.3 ACCOUNT TEAM PRINCIPALS**

The Account Team principals must be active CPAs and have a minimum of five (5) years experience doing business for firms or government agencies with assets and operating budgets of Fifty Million Dollars (\$50,000,000.00) or more.

### **1.2.4 INFORMATION TECHNOLOGY AUDIT**

The Account Team principals that will be assigned to the Information Technology Audit (as described in Section 5.2.4) must be active CPAs and have a minimum of five (5) years of Information Technology risk assessment, evaluation and audit experience.

## **1.3 GLOSSARY OF TERMS USED WITHIN THIS REQUEST FOR PROPOSALS**

**ADA** - Americans With Disabilities Act of 1990 including changes made by the ADA Amendments Act of 2008, and regulations promulgated pursuant to that statute.

**CAFR** – Comprehensive Annual Financial Report.

**Casino** – A facility at which Players play VLTs and Table Games.

**COMAR** – The Code of Maryland Regulations (available at <http://www.dsd.state.md.us/comar/>). Regulations governing the Lottery and Commission are found in COMAR Title 36. Regulations governing the State procurement process are found in COMAR Title 21.

**Commission** - The Maryland State Lottery and Gaming Control Commission, or designee.

**Contract** - The Contract entered into between the MLGCA and a selected Offeror responding to this RFP. The Contract will include all State Mandatory Contractual Provisions and will incorporate the entire RFP, and any Amendments, and all or indicated portions of the selected Offeror's Proposal, and any other provisions as indicated in the Contract.

**Contract Manager ("CM")** – The MLGCA's designated person as the single point-of-contact with the authority and knowledge to issue work orders and to resolve all matters in connection with the Contract on behalf of the Lottery. See Section 3.1.2 for the designated Contract Manager.

**Contractor** - An entity having the Contract with the MLGCA. The term Contractor shall apply to the successful Offeror who is awarded the Contract resulting from this RFP.

**CPA** – Certified Public Accountant.

**Draw Game** – A Lottery game whereby players can pick their numbers or utilize automatic computer generated plays purchased through a Lottery terminal. Customers receive a ticket and then wait for the drawing to determine if they have won.

**Director** - The Director of the Maryland State Lottery and Gaming Control Agency, or designee.

**EFT** - Electronic Funds Transfer through a bank employing the Automated Clearing House (ACH) network.

**Fiscal Year ("FY")** – Maryland State Fiscal Year, July 1 – June 30. For example, FY15 (or FY 2015) represents the period beginning July 1, 2014 through June 30, 2015.

**GAAP** – Generally Accepted Accounting Principles.

**GAGAS** – Generally Accepted Governmental Auditing Standards.

**Gaming Central Monitor and Control System (“Central System”)** – The hardware, software and network components which link and support all required video lottery terminals and the central site, provided to and controlled by the Commission to which VLTs communicate for the purposes of:

- (1) Information retrieval;
- (2) Retrieval of the win and loss determination from VLTs; and
- (3) Programs to activate and disable VLTs.

**Gaming Operations** – Operations which include VLT and Table Game activity.

**GFOA** – Government Finance Officers Association.

**ICS** – Internal Control System.

**Instant Ticket Game (also, Instant Game)** – A game in which tickets have a concealed prize structure and playing area. The player removes the material concealing the playing area on the game ticket (e.g. including but not limited to latex coating or flap) in accordance with the game instructions. Includes any game wherein the player receives an immediate result without waiting for a Drawing.

**Key Personnel (“Key Person”)** – Critical employees of the Contractor identified in its proposal or upon Contract commencement who shall perform continuously for the duration of the Contract and may not be replaced without prior approval of the Lottery.

**Local Time** - Time in the Eastern Time Zone (Eastern Standard Time or Eastern Daylight Savings Time, as applicable) as observed by the State.

**MLGCA** - The Maryland State Lottery and Gaming Control Agency (also sometimes referred to as “Lottery”).

**Lottery Central Monitor and Control System** - The computer system, both hardware and software, office, terminals, equipment, parts, supplies, commodities, personnel and services necessary to implement, conduct and provide the Contractor-provided lottery central monitor and control system for lottery games. This includes all game operations which enable the lottery to sell and redeem all tickets, validate all instant tickets and perform accounting and pack management functions for lottery retailers.

**MBE Certification** - Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.

**MBE Liaison Officer** - The person designated by the Director to be responsible for administering the Lottery's Minority Business Enterprise ("MBE") Program.

**MDOT** - The Maryland Department of Transportation.

**Minority Business Enterprise ("MBE")** - A business that has been certified by the State of Maryland Department of Transportation to be a minority business enterprise. Any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by one or more individuals who are socially and economically disadvantaged; and managed by, and the daily business operations of which are controlled by, one or more of the socially and economically disadvantaged individuals who own it.

**Monitor Games** – A Draw Game with drawing results graphically displayed on television-type screens at Retailer locations.

**Multi-State Lottery Association ("MUSL")** – A non-profit government-benefit association owned and operated by its member lotteries.

**Offeror** - An entity that submits a proposal in response to this RFP.

**Procurement Officer** - A person authorized by the MLGCA in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them; and, designated to be responsible for this RFP, for the procurement process, the determination of scope issues in the Contract, and is the only State representative that can authorize changes to the Contract. (See Section 3.1.1)

**Proposal** – The response by an Offeror to a Request for Proposals ("RFP") issued by a procurement agency to obtain goods or labor. The response may include but is not limited to an Offeror's price and terms for the proposed contract, a description of technical expertise, work experience, and other information as requested in the RFP.

**Qualified Offerors** – Those responsible Offerors that submitted proposals initially classified by the Procurement Officer as reasonably susceptible of being selected for award. (COMAR 21.05.03.03C.(1)).

**Responsible Offeror** – An Offeror who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that shall assure good faith performance. (COMAR 21.01.02.01(77))

**Retailer** – A business entity or retailer that is authorized by the Lottery to sell

Lottery products. (The term “Agent” may occasionally be used interchangeably to mean “Retailer”).

**Risk Assessment** – The process of identifying the risks to system security and determining the probability of occurrence, the resulting impact, and additional safeguards that would mitigate this impact. Part of Risk Management and synonymous with Risk Analysis.

**RFP** - This Request for Proposals for Auditing and Accounting Services #2015-04, dated April 6, 2015, including any amendments.

**State** - The State of Maryland.

**Subcontractor** – Any person having an agreement with a contractor to perform all or some of the contractor’s work under a contract with the MLGCA. Does not include an employee with an employment contract, or an employee organization with a collective bargaining agreement.

**Table Game** – Casino games (e.g., blackjack, craps) played on a table that are operated by one or more live dealers.

**Veteran-Owned Small Business Enterprise (“VSBE”)** – A business that is verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.”

**Video Lottery Terminal (“VLT”)** (1) Any machine or other device that, on insertion of a bill, coin, token, voucher, ticket, coupon, or similar item, or on payment of any consideration:

- (I) is available to play or simulate the play of any game of chance in which the results, including the options available to the Player, are randomly determined by the machine or other device; and
- (II) by the element of chance, may deliver or entitle the Player who operates the machine or device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payout is made automatically from the device or in any other manner.

(2) “Video Lottery Terminal” includes a machine or device:

- (I) that does not directly dispense money, tokens, or anything of value to winning players; and
- (II) described under paragraph (1) above that uses an electronic credit system making the deposit of bills, coins, or tokens unnecessary.

(3) “Video Lottery Terminal” does not include an authorized slot machine



operated by an eligible organization under Title 12, Subtitle 3 of the Criminal Law Article.

#### 1.4 TRADEMARK NOTICE

The Lottery employs several trademarks or registered trademarks. The list that follows is intended to be illustrative, but not necessarily exhaustive. Offerors are hereby provided notice that certain marks listed below may not be identified elsewhere in this RFP as holding intellectual property rights.

<u>Name</u>	<u>Mark</u>	<u>Owner:</u>
1. Lottery in Motion	™	Scientific Games International, Inc.
2. Mega Millions	®	Illinois Department of the Lottery
3. Megaplier	®	Texas Lottery Commission
4. MONOPOLY Millionaire	™	Hasbro, Inc. – filed; probably ® soon
5. MONOPOLY Millionaires' Club	™	Hasbro, Inc. – filed; probably ® soon
6. OnePlace Enterprise	™	Hudson Alley Software
7. Powerball	®	Multi-State Lottery Association
8. Power Play	®	Multi-State Lottery Association
9. Properties Plus	®	Scientific Games International, Inc.
10. Racetrax	®	Tabcorp International Pty Ltd
11. Racetrax® Bonus	™	Not filed for registration

In addition, the Lottery owns the rights to the following:

1. Keno Bonus	®
2. Multi-Match	®
3. Keno To Go	™
4. PHARAOH'S GOLD	®
5. Packaged Keno To Go	®
6. World Championship Poker	®
7. Super Slots	®
8. Carry Out Keno	®
9. My Lottery Rewards	™

## **SECTION II. MLGCA BACKGROUND**

The information provided in this Section II is for background and informational purposes only.

### **2.1 HISTORY**

The Maryland State Lottery and Gaming Control Agency (“MLGCA”) is an independent agency of the State of Maryland. It was established by the General Assembly through the enactment of Chapter 365 of Laws of Maryland of 1972 and the voters’ approval of a constitutional amendment that same year. The amendment was ratified on November 7, 1972, and operations commenced on January 2, 1973. In May 1973, the Lottery started selling a \$.50 weekly game that gave players the opportunity to win prizes ranging from \$25 to \$1 million. The popularity of this game led to a \$1 iteration, and eventually the introduction of Instant Ticket Games (also known as scratch-offs) in February 1976.

The MLGCA’s current portfolio includes Draw Games and Instant or scratch-off games. Draw Games are further categorized as Daily Draw (Pick 3, Pick 4, Bonus Match 5 and 5 Card Cash), Jackpot (Multi-Match, Mega Millions, Powerball) and Monitor (Keno and Racetrax®). Details about each of these games are included in Sections 2.3 and 2.4.

In 2014 Instant Ticket Lottery Machines (“ITLM”) were approved for Veterans’ Organizations located in certain counties in the State. The Law authorizes the issuance of up to 5 ITLMs for each licensed organization and it is estimated that there are currently 150 qualified organizations that may apply for the ITLMs. ITLMs are treated as a lottery offering. ITLM sales began in September 2014.

In 2007, during the special session of the Maryland General Assembly, House Bill 4 and Senate Bill 3 were enacted relating to the legalization of Video Lottery Terminals (“VLTs”). This set up broad parameters for the operation of a maximum of 15,000 VLTs, the establishment of five casinos within the State, and specified that the State Lottery and Gaming Control Commission shall regulate the operation of VLTs, including licensing of operators and operation of a Central Monitor and Control System. In 2012, Senate Bill 1 – Gaming Expansion – Video Lottery Terminals and Table Games – passed the 2012 second special session of the Maryland General Assembly. This bill was approved by voters in November 2012 – provisions include: the addition of table games to existing casinos and future casinos; a sixth casino; increased the maximum number of VLTs allowed in the State; and 24-7 casino operations. As of January 31, 2015, there were 9,141 VLTs and 374 table games in operation around the State.

### **2.2 GENERAL INFORMATION**

The MLGCA operates pursuant to State Government Article, Title 9, Subtitle 1, Annotated Code of Maryland, which establishes the purpose, powers, duties and procedural framework of the MLGCA and COMAR Title 36.

## **2.2.1 LOTTERY AND GAMING CONTROL COMMISSION (“COMMISSION”)**

The Lottery and Gaming Control Commission advises the Director on the operation and administration of the MLGCA and regulates casino gaming in Maryland under the State Gaming Law, found at State Government Article, Title 9, Subtitle 1A. The seven members of the Commission are appointed by the Governor with the advice and consent of Maryland’s Senate. The Commission provides direction and guidance to the MLGCA Director concerning Lottery operations and regulates the operation of the casinos and VLTs/Table Games with assistance of the MLGCA staff.

## **2.2.2. MLGCA ORGANIZATION**

The MLGCA is comprised of several administrative units or departments, all ultimately reporting to the Director. With the recent expansion of gaming, the MLGCA has grown significantly and numerous organizational changes have occurred. Some departments focus solely on the Gaming regulatory responsibilities, while others split their time between Gaming and traditional Lottery business matters.

## **2.3 DRAW AND MONITOR GAMES**

Draw Games generally allow players to select their numbers or utilize automatic computer plays. Players receive a ticket from a Retailer then wait for the MLGCA to conduct a Drawing to determine if they have won.

The MLGCA currently offers nine (9) Draw Games. These games can be divided into three broad categories:

- Daily Drawing
- Jackpot prizes
- Monitor

Although these are subject to change, information about each game as currently played is noted below:

### **Daily Drawing**

1. **Pick 3:** Pick 3 is a daily game. Players choose three numbers between zero and nine for the chance to win prizes ranging from \$25 to \$500. The Lottery offers both mid-day and evening Pick 3 drawings. Mid-day drawings are currently selected live on WBAL-TV 11 Monday through Friday at 12:27 p.m. Saturday and Sunday mid-day drawings are selected live from WBAL-TV 11 at 12:27 pm; however, the Saturday mid-day drawing is not televised. Evening drawings are currently selected live on WBAL-TV 11 Monday through Saturday at 7:57 p.m. Sunday

evening drawings are currently selected live on WBAL –TV 11 at 8:22.

2. **Pick 4** is a daily game and is basically the same game as Pick 3 with an extra digit. The field of playable numbers ranges from 0000 to 9999 and the top prize in Pick 4 is \$5,000 for a \$1.00 straight wager. The drawing of winning numbers is identical to Pick 3 and the wager options “straight” and “boxed” are also identical. The odds of winning a “straight” wager in Pick 4 are 1:10,000. Mid-day drawings are currently selected live on WBAL-TV 11 Monday through Sunday at 12:27 p.m. Evening drawings are currently selected live on WBAL-TV 11 Monday through Saturday at 7:57 p.m. Sunday evening drawings are currently selected live on WBAL –TV 11 at 8:22.
3. **Bonus Match 5** is a daily game with a top prize of \$50,000 for a \$1.00 wager. Players select 5 numbers from a field of 39 numbers. The Lottery selects six winning numbers from that same field of numbers. The first five winning numbers selected determine a \$50,000 win. The sixth number, called the “Bonus Ball”, provides additional ways of winning for players. Using the “Bonus Ball” number, players use it to make a match of 4, 3, or 2 of the original selected winning numbers to make a 5, 4, or 3 winning number match. Evening drawings are currently selected live on WBAL-TV 11 Monday through Saturday at 7:57 p.m. Sunday evening drawings are currently selected live on WBAL –TV 11 at 8:22. Bonus Match 5 drawings are not televised.
4. **5 Card Cash:** Based on a standard poker game using a 52 card playing deck, and offers players two chances to win – an instant win and a nightly drawing. Each ticket is \$2, and is printed with a “hand” of 5 cards. A player can win instantly if their ticket shows a poker hand of a pair of jacks or better. Instant win prizes range from a free 5 Card Cash game ticket up to \$10,000. Regardless of their instant win outcome, a player could also win during the nightly draw – every night, 5 cards are drawn and a player can win by matching 2, 3, 4 or 5 cards to those drawn. Drawing prizes range from \$3 up to \$100,000. Evening drawings are currently selected live on WBAL-TV 11, Monday through Sunday at 7:30 pm. These drawings are not televised.

### **Jackpot Games**

1. **Multi-Match** is a jackpot game. Players receive three lines of six numbers. Players choose or request the computer to generate the first line of numbers from a field of 43. The computer then generates the remaining two lines of numbers. Players matching all six numbers in a single line in any order win the jackpot, which typically starts at \$500,000 and increases after each drawing if not won. If there are multiple winners, the jackpot is divided by the number of winners. Players can also win fixed prizes ranging from \$2 to \$3,000 by matching three or more

numbers in a single line or five or more numbers in the combined lines. Multi-Match drawings are held on Monday and Thursday evenings at 11:22 p.m.

2. **Mega Millions:** A multi-state jackpot game. Drawings are held every Tuesday and Friday evening at 11:00 pm. These drawings are conducted by non-MLGCA personnel. These drawings are recorded and then aired at 11:22 pm. All game sales data is uploaded to MUSL via two independent reporting systems. The MLGCA reconciles to MUSL and winners are then reported. MUSL handles the transferring of funds between lotteries.
3. **Powerball:** A multi-state jackpot game. Drawings are held every Wednesday and Saturday evening at 10:59 pm. These drawings are conducted by non-MLGCA personnel. These drawings are recorded and then aired at 11:22 pm. All game sales data is uploaded to MUSL via two independent reporting systems. The MLGCA reconciles to MUSL and winners are then reported. MUSL handles the transferring of funds between lotteries.

## Monitor

1. **Keno:** Keno is predominantly sold in a social atmosphere and drawings take place every 4 minutes. Players select from 1 to 10 numbers from a field of 80 playable numbers. The Random Number Generator selects 20 winning numbers, and the player wins by matching anywhere from zero to 10 numbers. Prizes in Keno range from \$2 to \$100,000. *Keno Bonus* is sold in conjunction with Keno at a cost equal to a player's original Keno wager and provides players with an opportunity to multiply their winnings. Possible multipliers are three, four, five or 10. *Keno Super Bonus* is very similar to Keno Bonus, only a player is guaranteed a multiplier. Cost to play Keno Super Bonus is twice the amount of the game wager. Possible multipliers are two, three, four, five, six, 10, 12 and 20.
2. **Racetrax®** is a keno-style game that incorporates an animated horse racing game to offer payouts and prizes. Each horse has predetermined odds for winning the race. The player places a minimum bet of \$1 for Win (selects a horse to finish first), Show (selects a horse to finish in top three), Quinella (selects two horses to finish first and second in any order), Exacta (selects the two horses that will finish first and second in exact order), Trifecta (selects three horses to finish first, second and third in exact order) and Superfecta (selects four horses that will finish first, second, third and fourth in exact order). Other bet types include Exacta Box (selects at least two horses that will finish first and second in any order), Trifecta Box (selects horses to finish first, second and third in any order) and Trifecta Wheel (selects four or more horses to place first, second and third in any order) Superfecta Box (selects at least four

horses that will finish in first, second, third and fourth in any order) and Superfecta Wheel (selects at least five horses that will finish first, second, third and fourth in exact order). The races (drawings) are conducted every four and a half minutes throughout the day. *Racetrax Bonus* is an add-on feature that gives players the opportunity to increase their winnings by three, four, five or ten times. The cost is equal to a player's base or original wager.

## **2.4 INSTANT TICKET GAMES (SCRATCH-OFF GAMES)**

Instant Ticket Games, also known as Scratch-Off Games, are offered in a variety of price points, colors, themes and play styles. Instant Players scratch a latex-covered play area to reveal a variety of numbers and/or symbols, which are compared to a "key" or winning numbers already printed on the ticket to determine if they won. The MLGCA launched 51 different Instant Ticket Games in fiscal year 2014.

A detailed ten year sales history for these games can be found in the MLGCA CAFR using the following link: <http://cdn.mdlottery.com/CAFR/CAFR%20-%202014.pdf>

## **2.5 INFORMATION TECHNOLOGY**

The MLGCA operates a Cisco supported network with approximately 250 workstations, 15 production servers running Windows and VMware, a Unisys mainframe computer, as well as three (3) demilitarized network zones (DMZs) that support several publicly accessible servers hosting various functions.

The network includes 3 firewalls for connectivity to the Internet, networkMaryland (SwGI), the MLGCA claim center in Lanham, MD, and to MLGCA Contractors' (Scientific Games and GTECH) networks used for system access by the MLGCA. The main firewall also incorporates an intrusion prevention and detection system.

## **2.6 FUTURE GAMES AND SERVICE PROVIDER**

The MLGCA reserves the right to add new lottery games and/or new lottery game features during the term of the contract resulting from this RFP. In addition, the MLGCA reserves the right to change its contractual service providers, add additional casinos, VLTs and/or table games during the term of the contract resulting from this RFP. The Contractor will not receive additional compensation for auditing these new games and/or new game features.

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## SECTION III. GENERAL SOLICITATION TERMS AND CONDITIONS

THE OFFEROR SHALL PROVIDE IN ITS PROPOSAL A STATEMENT OF INTENT TO COMPLY WITH THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH HEREIN. ALSO, THE OFFEROR SHALL PROVIDE IN ITS PROPOSAL ALL INFORMATION REQUIRED BY THIS SECTION.

### 3.1 ISSUING OFFICE/PROCUREMENT OFFICER

This RFP is issued by the MLGCA. The MLGCA's Procurement Officer is the sole point of contact in the State with regard to all procurement matters relating to the services described herein. The MLGCA's Procurement Officer is the only person authorized to change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of this RFP and any contract awarded as a result of this RFP. The Contract resulting from this RFP will become binding and effective after approval by the MLGCA, the Commission, the Attorney General, the Department of Budget and Management, and the Maryland Board of Public Works.

**3.1.1** The sole point-of-contact in the State for the purposes of this RFP prior to award of the Contract is the Procurement Officer listed below:

Robert W. Howells, Procurement Officer  
Maryland State Lottery and Gaming Control Agency  
Montgomery Park Business Center  
1800 Washington Boulevard, Suite 330  
Baltimore, MD 21230  
Telephone: (410) 230-8789  
Fax: (410) 230-8727  
E-mail Address: [Robert.howells@maryland.gov](mailto:Robert.howells@maryland.gov)

The MLGCA may change the Procurement Officer at any time by written notice to the Contractor.

**3.1.2** After the Contract is awarded, the MLGCA's Contract Manager, who monitors the daily activities of the Contract and provides guidance to the Contractor, is:

Gina M. Smith, Deputy Director/CFO  
Maryland State Lottery and Gaming Control Agency  
Montgomery Park Business Center  
1800 Washington Blvd., Suite 330  
Baltimore, MD 21230  
Telephone: (410) 230-8763  
Fax: (410) 230-8727  
E-mail Address: [gina.smith@maryland.gov](mailto:gina.smith@maryland.gov)

The MLGCA may change the Contract Manager at any time by written notice to the Contractor.

### **3.2 CONTRACT DURATION AND TYPE**

The Contract awarded as a result of this RFP will be for an initial term of approximately three (3) years tentatively beginning on or about July 1, 2015 and extending through June 30, 2018. The MLGCA, at its sole option, shall have the unilateral right to extend the Contract for three (3) additional one (1) year renewal periods, for a total contract term of approximately six (6) years.

Upon the expiration of this Contract, or of the renewal option periods if exercised, the MLGCA, at its sole option, shall have the unilateral right to extend the Contract for a Final Renewal Option Period (for transitioning) of up to an additional six (6) month period in order to facilitate the conversion and transition to a follow-on Auditing and Accounting Services contractor. Upon expiration of the initial Contract term of three (3) years, the renewal option periods of three (3) years total (if exercised), and the Final Renewal Option for transitioning of up to six (6) months (if exercised), the total Contract Term shall not exceed approximately six (6) years and six (6) months.

The Contract that results from this RFP will be a Firm Fixed Price Contract as described in COMAR 21.06.03.02 with respect to the services specified in Components 1, 2, 3 and 4; and an Indefinite Quantity Contract with Firm Fixed Unit Prices as described in COMAR 21.06.03.02 and 21.06.03.06 with respect to the services specified in Component 5.

### **3.3 eMARYLAND MARKETPLACE (“eMM”)**

1. Posting of Solicitation Documents: eMaryland Marketplace (“eMM”) is the State's internet-based commerce system. Vendors interested in doing business with the State are encouraged to register with eMM. The website for eMM is <http://emaryland.buyspeed.com>.

All efforts will be made to communicate with potential Offerors. However, the MLGCA is not responsible for failures to deliver by mail, e-mail, fax services, etc. In addition to other means, the RFP, Pre-Proposal Conference Summary, Offeror questions and MLGCA's responses, amendments to the RFP, and other solicitation related information will be provided via eMM. The MLGCA will post relevant information to eMM, and it is the responsibility of interested parties to remain informed of any changes to this information by monitoring eMM.

2. Registration: In order to receive a contract award, an Offeror must be registered on eMM. Each Offeror is requested to indicate its eMM vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP. There is no fee for registration on eMM. Information about eMM can be found at the Maryland Department of General Services website ([www.dgs.maryland.gov](http://www.dgs.maryland.gov)). If additional assistance is required, the eMaryland



Marketplace Support Team can be reached at [emaryland@dgs.state.md.us](mailto:emaryland@dgs.state.md.us).

### 3.4 SCHEDULE

The Key Dates for this procurement as stated below are for informational and planning purposes. The MLGCA reserves the right to change any of these dates.

<u>Event</u>	<u>Date</u>
Issue Date of RFP	April 6, 2015
Pre-Proposal Conference	April 16, 2015
Proposals Due	May 1, 2015
Oral Presentations ( <b>Approximately</b> )	May 18 - 22, 2015
Contract Start	July 1, 2015

The MLGCA's existing Auditing and Accounting Services contract expires on June 30, 2015. It is the MLGCA's intention to make a recommendation for award of the Contract resulting from this RFP in May 2015 and to submit that recommendation to the Board of Public Works for approval in June.

Even if other dates in the procurement process change, the Contract start date shall not change unless otherwise indicated in writing by the MLGCA. By submitting a response to this RFP, the Offeror/Contractor shall be committed to meet the required July 1, 2015 start date for a fully operational Auditing and Accounting Services Contract without regard to other changes in the schedule for this procurement.

### 3.5 PRE-PROPOSAL CONFERENCE

A Pre-Proposal Conference ("Conference") will be held on **April 16, 2015**, beginning at **2:00 p.m.** Local Time, at the Maryland State Lottery and Gaming Control Agency, Montgomery Park Business Center-Suite 330, 1800 Washington Boulevard, Baltimore, Maryland 21230.

All potential Offerors are encouraged to attend. Information presented may facilitate the Offeror's ability to better prepare their proposals and their understanding and ability to meet the Minority Business Enterprise (MBE) goals.

As promptly as practicable subsequent to the Conference and in accordance with State Finance and Procurement Article, §13-210(a), of the Annotated Code of Maryland, a summary of the Conference will be distributed to all parties known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations for this Conference, prospective attendees are requested to return the Pre-Proposal Conference Response

Form (Appendix C) no later than April 14, 2015, to provide notice of the anticipated number of individuals who will attend.

If any individual interested in attending the Conference is in need of sign language interpretation or other special accommodations due to a disability, it is requested that a minimum of five (5) working days advance notice be provided. Reasonable efforts will be made to provide such special accommodation.

### **3.6 QUESTIONS**

**3.6.1** All questions must be submitted in writing to the Procurement Officer. E-mail is the preferred method of written communication. Telephone inquiries will not be answered.

The Procurement Officer will accept **written** questions from prospective Offerors prior to the Pre-Proposal Conference. If possible and appropriate, such questions will be answered at the Conference. No substantive question will be answered prior to the Conference. Questions, both oral and written, will also be accepted from attendees at the Conference.

The Lottery will prepare written responses to all questions received, both questions received prior to the Conference and questions asked at the Conference, and will distribute these responses to all prospective Offerors who are known to have received a copy of the RFP.

Questions will also be accepted subsequent to the Conference. All post-Conference questions shall be submitted in a timely manner to the Procurement Officer only. The Procurement Officer, based on the availability of time to research and communicate an answer, will decide whether an answer can be given before the Deadline for Receipt of Proposals. Answers to all substantive questions that have not previously been answered and are not clearly specific only to the requestor, will be distributed to all parties known to have received the RFP.

**3.6.2** If an Offeror discovers any conflict, discrepancy, omission, or other error in this RFP, it shall immediately notify, in writing, the Procurement Officer. Should a potential Offeror identify alleged ambiguities in the specifications or Contract provisions included in this RFP, or should there be doubt as to the meaning or intent of any section herein, the potential Offeror must request clarification from the Procurement Officer prior to the Deadline for Receipt of Proposals. Failure to do so may prevent consideration of a future protest. (See COMAR 21.10.02.03)

**3.6.3** If an Offeror fails to notify the MLGCA of an error in the RFP known to the Offeror, or an error that reasonably should have been known to the Offeror, the Offeror shall submit a proposal at the Offeror's own risk; and, if awarded the Contract, the Offeror shall not be entitled to additional compensation or time by reason of the error or its later correction.

## 3.7 PROPOSAL SUBMISSION

### 3.7.1 Deadline for Receipt of Proposals

The submission of Proposals shall be conducted as described in Section VII.

**All proposals must be received by the Procurement Officer, at the address listed in Section 3.1.1 and the Key Information Summary Sheet, no later than 2:00 p.m. (Local Time) on May 1, 2015, in order to be considered.**

### 3.7.2 General Submission Requirements

Requests for extension of the Deadline for Receipt of Proposals (date or time) will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer as specified in Section 3.1.1.

Proposals **may not** be sent by fax or e-mail to the MLGCA.

All written materials must be in English.

Upon its receipt, each proposal will be stored in a secure place until the time and date of opening. Proposals will not be opened publicly, but shall be opened in the presence of at least two (2) State employees. Proposals shall be shown only to State employees, members of the Evaluation Committee, or other persons deemed to have a legitimate interest in them.

A Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals and identity of Offerors may not be disclosed before the Procurement Officer makes a determination recommending award of the Contract.

Except as provided in COMAR 21.05.02.10 and 21.05.03.02, Proposals or requests for withdrawal or modification received by the Procurement Officer after the Deadline for Receipt of Proposals will not be considered.

**Modifications or Withdrawals:** Proposals may be modified or withdrawn only by written notice to the Procurement Officer prior to the Deadline for Receipt of Proposals.

**Late Actions:** A proposal, request to withdraw a proposal, or a modification to a proposal is late if the Procurement Officer does not receive it by the Deadline for Receipt of Proposals. A late proposal, late request for withdrawal, or late modification will not be considered, except under the following circumstances and with approval of the office of the Attorney General:

- A. When a late proposal, modification or withdrawal is received before contract award and the proposal, modification or withdrawal would have been timely but for the action or inaction of State personnel directing the procurement activity or their employees.
- B. A late modification of a successful proposal, which makes its terms more favorable to the State, shall be considered at any time it is received and may be accepted at the sole discretion of the State. (See COMAR 21.05.02.10)

### **3.8 ORAL PRESENTATIONS/SITE VISITS DURING EVALUATION**

For any oral presentations, demonstrations of proposed equipment and services, or site visits, the Offeror must include in these activities its key staff that would be assigned to this project if awarded the Contract. Submission of a proposal does not guarantee an Offeror the opportunity to be invited to participate in oral presentations or discussions, demonstrations or site visits.

#### Oral Presentations

Offerors will be required to make individual oral presentations to the Evaluation Committee in order to clarify their proposals and provide an opportunity for the Committee to ask questions of the Offeror. It is anticipated that these meetings will be held at the MLGCA's headquarters.

The Offeror's Oral Presentation is an important portion of the Offeror's overall technical evaluation. The Offeror must provide a written summary (9 copies) of its Oral presentation at the time of the Oral Presentation. Oral Presentations are tentatively scheduled to take place at the MLGCA's headquarters between May 18, 2015 and May 22, 2015. However, these dates are subject to change.

#### Oral Presentation Guidelines

- 1 Introduce the proposed Account Team.
2. Present the strengths, assets, and benefits that the Offeror can offer to the Lottery.
3. Discuss the Offeror's approach for completing each of the five (5) Components of the Contract as defined in Section 5.2.

#### Demonstrations

The Evaluation Committee may require demonstration of the proposed products and equipment by all qualified Offerors. The purpose of the demonstration is to give the MLGCA an opportunity to observe a demonstration of the proposed products and equipment and to compare the Offeror's demonstrated performance with its written Technical Proposal. An Offeror's demonstration must include the key staff that would be assigned to the MLGCA account if awarded the Contract.

### Site Visits

The Evaluation Committee may make site visit(s) to the Offeror's place of business.

### Scheduling

The Procurement Officer will notify Offerors of the time, place, procedure, scope, and format for oral presentations, demonstrations and/or site visit(s) that may be required. These events may be scheduled concurrently or separately at the MLGCA's discretion. An Offeror's failure to promptly comply and cooperate with these requirements could result in its proposal being rejected and eliminated from further consideration.

### Representations

Significant representations made by an Offeror during oral presentations, discussions, demonstrations and site visits shall be reduced to writing by the Offeror. All such representations will become part of the Offeror's Proposal and shall be binding if the Contract is awarded.

## **3.9 DURATION OF OFFER**

Proposals submitted in response to this RFP are irrevocable for one hundred twenty (120) days following the Deadline for Receipt of Proposals or of Best and Final Offers ("BAFO"), if requested. This period may be extended only by written mutual agreement between the Offeror and the MLGCA.

## **3.10 OWNERSHIP OF MATERIAL**

All opened proposals become the property of the MLGCA upon receipt and will not be returned to the Offerors. Selection or rejection of the proposal will not affect this right. Unopened financial proposals will be returned to the Offeror.

## **3.11 PROPOSAL DISCLOSURE PROHIBITION**

Upon issuance of this RFP, neither the MLGCA or Commission, nor their representatives shall discuss the contents of this RFP with potential Offerors or their representatives, other than in conjunction with the Pre-Proposal Conference, the Question and Answer process, oral presentations/site visits or discussions. (See RFP Section 3.5, 3.6, 3.8 and 8.6)

Until a Contract resulting from this RFP is awarded, no employee, agent, or representative of any Offeror may make available or discuss its proposal with any officer of the State of Maryland, any Commission member, or any employee, agent or representative of the MLGCA, unless specifically authorized to do so in this RFP or in writing by the Procurement Officer for the purposes of clarification, evaluation, and/or negotiation.

Prior to Contract award, Offerors shall not represent themselves to MLGCA staff, Retailers or the public as having the endorsement of the Lottery or Commission or as a supplier of any products or services to the MLGCA or Commission.

### **3.12 METHOD OF PROCUREMENT**

The method of procurement used shall be Competitive Sealed Proposals pursuant to COMAR 21.05.03.

### **3.13 REVISIONS TO THE RFP**

If it becomes necessary to revise any part of this RFP before the Deadline for Receipt of Proposals, the MLGCA will provide an amendment(s) to all parties who were sent or otherwise are known by the Procurement Officer to have obtained a copy of this RFP. Amendments will be posted on eMarylandMarketplace. Amendments will be distributed in reasonable time to allow prospective Offerors to consider them in preparing their proposals.

Amendments made after the Deadline for Receipt of Proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the Deadline for Receipt of Proposals shall be required from all Offerors in their Transmittal Letter accompanying their Technical Proposal. (See Section 7.3.1) Acknowledgement of the receipt of amendments to the RFP issued after the Deadline for Receipt of Proposals shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendments.

### **3.14 INFORMATION NOT CONTAINED IN THE RFP**

Proposals shall be based solely on the material contained in this RFP and any amendments thereto. Offerors are to disregard any newspaper advertisements, news articles, and any oral representations when preparing their proposals.

### **3.15 CANCELLATION OF THE RFP; REJECTION OF ALL PROPOSALS**

The MLGCA may cancel this RFP or reject all proposals submitted in response to this RFP when this action is determined to be in the State's best interest.

### **3.16 PROPOSAL ACCEPTANCE; DISCUSSIONS**

The MLGCA reserves the right to accept or reject any or all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions or negotiations with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. This may be followed by submission of Offeror-revised proposals and a BAFO. This request does

not commit the MLGCA to award a Contract.

The MLGCA also reserves the right, in its sole discretion, to award a contract based upon the written proposals received without prior discussions or negotiations with respect to those proposals.

### **3.17 INCURRED EXPENSES AND ECONOMY OF PREPARATION**

The MLGCA will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this RFP. Proposals should be prepared simply and economically, providing a straightforward, concise description of how the Offeror proposes to meet the requirements of this RFP.

### **3.18 PUBLIC INFORMATION ACT NOTICE**

An Offeror should give specific attention to the clear identification of those portions of its proposal that it deems to be confidential, proprietary commercial information or trade secrets, and provide justification of why such materials, upon request, should not be disclosed by the State pursuant to the Maryland Public Information Act ("PIA"), Title 4, General Provisions Article, Annotated Code of Maryland. A blanket statement by an Offeror that its entire proposal is confidential, proprietary commercial information or a trade secret is unacceptable. Proposals shall be open to public inspection only after Contract award, to the extent permitted by the PIA.

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 may be disclosed. (See COMAR 21.05.08.01)

### **3.19 OFFEROR/CONTRACTOR RESPONSIBILITIES**

The MLGCA will enter into a contractual agreement only with the selected Offeror. The selected Offeror shall be responsible for providing all products, equipment and services required by this RFP. The selected Offeror remains responsible for all work performed by, and any deliverable submitted by, a subcontractor.

If an Offeror is the subsidiary of another entity, all information submitted by the Offeror such as, but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror must provide an explicit statement that the parent organization will guarantee the performance of the subsidiary. (See Section 7.3.2)

### **3.20 PROTESTS**

The State provides avenues for an Offeror to protest the award or the proposed award of

a contract. Any protest or dispute related to this RFP or the resulting contract will be subject to Title 15, Subtitle 2 of the State Finance and Procurement Article, Annotated Code of Maryland, and COMAR Title 21, State Procurement Regulations, Subtitle 10, Administrative and Civil Remedies.

### **3.21 MINORITY BUSINESS ENTERPRISE (“MBE”) SUBCONTRACT PARTICIPATION GOAL**

#### **3.21.1 General**

**3.21.1.1** Minority business enterprises are encouraged to respond to this RFP.

**3.21.1.2** Offerors are advised to carefully review these provisions as they will be closely scrutinized and monitored by the MLGCA for compliance. The MLGCA will report procurement activity with all Minority Business Enterprises (“MBEs”) to the Governor’s Office of Minority Affairs.

**3.21.1.3** All MBE firms proposed must be certified by the Maryland Department of Transportation (“MDOT”) at the time of proposal submission in order to be counted. Only MDOT Certified MBEs may be used to meet the MBE subcontracting goal. The spirit and intent of the State of Maryland is to afford MBEs the opportunity to perform viable and meaningful services in a teaming effort on its contracts. It is the desire of the State to maximize notice, and the opportunity to participate in the procurement process, to a diverse and broad range of MBEs.

The Contractor shall accomplish an amount of work not less than the MBE subcontract participation goal with MDOT certified MBE subcontractors, unless it has requested and been granted a waiver.

In the event that two (2) or more proposals are determined by the Procurement Officer to be equal, the Lottery may award a contract to the Offeror whose offer reflects the greatest amount of meaningful and diverse certified MBE participation. (See COMAR 21.11.03.10.)

#### **3.21.2 Establishment of Goal and Subgoals**

An overall MBE subcontractor participation goal of **25%** of the total contract dollar amount has been established for this Contract.

There are no MBE subcontractor participation subgoals for this procurement.

#### **3.21.3 Assistance and MBE Directory**

**3.21.3.1** Offerors requiring assistance in locating certified MBEs are encouraged to contact the following offices:

The Governor's Office of Minority Affairs



6 Saint Paul Center, #1502  
William Donald Schaefer Tower  
Baltimore, Maryland 21202  
(410) 767-8232

Minority Business Enterprise Liaison  
Maryland State Lottery and Gaming Control Agency  
Montgomery Park Business Center  
1800 Washington Boulevard, Suite 330  
Baltimore, Maryland 21230  
(410) 230-8823

**3.21.3.2** A current Directory of Certified MBEs is available from:

Maryland Department of Transportation (“MDOT”)  
Office of Minority Business Enterprise  
7201 Corporate Center Drive  
Hanover, Maryland 21076  
(800) 544-6056; (410) 865-1269; TTY (410) 865-1342

The Directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current information on MBEs is available via this website.

**3.21.4 MBE Subcontractor Solicitation Process**

Pursuant to COMAR 21.11.03.09C(2)(a-e), to achieve the result specified in Section 3.21.2, the Offeror shall conduct the subcontractor solicitation process in such a manner as to not place MBE subcontractors at a disadvantage. In this process, the Offeror shall:

- (a) Identify specific and meaningful work categories within the RFP’s scope of work that are appropriate for subcontracting;
- (b) Solicit diverse certified MBEs through written notice at least ten (10) days before bids or proposals are due, describing the identified work categories under item (a) above and providing instructions on how to submit a bid for the subcontracts (Make sure the MBEs are certified in the work category for which they are being solicited – carefully check the NAICS code);
- (c) Attempt to make personal contact with the certified MBEs solicited in item (b) above and document these attempts;
- (d) Assist certified MBEs to fulfill bonding requirements or to obtain a waiver of those requirements;
- (e) In order to publicize subcontracting opportunities to certified MBEs, attend pre-proposal conferences or other meetings scheduled by the procurement agency; and
- (f) Notify and encourage those MBEs solicited to attend the pre-proposal conference.

### 3.21.5 Forms and Instructions

**3.21.5.1** MBE forms required to be submitted are contained in Attachments D-1 through D-5 to Appendix D: Minority Business Enterprise (“MBE”) Instructions/Forms, as follows:

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

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

(a) The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and

(b) The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

(c) An Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request. An Offeror that has requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment D -1C) and all documentation within ten (10) Working Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

(d) Offerors are responsible for verifying that each of the MBE(s) (including any MBE primes and/or MBE primes participating in a joint venture), selected to meet the goal and any subgoals and subsequently identified in Attachment D-1A is

appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

***If the Offeror fails to submit a properly completed Attachment D-1A at the time of submittal of its Proposal as required, the Procurement Officer must determine that the Proposal is not reasonably susceptible of being selected for award.***

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

- (a) Outreach Efforts Compliance Statement (Attachment D-2);
- (b) MBE Subcontractor Project Participation Certification (Attachment D-3A) and, as applicable, MBE Prime Project Participation Certification (Attachment D-3B);
- (c) If the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11; and
- (d) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

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

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

- (a) Attachment D-4A (Prime Contractor Paid/Unpaid MBE Invoice Report).
- (b) Attachment D-4B (MBE Prime Contractor Report).
- (c) Attachment D-5 (Subcontractor Paid/Unpaid MBE Invoice Report).

### **3.21.6 MBE Prime Contractor (Including Joint-Venture Where MBE Is Partner)**

As set forth in COMAR 21.11.03.12-1(D) when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (Attachment D-1A) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE prime must also identify other certified MBE subcontractors (see Section 4B of the MBE Participation Schedule (Attachment D-1A)) used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE classifications but can self-perform up to 100% of the stated sub-goal.

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

### **3.21.7 Contract Requirements**

**3.21.7.1** All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and shall be expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract Section 4.1.3).

**3.21.7.2** The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract Section 4.48.4).

**3.21.7.3** Amendment for Unforeseen Circumstances. If at any time before or after the award of the Contract, the Offeror or apparent successful Offeror determines that a certified MBE listed on its MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Appendix D-1A) has become or will become unavailable, then the Offeror shall immediately notify the Procurement Officer who may verify such unavailability. Within ten (10) working days from notification to the Procurement Officer, the Offeror must submit and it shall be considered as part of the Contract, a revised MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Appendix D-1A) and submit a new Subcontractor Project Participation Statement (Appendix D-3A) signed by both the Offeror and the newly proposed certified MBE(s), which must be approved by the Procurement Officer and the MBE Liaison Officer. In the event certified MBE subcontractors are found to be unavailable, the Offeror must submit a request in writing for a waiver.

### **3.21.8 Contract Administration**

With respect to Contract administration, the Contractor shall:

- (a) Submit by the 10th of each month to the Lottery's designated representative:

(i) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and

(ii) (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.

(b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit by the 10th of each month to the Department's designated representative an Subcontractor Paid/Unpaid MBE Invoice Report (Attachment D-5) that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding 30 days, as well as any outstanding invoices, and the amounts of those invoices.

(c) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.

(d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.

(e) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### **3.21.9 Compliance**

(a) To ensure compliance with certified MBE subcontract participation goals, the Lottery shall verify that the certified MBEs listed in the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A) are actually performing work and receiving compensation as set forth in the Schedule. The Contractor shall:

(i) Permit the Lottery to inspect any relevant matter and conduct periodic reviews, including reviewing records, visiting jobsites and interviewing subcontractors and workers;

(ii) Submit monthly a report listing unpaid invoices over 30 days old received from a certified MBE subcontractor, and the reason payment has not been made. By the 15th of each month, beginning the first month after the Contract

commencement date, the Contractor shall submit to the MBE Liaison Officer a Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) for each certified MBE. The report shall include all invoices submitted by the MBE subcontractor and canceled checks; and,

(iii) Include in its agreements with its certified MBE subcontractors a requirement that the certified MBE subcontractors submit by the 15<sup>th</sup> of each month to the MBE Liaison Officer a report, the Subcontractor Paid/Unpaid MBE Invoice Report (Attachment D-5), identifying the prime contract, and listing:

- (1) All invoices submitted to the Contractor;
- (2) Payments received from the Contractor in the preceding 30 days; and,
- (3) Subcontractor invoices over 30 days old.

(b) Provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. The Contractor must maintain and retain all records concerning MBE subcontractor participation and make them available for inspection for a period of three (3) years from the date of final payment under the Contract. Subcontract agreements documenting the work performed by all MBEs must be retained by the Contractor and furnished to the Procurement Officer upon request. (All MBE information from the first day of the contract until the last day of the contract shall be retained for three years after the final payment of the Contract.)

(c) Upon determining the Contractor's noncompliance, the MBE Liaison Officer shall notify the Contractor in writing of its findings and shall specify what corrective actions are required. The Contractor shall be required to initiate the corrective actions within ten (10) working days and complete them within the time specified by the MLGCA. (See COMAR 21.11.03.13 B.)

(d) If the MLGCA determines that material noncompliance with MBE Contract provisions exists and that the prime Contractor refuses or fails to take the corrective action required by the MLGCA, then the following sanctions may be invoked:

- (i) Withholding payment;
- (ii) Termination of the Contract;
- (iii) Suspension of the right of the Contractor to participate in any future contracts;
- (iv) Referral to the Office of the Attorney General for appropriate action;
- (v) Initiation of any other specific remedy identified by the Contract;
- (vi) Liquidated Damages in accordance with RFP Section 4.51;
- (vii) Any other compliance mechanism authorized in COMAR 21.11.03 or available at law.

(e) The MLGCA may, upon completion of the Contract, and before final payment or release of retainage or both, require that the prime Contractor on any contract having an MBE subcontract goal, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

(f) If the MLGCA determines that the Contractor has not complied with the MBE subcontract participation goal, and has not obtained a waiver, the Procurement Officer, upon review by the Office of the Attorney General, may determine the Contractor to be in breach of contract. The reasons for this action shall be specified in writing to the Contractor.

### **3.21.10 Prohibited Acts; Fines**

Under Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland, any person who commits any of the following acts 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:

- (a) Fraudulently obtains, holds, or attempts to obtain or hold certification;
- (b) Aids another person in performing an act prohibited under item (a) of this paragraph;
- (c) Willfully obstructs, impedes, or attempts to obstruct or impede a State official or employee investigating the qualifications of a business entity that has requested certification;
- (d) Fraudulently obtains, attempts to obtain, or aids another person in fraudulently obtaining or attempting to obtain, public monies to which the person is not otherwise entitled under this subtitle; or,
- (e) In any minority business enterprise matter administered under this subtitle:
  - (i) Willfully falsifies, conceals, or covers up a material fact by any scheme or device;
  - (ii) Makes a false or fraudulent statement or representation; or,
  - (iii) Uses a false writing or document that the person knows to contain a false or fraudulent statement or entry.

### **3.21.11 Protests**

A protest under COMAR 21.10.02 may not be filed to challenge a decision whether an entity is or is not a certified MBE.

### **3.22 PROPOSAL AFFIDAVIT**

An Offeror submitting a proposal must complete the Proposal Affidavit (Appendix A of this RFP) and submit it with its proposal. The Affidavit includes anti-bribery, non-

collusion, debarment, and financial disclosure and political contribution disclosure affirmations.

### **3.23 CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

An Offeror submitting a proposal must complete the Conflict of Interest Affidavit and Disclosure (Appendix G of this RFP) and submit it with its proposal.

It is unlawful for any State officer, employee, or agent to participate personally in his official capacity through decision, approval or disapproval, recommendation, advice, or investigation in any Contract or other matter in which he, his spouse, parent, minor child, brother, or sister has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee, or agent has previously complied with the provisions of the Maryland Code Annotated, General Provisions Article, §5-501 et seq. (See also COMAR 21.05.08.08)

### **3.24 CONTRACT AFFIDAVIT**

All Offerors are advised that if a contract is awarded as a result of this RFP, the successful Offeror/Contractor will be required to complete a Contract Affidavit, which is included for information purposes as Appendix B of this RFP. This Affidavit is not required to be submitted with the Offeror's proposal, but shall become a part of the Contract to be signed by the Contractor. This Affidavit must be provided within five (5) calendar days of notification of proposed Contract award. This Affidavit will also be required to be completed by the Contractor prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term.”

### **3.25 RECIPROCAL PREFERENCE - RESIDENT OFFEROR**

1. The provisions of State Finance and Procurement Law §14-401 and COMAR 21.05.01.04 shall apply to this solicitation.
2. Nonresident Offerors submitting a proposal for this solicitation shall include a copy of the current statute, resolution, policy, procedure or executive order of the resident state for the nonresident Offeror that pertains to that state's treatment of nonresident Offerors.
3. Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, the Lottery will apply a resident business preference if: a Responsible Offeror whose headquarters, principal base of business operations, or principal site that will primarily provide the services required by this RFP is in another state submits the most advantageous offer; the



other state gives a preference to its residents through law, policy, or practice; and the preference does not conflict with a federal law or grant affecting the Contract. The preference given will be identical to the preference that the other state, through law, policy or practice gives to its residents.

### **3.26 ARREARAGES**

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

### **3.27 VERIFICATION OF REGISTRATION AND TAX PAYMENT**

Before a corporation can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore Maryland 21201 and the Department of Labor, Licensing and Regulation. Corporations that are not incorporated in Maryland are required to have a resident agent. The resident agent must be either an individual (not the corporation itself) with an address in Maryland or a corporation that represents other corporations as a resident agent.

Further, both corporations and individuals should contact the Comptroller's office to verify that they have no tax liability.

The Contractor shall ensure that all subcontractors meet these requirements, and further, that the Contractor and all subcontractors meet these requirements for the duration of the Contract.

Any potential Offeror who has questions concerning this requirement is advised to contact the Department of Assessments and Taxation at (410) 767-1330. It is strongly recommended that potential offerors and subcontractors be completely registered prior to the due date for receipt of proposals. Failure to register may disqualify an otherwise successful Offeror from final consideration and recommendation for contract award.

### **3.28 PAYMENTS BY ELECTRONIC FUNDS TRANSFER**

By submitting a proposal in response to this RFP, an Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form, which is provided in Appendix E or may be downloaded at: <http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>. A 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 and include the business identification information as stated on the form and include the reason for the exemption.

### **3.29 MULTIPLE OR ALTERNATE PROPOSALS**

Neither Multiple nor Alternate proposals will be accepted.

### **3.30 FALSE STATEMENTS**

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

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

### **3.31 ANTI-BRIBERY**

Pursuant to the Annotated Code of Maryland, State Finance and Procurement Article, §16-202, any person convicted of bribery, attempted bribery, or conspiracy to bribe committed in the obtaining of a contract from the State or any of its subdivisions, shall be subject to disqualification from entering into a contract with the State, or any county or other subdivision of the State.

### **3.32 NONDISCRIMINATION**

As a condition of entering into this agreement, the Offeror 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, the Offeror may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Offeror retaliate against any person for reporting instances of such discrimination. The Offeror 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 nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the

marketplace. The Offeror understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the Offeror 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.

### **3.33 LIVING WAGE REQUIREMENT**

**3.33.1** A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in this RFP (Appendix K - Living Wage Requirements for Service Contracts). If the Offeror fails to submit and complete the Affidavit of Agreement, the State may determine an Offeror to be not responsible.

**3.33.2** Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the required amount per hour as specified on the Department of Labor, Licensing and Regulation ("DLLR") website at [www.dllr.maryland.gov](http://www.dllr.maryland.gov), if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least the required amount per hour as specified on the DLLR website. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the Contractor provides more than 50% of the services from an out-of-State location, the State shall determine the wage tier based on where the majority of the service recipients are located.

The contract resulting from this RFP has been deemed to be a Tier 1 contract.

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

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

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

**3.34 PROMPT PAYMENT REQUIREMENT**

This procurement and the contract to be awarded pursuant to this RFP are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article, and COMAR 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror who is awarded a contract shall comply with the prompt payment requirements outlined in the Contract (RFP Section 4.62). Additional information is available on GOMA's website at: [http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs\\_000.pdf](http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf)

**3.35 LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE**

An Offeror submitting a proposal must complete the Location of the Performance of Services Disclosure Affidavit (Appendix M of this RFP) and submit it with its proposal. The Affidavit includes information regarding any services that the Offeror plans to perform outside of the United States.

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## SECTION IV. MANDATORY CONTRACTUAL PROVISIONS-CONTRACT

The Contract resulting from this RFP shall include the following mandatory contractual terms and conditions (See generally COMAR Title 21, State Procurement Regulations, Subtitle 07, Contract Terms and Conditions), and shall be substantially in the format below.

**THE ONLY RESPONSE REQUIRED IN THE OFFEROR'S PROPOSAL FOR THIS SECTION IS A STATEMENT OF INTENT TO COMPLY WITH THE TERMS, CONDITIONS, AND REQUIREMENTS SET FORTH HEREIN.**

NOTE: An Offeror who takes exceptions to the State's mandatory contractual provisions may have its otherwise qualified proposal deemed to be not susceptible for award. (See also Section 7.3.4 (4))

### AUDITING AND ACCOUNTING SERVICES CONTRACT #2015-04

This Auditing and Accounting Services Contract #2015-04 ("Contract") made this \_\_\_\_\_ day of \_\_\_\_\_, 2015 is by and between the **Maryland State Lottery and Gaming Control Agency** ("MLGCA"), an agency of the State of Maryland having its headquarters at 1800 Washington Boulevard, Suite 330, Baltimore, Maryland 21230, and **(The Selected Offeror)** ("Contractor"), a \_\_\_\_\_ (Type of Business) having its principal place of business at \_\_\_\_\_.

Now therefore, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

#### 4.1. SCOPE OF THE CONTRACT

4.1.1 As set forth in this Contract and the Technical Specifications of the Request for Proposals #2015-04, the Contractor shall provide: Auditing and Accounting Services.

4.1.2 The Contractor shall provide the MLGCA with the foregoing services in accordance with:

- (i) this Contract;
- (ii) the Request for Proposals #2015-04, dated April 6, 2015, as amended by: Amendment #\_\_\_\_ dated \_\_\_\_\_, 2015 and BAFO dated \_\_\_\_\_, 2015, collectively referred to hereinafter as the "RFP"; and
- (iii) the Contractor's Proposal, dated \_\_\_\_\_, 2015, only to the extent that it is consistent with the Contract and the RFP.

All of the above documents referred to in (i), (ii), and (iii) are incorporated herein by

reference as if fully set forth herein. For purposes of reference, the "Contract" means all of the foregoing documents, attachments, or exhibits.

**4.1.3 PRECEDENCE OF CONTRACT DOCUMENTS:** In the event of inconsistencies and/or ambiguities between the Contract, the RFP, the Amendments modifying the RFP and the Contractor's Proposal, the Contractor's obligations for providing the required services are defined in order of precedence by (1) the Contract; (2) the Amendments modifying the RFP; (3) the RFP; and (4) the Contractor's Proposal (Technical and Financial), to the extent that the Proposal does not conflict with the Contract, RFP or Amendments. The MLGCA shall not be bound by any part(s) of the Contractor's Proposal to the RFP which contains information, options, exceptions, conditions, terms, or prices not requested or required in the RFP, unless specifically included in the Contract.

## **4.2 CONTRACT TERM**

Subject to approval by the Maryland Department of Budget and Management, the Maryland Board of Public Works, and any other necessary State officials, this Contract shall commence on or about July 1, 2015 and expire on June 30, 2018, for a term of approximately three (3) years. The MLGCA, at its sole option, shall have the unilateral right to extend the Contract for three (3) additional one (1) year Renewal Option Periods, for a total Contract term of approximately six (6) years. All other terms and conditions shall remain the same during the Renewal Option Periods.

After the expiration of this Contract, or of the Renewal Option Periods if exercised, the Contractor shall assure that essential employees are available, at no cost to the MLGCA, to orient and provide information to the incoming staff of any successor Contractor for this service. These transitional services shall be provided for a maximum of thirty (30) days of the subsequent Contract period at no additional cost to the State.

Upon the expiration of this Contract, or of the Renewal Option Periods if exercised, the MLGCA, at its sole option, shall have the unilateral right to extend the Contract for a Final Renewal Option Period (for transitioning) of up to an additional six (6) month period in order to facilitate the transition to a follow-on Auditing and Accounting Services contractor. For this Final Renewal Option Period, the MLGCA will determine and indicate the number of months needed to facilitate the transition to a follow-on contractor at the time of exercising this Option. All other terms and conditions, including price, shall remain the same for this Final Renewal Option as what is in effect at time of expiration of the initial Contract term or of the Renewal Option Period, as applicable. Upon expiration of the initial Contract term of three (3) years, the three (3) Renewal Option Periods of one (1) year each (if exercised), and the Final Renewal Option for transitioning of up to six (6) months (if exercised), the total Contract Term shall not exceed approximately six (6) years and six (6) months.

### 4.3 COMPENSATION AND METHOD OF PAYMENT

4.3.1 Beginning on **(insert date)**, 2015, or upon the commencement of the Contract, whichever is later, the Contractor will begin to accrue earnings and the Lottery agrees to pay for the Auditing and Accounting Services Contract in accordance with the prices stated on the Contractor's Financial Proposal Sheet dated **(insert date)** 2015-Appendix F to the RFP, which is attached hereto as Exhibit B to the Contract.

The stated unit prices shall be fully loaded and expressly include overhead expenses (e.g., fringe benefits, administrative costs, profits, etc.), and all other related and incidental expenses (e.g., travel, legal, etc.) associated with providing all goods and services and equipment required by this Contract. No other amounts or costs will be paid to the Contractor. Specifically, no taxes or assessments or license fees or permits of any type will be paid in addition to the stated prices.

The unit prices shall be fixed prices for the entire term of the Contract, to include the Renewal Option Periods, if exercised, and any other extensions.

4.3.2 The Contractor shall submit invoices to the MLGCA on a monthly basis in accordance with the Financial Proposal – Appendix F. All invoices shall include the Contractor's Federal Tax Identification Number, which is **(number to be inserted upon contract award)**. In the event of an incorrect or incomplete invoice, the entire monthly billing will not be approved and will be returned to the Contractor for appropriate corrective action.

4.3.3 The Contractor will be compensated upon the proper completion of each of the following five components: (1) Audit Reports, (2) Audit of Lottery Game Drawings, (3) MUSL Agreed Upon Procedures; (4) Assessment of the MLGCA's Technology; and (5) Management Services.

#### 1. **Audit Reports**

The Contractor will be compensated, on a monthly basis, upon completion of each of the audits defined in Section 5.2.1 - Component 1 of the RFP. The MLGCA will not accept billings from the Contractor until the audited financial statements have been received.

The Contractor will be compensated at the monthly fee on the Financial Proposal Sheet-Appendix F for Component 1 services. No additional compensation will be paid to the Contractor for the audit of

the year-end GAAP financial statements, the GAGAS letter on internal controls, consultation/assistance with the MLGCA's CAFR, preparation of the management letters or attendance at Commission meetings. The cost to provide these services shall be included in the monthly fee.

## **2. Audit of Lottery Game Drawings**

The Contractor will be compensated, on a monthly basis, for observing the Lottery Game Drawings as described in Section 5.2.2 - Component 2 of the RFP. The Contractor will be compensated at the monthly fee on the Financial Proposal Sheet-Appendix F for Component 2 services. The MLGCA will not accept billings from the Contractor until the drawing inspection forms have been received.

## **3. MUSL Agreed Upon Procedures**

The Contractor will be compensated upon the proper completion, and delivery to the MLGCA, of each Mega Millions Agreed Upon Procedures audit as described in Section 5.2.3 – Component 3 of the RFP. The Contractor will be compensated in accordance with the flat fee on the Financial Proposal Sheet-Appendix F for Component 3 services.

The Contractor will be compensated upon the proper completion, and delivery to the MLGCA, of each Powerball Agreed Upon Procedures audit as described in Section 5.2.3 – Component 3 of the RFP. The Contractor will be compensated in accordance with the flat fee on the Financial Proposal Sheet-Appendix F for Component 3 services.

## **4. Assessment of the MLGCA's Technology**

The Contractor will be compensated upon the proper completion of each audit of the MLGCA Information Technology Division as described in Section 5.2.4 – Component 4 of the RFP. The Contractor will be compensated in accordance with the flat fee on the Financial Proposal Sheet-Appendix F for Component 4 services.

## **5. Management Services**

The Contractor will be compensated on an hourly basis for management services as described in Section 5.2.5 – Component 5 of the RFP. Prior to beginning any management services, the Contractor shall provide the MLGCA with a description of the services that will be performed and an estimate of the anticipated number of hours. The MLGCA will not reimburse the Contractor for any



management services provided if prior written consent was not obtained from the MLGCA. The total cost to the MLGCA cannot exceed the estimate without prior written approval by the MLGCA. The Contractor will be compensated for all management services at the hourly fee on the Financial Proposal Sheet-Appendix F for Component 5 services.

If the MLGCA exercises any of the Renewal Options, the Contractor will be compensated during the Renewal Option period(s) in accordance with the Renewal period pricing on the Financial Proposal Sheet-Appendix F. The Contractor will be compensated upon proper completion of each of the five Components as defined above.

- 4.3.4** Payment shall be made no later than thirty days (30) after receipt of proper invoice(s) from the Contractor in accordance with standard State procedures. The MLGCA shall not pay for goods or services prior to their delivery and acceptance. The MLGCA may withhold and/or reduce payment, as well as institute for set-off, counterclaim, liquidated damages, or any other legally permitted deduction, for the Contractor's unsatisfactory performance, failure to provide the MLGCA with all required deliverables within the specified timeframe, or material breach of the terms and conditions of the Contract. The MLGCA shall have the right to adjust future invoices based on the results of a monthly review of invoices by the MLGCA.

The rights and remedies of the State under the Contract are cumulative. The enforcement of any right or election of any remedy by the State provided by the Contract for any breach of the Contract will not preclude the State from enforcing other rights and availing itself of other remedies available under the Contract for the same breach or any other breach of the Contract.

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 established by the Procurement Officer. The final Contract payment shall not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

- 4.3.5** The total amount of this Contract for the initial three (3) year term excluding any future modifications shall not exceed (**\$ amount to be inserted upon contract award**) Dollars. In the event that the MLGCA

exercises its unilateral options to extend the Contract in its sole discretion, the amount of this Contract for the Renewal Option Periods excluding any future modifications shall not exceed (**\$ amount to be inserted upon contract award**) Dollars for the first 1-year Renewal Option Period, (**\$ amount to be inserted upon contract award**) Dollars for the second 1-year Renewal Option Period, (**\$ amount to be inserted upon contract award**) Dollars for the third 1-year Renewal Option Period, and (**\$ amount to be inserted upon contract award**) Dollars for the Final Renewal Option Period (for transitioning) of up to an additional six (6) month period. If the MLGCA exercises the options to extend, such options shall be at the prices, terms and conditions specified on the Financial Proposal – Appendix F. The amount of this Contract for the potential total of six (6) years and six (6) months excluding any future modifications shall not exceed (**\$ amount to be inserted upon contract award**). The “not to exceed” amounts are not guaranteed amounts, but only the maximum amount authorized to be expended under this Contract without further written and properly authorized modification.

#### **4.4 CONTRACT MODIFICATION**

Any amendment, change, modification or extension of this Contract must be in writing and executed by both parties with approval by the Procurement Officer, subject to any additional approvals required by State law. No amendment to this Contract shall be binding unless in writing, so approved by the appropriate parties, and signed by both parties. No amendment may change significantly the scope of the original Contract.

#### **4.5 NON-HIRING OF OFFICIALS AND EMPLOYEES**

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

#### **4.6 DISPUTES**

This Contract shall be subject to the provisions of the State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, as from time to time amended, and COMAR 21.10 (Administrative and Civil Remedies). 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. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the

Contract in accordance with the Procurement Officer's decision.

#### **4.7 MARYLAND LAW PREVAILS**

The place of performance of this Contract shall be the State of Maryland, and this Contract shall be governed by the laws of the State of Maryland and for all purposes shall be construed, interpreted, and enforced in accordance with said laws and the decisions of the courts of the State of Maryland thereon and as required under applicable laws and regulations, including approval of the Board of Public Works where appropriate, and shall be binding upon the successors and assigns of the parties hereto. Any and all litigation arising under this Contract shall be instituted in the appropriate court of the State of Maryland. The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.

#### **4.8 NONDISCRIMINATION IN EMPLOYMENT/SEXUAL HARASSMENT**

The Contractor agrees:

1. Not to discriminate in any manner against any employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, sexual preference, national origin, ancestry, or disability of a qualified individual with a disability;
2. To include a provision similar to that contained in subsection 1, above, in any subcontract except a subcontract for standard commercial supplies or raw materials;
3. 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;
4. To operate under this Contract so that no employee or client is subjected to sexual harassment in the workplace or in locations and situations otherwise associated with the performance of duties per the terms of this Contract. Further, except in sub-contracts for standard commercial supplies or raw materials, the Contractor shall include this clause, or a similar clause approved by the Lottery, in all sub-contracts. The Contractor has primary responsibility for enforcement of these provisions and for securing and maintaining the sub-contractor's full compliance with both the letter and spirit of this clause;
5. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual

orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, 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;

6. The contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Commission, in all sub-contracts; and

7. As a condition of entering into this Contract, upon the Commission on Civil Rights' request, and only after the filing of a complaint against the Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, the Contractor agrees to: provide to the State within sixty (60) days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the 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 the Contractor on each subcontract or supply contract. The Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The Contractor understands and agrees that violation of this clause shall be considered a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

#### **4.9 CONTINGENT FEE PROHIBITION**

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

#### **4.10 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS**

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

#### **4.11 TERMINATION FOR DEFAULT**

The rights and remedies of the State under the Contract are cumulative. The enforcement of any right or election of any remedy by the State provided by the Contract for any breach of the Contract will not preclude the State from enforcing other rights and availing itself of other remedies available under the Contract for the same breach or any other breach of the Contract.

If the Contractor fails to properly perform its obligations under the Contract, the State may correct any deficiencies at the Contractor's expense. If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by giving written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work and services 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 determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

#### **4.12 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 the Contractor all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs

associated with the termination of the Contract. However, the State will not pay, and the Contractor shall not be entitled to, any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 A (2).

#### **4.13 DELAYS AND EXTENSIONS OF TIME**

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

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

#### **4.14 SUSPENSION OF WORK**

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

#### **4.15 PRE-EXISTING REGULATIONS**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract. However, both parties expressly acknowledge the possibility of substantial changes in federal and State laws and regulations applicable to this Contract and expressly agree to renegotiate this Contract as necessary to comply with any such changes. Specifically, Contractor should make note of Environment Article, Section 9-1707 (Newsprint Recycling Program) of the Annotated Code of Maryland and ensure that potential third-party vendors are in compliance with applicable environmental recycling laws and regulations.

#### **4.16 PAYMENT OF STATE OBLIGATIONS**

Section 15-104 et seq. of the State Finance and Procurement Article, Annotated Code of Maryland, provides that the State shall remit payment to the Contractor within thirty (30) days after receipt of a proper invoice pursuant to any authorized, written procurement contract. Except as provided in Section 15-105 of this Article, the State's failure to remit payment within this period may entitle the Contractor to interest at the rate specified in 15-104 of this Article, for the period that begins thirty one (31) calendar days after the receipt date. This amount, if paid, shall be in lieu of payment of any other late charge(s) by the State.

For purposes of this contract, an amount will not be deemed "due and payable" and interest payments will not be authorized for late payments unless the following conditions have been met:

- (1) The amount invoiced is consistent with the amount agreed upon by the parties to the contract.
- (2) The goods or services have been received by the State and the quantity received agrees with the quantity ordered.
- (3) The goods or services meet the qualitative requirements of the contract and have been accepted by the State.
- (4) The proper invoice has been received by the party or unit of government specified in the contract.
- (5) The invoice is not in dispute.
- (6) If the Contract provides for progress payments, the proper invoice for the progress payment has been submitted pursuant to the schedule contained in the Contract.
- (7) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have been met.

In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest within 30 calendar days after the payment date (i.e., the date of the check from the State Treasurer that pays the Contractor for the goods supplied or the service rendered) of the amount on which the interest accrued. Interest may not be claimed (1) if a claim has been filed under Title 15, State Finance and Procurement Article (Procurement Contract Administration and Dispute Resolution) Annotated Code of Maryland, (2) for more than one year following the 31st calendar day after the date that a proper invoice is received by a State agency, or (3) on an amount representing unpaid interest.

#### **4.17 FINANCIAL DISCLOSURE**

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

#### **4.18 POLITICAL CONTRIBUTION DISCLOSURE**

The Contractor shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

#### **4.19 RETENTION OF RECORDS**

Unless otherwise stated in the RFP or Contract, the Contractor shall retain and maintain all records and documents in any way relating to this Contract for three (3) years after final payment by the State under this Contract or until the expiration of any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times.

#### **4.20 COMPLIANCE WITH LAWS / WARRANTIES**

The Contractor hereby represents and warrants that:

1. It is qualified to do business in the State of Maryland and that it will take such



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

#### **4.21 COST AND PRICE CERTIFICATION**

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 a mutually determined specified date prior to the conclusions of any price discussion or negotiations for: (a) a negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or (b) a change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

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 agreed upon between the parties, was inaccurate, incomplete or not current.

#### **4.22 SUBCONTRACT, ASSIGNMENT AND PROHIBITION ON AFFILIATED ENTITY RELATIONSHIPS**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the MLGCA, nor may the Contractor assign this Contract or any of its rights or obligations hereunder without the prior written approval of the MLGCA. The Contractor shall not pledge this Contract as a receivable without the prior written approval of the MLGCA. Any such subcontract or assignment shall include terms and conditions that the Attorney General deems necessary to protect the interests of the MLGCA and the State. The State shall not be responsible for the fulfillment of the Contractor's obligations to any subcontractor or assignee.

#### **4.23 INDEMNIFICATION AND RESPONSIBILITY FOR CLAIMS AND LIABILITY**

1. The Contractor shall indemnify and save and hold harmless the MLGCA, the State of Maryland, the Commission, its agents, or any individual member thereof, or any

employee of the State, against and from all liability for any costs, expenses, losses, liabilities, fines, penalties, suits, actions, demands, or claims of any nature or character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this Contract or in any manner related to the subject matter of this Contract. This section 4.23 shall survive the termination of this Contract.

The Contractor shall indemnify and save and hold the aforementioned entities and individuals harmless for the failure of the Contractor, its agents or employees, or its subcontractor(s), to comply with the terms of this Contract (or any part thereof), negligence of the Contractor, injury or death to any person, damage to property, nuisance (public or private), or trespass arising out of or attributable to the performance of work by the Contractor, its agents or employees, or its subcontractor(s), except to the extent caused by the negligent or willful act or omission of the State or its employees, agents, or independent contractors, other than the Contractor, its agents or employees, or its subcontractor(s). The whole, or so much of the moneys due, or to become due the Contractor under this Contract, as may be considered necessary by the Procurement Officer, may be retained by the Commission until such suits or claims for damages shall have been settled, or otherwise disposed of, and satisfactory evidence to that effect furnished to the Procurement Officer.

2. The Contractor further agrees to indemnify the State for damage, loss, or destruction of State property in the Contractor's care, custody, and/or control during the term of this Contract due to the action or inaction of the Contractor or its subcontractor(s).

3. State law prohibits the State from incurring, by way of an indemnity agreement, a potentially unlimited liability when no funds have been appropriated to fund the liability, the risk is uninsured, and the indemnity agreement is not conditioned upon the future appropriation of funds to satisfy the liability. Notwithstanding any other provisions of the Contract documents, the State shall have no liability to the Contractor under the circumstances described in this paragraph.

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

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

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

investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract. Neither the Contractor nor subcontractors may settle or resolve any such claim, suit or action without advance notice to the State.

7. The Lottery will provide written notice of any claims filed against the MLGCA or Commission arising out of the Contractor's performance under the Contract of which it has notice. With the concurrence of the Office of the Maryland Attorney General, the MLGCA may allow Contractor the right to control such litigation, but the MLGCA and the State reserves the right to jointly participate in all such legal proceedings, as well as the settlement of any such claims.

#### **4.24 NO WAIVER OF RIGHT**

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

#### **4.25 CHANGE IN FINANCIAL CONDITION**

If the Contractor experiences a substantial change in its financial condition during the term of the Contract or any extension thereof, the Contractor shall notify the Procurement Officer in writing of the change at the time the change occurs or is identified. Failure to notify the Procurement Officer of such a substantial adverse change in financial condition may be sufficient grounds for terminating the Contract.

#### **4.26 BANKRUPTCY**

Upon the filing of any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor shall notify the Procurement Officer in writing immediately.

#### **4.27 TAXES**

The MLGCA and Commission shall have no responsibility for the payment of any federal, state or local taxes which become payable by the Contractor or its subcontractors as a result of this Contract.

The State is generally exempt from Federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates will be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a

contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.

#### **4.28 LIABILITY FOR LOSS OF DATA OR RECORDS**

In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error, negligence, or intentional action of the Contractor or its employees, agents or subcontractors, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records in a manner, format, and time frame acceptable to the State.

#### **4.29 PROPERTY RIGHTS/USUFRUCT**

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

Any data, information, survey instruments, and reports collected or prepared by the Contractor in the course of performing its duties and obligations under this Contract shall be deemed owned by the MLGCA. This ownership provision is in consideration of the Contractor's use of public funds in collecting, preparing, or using such data, information, survey instruments, and reports. These items shall not be used by the Contractor for any independent project of the Contractor or publicized by the Contractor without the written permission from the MLGCA. Subject to applicable State and federal laws and regulations, the MLGCA shall have full and complete rights to reproduce, duplicate, disclose, and otherwise use all such data, information, survey instruments and reports.

Except as otherwise provided in this subsection, if any trademark, copyrightable or patentable material is developed by the Contractor in the course of performance of this Contract, the MLGCA and the State shall have a royalty-free, non-exclusive, and irrevocable right to reproduce, publish, or otherwise use the work, and authorize others to do so.

If, for any reason, other than the natural expiration of the Contract term, the Contractor ceases to perform the Contract, the MLGCA shall, in addition to any other rights it may have under this Contract, acquire a property right (usufruct) in all property (tangible or intangible, real or personal) used by the Contractor to perform the Contract and which is necessary to provide such service. Said property right (usufruct) shall be limited to the right of the MLGCA to possess and make use of such contractual items solely for the use and benefit of the MLGCA in operating, maintaining, altering and improving the operational characteristics of the Systems being used by the MLGCA under the

Contract. Such property right (usufruct) shall be limited in time to the duration of the Contract or as the MLGCA deems necessary to fulfill the Contract and any extension thereof or obtain a substitute.

#### **4.30 RIGHTS IN PRODUCTS**

1. All original written material including, but not limited to, reports, software and/or other documentation originated and prepared exclusively for the MLGCA pursuant to this Contract shall belong exclusively to the MLGCA.

2. All preexisting ideas, concepts, know-how and techniques and each invention, discovery and improvement thereof, previously made or conceived of by either the Contractor or the MLGCA, as the case may be, whether reduced to practice or not (“Preexisting Party Innovations”), and any and all domestic, foreign or other intellectual property and other proprietary rights whatsoever relating thereto, whether registered, recorded or otherwise protected under patent, copyright, trademark, trade secret or other law (“Intellectual Property Rights”) shall remain the sole and exclusive property of the party hereto which made or conceived of same. Furthermore, the MLGCA has the right to use any preexisting intellectual property rights, free of any type of fees, of the Contractor necessary to effectuate the purpose of this Contract.

3. All ideas, concepts, know-how and techniques and each invention, discovery and improvement thereof, exclusively made or conceived for the MLGCA by the Contractor or its employees separately or jointly with Lottery personnel in the course of performance under this Contract, whether reduced to practice or not (“New Innovations”), together with all Intellectual Property Rights relating thereto (“New Intellectual Property Rights”), shall be owned solely and exclusively by the MLGCA and may be used by the Contractor only upon written agreement with the MLGCA.

In furtherance of the foregoing, Contractor shall deliver to the MLGCA good and marketable title, free and clear of any lien or encumbrance to all work product and deliverables hereunder; provided that, Contractor shall be permitted to incorporate into said work product and deliverables software and other materials, technologies or other works owned by third parties (a “Third Party Preexisting Work”) under the terms of a blanket developer license or other authority; provided further, such Third Party Preexisting Work is specifically identified to the MLGCA prior to the delivery of such materials and Contractor obtains at no additional cost for the benefit of the MLGCA, its successors, assigns and contractors, an irrevocable, perpetual, nonexclusive, royalty-free right and license, for wherever the MLGCA can lawfully operate, to make, use, sell, offer for sale, reproduce, sublicense and distribute and otherwise exploit said Third Party Preexisting Works.

#### **4.31 ROYALTIES**

The State shall not pay any royalties or other fees/costs to outside parties for

proprietary material used in the performance of this Contract or in the conduct of the MLGCA or Commission activities.

#### **4.32 INTELLECTUAL PROPERTY PROTECTION**

To the extent that full ownership of any New Intellectual Property Rights does not automatically vest in the MLGCA by virtue of this Contract or otherwise, Contractor hereby irrevocably transfers and assigns to the MLGCA all right, title and interest in any New Intellectual Property Rights. Contractor shall obtain a suitable form of assignment of any actual or prospective New Intellectual Property Rights from all persons who perform any part of the services under this Contract. In the event the MLGCA elects to file an application for the protection of the New Intellectual Property Rights anywhere in the world based on work product or deliverables made by an employee of Contractor, such employee and Contractor shall assist the MLGCA, at the MLGCA's expense, in preparing such application and shall execute all documents necessary for the MLGCA to file, effect and maintain title to such application in the name of the MLGCA. Contractor agrees to require each of its employees and authorized agents who provide services on behalf of Contractor to execute and provide the MLGCA with a copy of an assignment acceptable to the MLGCA prior to the provision of any services by each such person, and to disclose to the MLGCA the name of each such person and agent prior to the commencement of work by such person or agent.

The Contractor shall promptly provide written notice to the MLGCA of each claim received, or reasonably anticipated to be asserted, that the service, work product, deliverables, or New Intellectual Property Rights infringe or otherwise violate any third party Intellectual Property Rights ("Third Party Infringement Claims"). Such notice shall include all available information regarding the actual or anticipated notice or claim, the likely parties thereto and an assessment of liability thereunder based on all reasonably available information. Further, from time to time and as changes in circumstances warrant, Contractor shall update in writing the MLGCA on the status of all anticipated notices and claims.

The Contractor shall hold and save harmless the State of Maryland, the MLGCA, the Commission, and its agents, officers, and employees from liability of any nature or kind arising out of a claim or suit, including Third Party Infringement Claims, for or on account of the use of any service, work product or deliverable furnished or used in the performance of any Contract resulting from this RFP or the New Intellectual Property Rights. The Contractor agrees to defend any and all such threatened or actual claims and suits, and to pay all damages and costs, including attorneys and witness fees, subject to the right of the State to provide additional legal counsel at the State's own expense; provided that, the MLGCA (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations.

In addition to Contractor's obligations stated above, if any service, work product,

deliverable, or New Intellectual Property Rights become, or can be reasonably anticipated to become, the subject of a Third Party Infringement Claim, the Contractor, at its own expense and with the consent of the MLGCA, shall within thirty (30) days from the time Contractor first learns of such a claim or potential claim, perform the following:

- a) procure for the Lottery the right to continue receiving the service or using the work product, deliverable, or New Intellectual Property Rights,
- b) replace the service, work product, deliverable, or the New Intellectual Property Rights with a non-infringing service, work product, deliverable, or Intellectual Property Rights substantially complying with the applicable specifications, or
- c) modify the service, work product, deliverable, or New Intellectual Property Rights so that it becomes non-infringing and performs in a substantially similar manner to the original service, work product, deliverable, or New Intellectual Property Rights.

The Contractor shall not affix any restrictive markings upon any work product, deliverable, New Intellectual Property or other data and if such markings are affixed, the MLGCA shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

Contractor agrees to treat all New Intellectual Property Rights as confidential and trade secret proprietary information. Except as expressly permitted in Section 4.30, Contractor shall not sell, copy, transfer, publish, disclose, display, or otherwise make available any New Intellectual Property Rights to any person or third party (including any of its subsidiaries), except those with a need to know such New Intellectual Property Rights in order to accomplish the purposes of this Contract. Contractor shall secure and protect the New Intellectual Property Rights in a manner consistent with the maintenance of the rights in the New Intellectual Property Rights, and shall take appropriate action by instruction and/or agreement with its employees who are permitted access to such New Intellectual Property Rights, to satisfy its obligations hereunder. The foregoing restrictions continue to apply (even after the termination of this Contract) without limit in time.

#### **4.33 RIGHT TO REJECT OR SUBSTITUTE PERSONS PROPOSED FOR PROJECT**

The MLGCA shall have the right to reject any person proposed by the Contractor to work on this Contract if the MLGCA determines that the use of such person is not suitable for the Contract, they are not qualified, or that their work on the Contract is not in the best interest of the State.

All Key Personnel described in the Contractor's proposal, or identified at Contract commencement, shall perform continuously for the duration of the Contract, and for so long as performance is satisfactory to the MLGCA. The MLGCA may direct the Contractor to replace any personnel who are perceived as being unqualified, non-

productive, unable to fully perform the job duties due to full or partial incapacity or personal circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. The Procurement Officer will give written notice of performance issues to the Contractor, describing the problem and delineating remediation requirement(s). The Contractor shall respond with a written remediation plan within five (5) calendar days and implement the plan immediately upon written acceptance of the MLGCA. If performance issues persist, the MLGCA may require the immediate removal of persons whose performance is at issue. The Contractor shall provide a suitable replacement for approval within fifteen (15) calendar days of the notification of the need for removal, or the actual removal, whichever occurs first.

The Contractor may not substitute Key Personnel, other than by reason of an individual's death, sudden illness or termination of employment, without the prior written approval of the MLGCA. To replace any Key Personnel identified in the Contractor's proposal or at Contract commencement, the Contractor shall submit the resumes of the proposed substitute personnel to the MLGCA for approval at least two weeks prior to the effective date of substitution. All proposed substitute personnel shall have qualifications at least equal to those of the replaced personnel, and shall be approved by the MLGCA.

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

#### **4.34 CONFLICT OF INTEREST**

The Contractor shall ensure that there is no real or perceived conflict of interest of clients at any time during the term of the Contract. If the Contractor has any lottery-related clients or clients which would be perceived as improper in its alliance to the Lottery at the time of Contract award, or obtains any such clients during the term of the Contract, the Contractor shall notify the MLGCA of such clients.

The MLGCA shall make the final determination as to whether any activity constitutes a conflict of interest, pursuant to this provision. The MLGCA's decision shall be final and without recourse; however, the MLGCA will not make any such decision without providing the Contractor with an opportunity to present comments. Failure of the Contractor to cancel such client accounts upon notification by the MLGCA that a conflict exists, shall constitute a material breach of the Contract, and the Contract is subject to termination by the MLGCA. See provisions of COMAR 21.05.08.08 (B) and State Finance and Procurement Article, §13-211 and §13-212 of the Annotated Code of Maryland.



#### **4.35 CONFIDENTIALITY**

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Contract shall be kept confidential and not be disclosed to any person other than the State, its designated officials, employees, and authorized agents. The Contractor shall immediately notify the State in writing if it is requested to disclose any information made known to or discovered by it during the performance of the Contract.

#### **4.36 SET-OFF**

The MLGCA may deduct from and set-off against any amounts due and payable to the Contractor any back charges or damages sustained by the State that are caused by the Contractor. Nothing herein shall be construed to relieve the Contractor of liability for additional costs resulting from a failure to satisfactorily perform the services.

#### **4.37 DRUG AND ALCOHOL FREE WORKPLACE**

The Contractor shall comply with the State's Drug and Alcohol Free Workplace provisions as set forth in paragraph E. of the Contract Affidavit (Appendix B).

#### **4.38 DISSEMINATION OF INFORMATION**

The Contractor shall not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of the MLGCA. The Contractor shall indemnify the State, MLGCA and Commission, their officials, agents, and employees, from any liability that may be incurred by reason of dissemination, publication, distribution or circulation, of any information, or materials pertaining to this Contract by the Contractor, its agents, or employees.

#### **4.39 LOTTERY, VLT AND TABLE GAME PLAY AND PRIZE PAYMENT RESTRICTIONS**

In accordance with Section 9-123 of the Maryland State Government Article, Annotated Code, no officer or employee of the MLGCA, their spouse, child, brother, sister, or parent residing in the household of such officer or employee shall purchase a Maryland Lottery ticket or be paid a prize in any Maryland Lottery game. During the term of this Contract, this restriction as well as a similar restriction on the playing of VLTs and table games at any casino within the State and receiving payment of a prize by any Maryland casino shall also apply to officers and employees of the Contractor or of any subcontractor whose use is subject to Commission approval who are directly involved with the Commission's account, and their spouse, child, brother, sister, or parent

residing in the household of such officer or employee. This restriction also applies to the purchase of the multi-state game known as Mega Millions, which shall not be purchased in any participating state. Powerball may be purchased in a state other than Maryland. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor whose use is subject to Commission approval. The Director shall have the sole discretion to determine the applicability of this restriction to any specific individual.

#### **4.40 CONTRACTOR COOPERATION**

The Contractor shall cooperate with any subsequent contractor or any other contractor designated by the MLGCA to accomplish its objectives.

#### **4.41 CHANGES, ALTERATIONS OR MODIFICATIONS IN THE SERVICES**

Pursuant to Section 13-218 of the State Finance and Procurement Article, Annotated Code of Maryland, the State has: 1) the unilateral right to order in writing changes in the work within the scope of the Contract; and 2) the unilateral right to order in writing a temporary stop or delay in performance.

1. The Procurement Officer may at any time, by written order and unilaterally and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:
  - a. Description of services to be performed;
  - b. Time of performance (i.e., hours of the day, days of the week, etc.);
  - c. Place of performance of the services;
  - d. Drawings, designs or specifications;
  - e. Method of shipment or packing of supplies;
  - f. Place of delivery.
2. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the Procurement Officer shall make an equitable adjustment in the contract price, the delivery schedule or both, and shall modify the Contract.
3. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order.
4. If the Contractor's proposal for an adjustment includes the cost of property made obsolete or excess by the change, the Procurement Officer shall have the right to

prescribe the manner of the disposition of the property.

5. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

#### **4.42 VARIATIONS IN ESTIMATED QUANTITIES**

Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a written request from the Contractor for an extension of time within ten (10) days from the beginning of the delay or within a further period of time which may be granted by the Procurement Officer before the date of final settlement of the Contract, ascertain the facts and make the adjustment for extending the completion data as in his/her judgment the findings justify.

#### **4.43. LIQUIDATED DAMAGES**

**4.43.1 GENERAL** - It is agreed by the MLGCA and Contractor that:

- a. If the Contractor does not provide or perform the requirements referred to or listed in this provision, damage(s) to the Lottery will result.
- b. Proving such damage(s) will be costly, difficult, and time consuming.
- c. The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract and is not considered a penalty.
- d. Liquidated damages shall become due within thirty (30) calendar days after written notification by the MLGCA. The MLGCA may, at its sole discretion, deduct liquidated damages from payments due to the Contractor. The Contractor's surety shall be liable under the Performance Bond for all liquidated damages assessed against the Contractor.
- e. Nothing in this provision shall be construed as relieving the Contractor from performing all Contract requirements whether listed herein or not, nor is the MLGCA's right to enforce or to seek other remedies from failure to perform any other Contract duty hereby diminished.

- f. Remedies of the MLGCA specified in this section or elsewhere in the Contract for breach or failure of performance by the Contractor shall in no way limit any other remedies available to the MLGCA under the Contract; under any statute or regulation; or at law or in equity including, without limitation, all remedies of a buyer under the Uniform Commercial Code. All rights, powers and remedies shall be cumulative and concurrent. Any failure of the MLGCA to exercise a remedy shall not be a waiver of any breach or non-performance by the Contractor nor shall it prevent the MLGCA from later exercising that or any other remedy.
- g. The Contract will be used by the MLGCA to monitor Contractor performance and will provide the basis for determining liquidated damages.

#### **4.43.2 LIQUIDATED DAMAGES ASSESSMENT: COLLECTIONS, WITHHOLDS**

- a. Once the MLGCA has determined that liquidated damages are to be assessed, the Director shall notify the Contractor of the assessment (or assessments). At the Director's discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within thirty (30) calendar days of receipt of the assessment notice unless directed otherwise by the Director. If the Director determines that any damage was caused in part by the MLGCA, the Director shall reduce damage assessment against the Contractor proportionately.
- b. Any liquidated damages assessment may also be collected, at the Director's discretion, by withholding the funds from any payment (or payments) due the Contractor after the date of assessment.

#### **4.43.3 CONDITIONS FOR TERMINATION OF LIQUIDATED DAMAGES**

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

- a. Except as waived by the Director, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Director verifying the correction of condition(s) for which liquidated damages were imposed, and all the Contractor corrections have been subjected to system testing or other verification at the discretion of the Director.
- b. The Contractor shall conduct the acceptance testing of any correction the

Director deems necessary.

c. The necessary level of documentation to verify corrections will be determined by the Director, who is the sole judge of the accuracy of any documentation provided.

d. A Contractor Notice of Correction will not be accepted until the correction is verified by a system test and the MLGCA's written approval of the test results is received.

e. Unless specified otherwise by the Director, system corrections shall be sustained for a reasonable period of at least ninety (90) calendar days from MLGCA acceptance, otherwise liquidated damages may be re-imposed without a succeeding grace period (in those cases where one is allowed) within which to correct.

f. The Contractor's use of resources to correct defects shall not cause other system problems.

g. The Contractor shall certify that each defect is corrected.

#### **4.43.4 SEVERABILITY OF INDIVIDUAL LIQUIDATED DAMAGES CLAUSES**

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

#### **4.43.5 DAMAGES IMPOSED**

a. Failure to Present the Monthly Audited Financial Statements Prior to the 15<sup>th</sup> of each Month

In the event the Contractor fails to present the monthly audited financial statements to the MLGCA prior to the 15<sup>th</sup> of each month, the Director may impose liquidated damages in the amount of up to Three Hundred Dollars (\$300.00) per day for each day or fraction thereof during which the Contractor fails to present the statements.

b. Failure to Complete the Year End Audited Financial Statements by the Date Required by the State

In the event that the Contractor fails to complete the year end audited financial

statement by the date required by the State, which is typically on or around October 1<sup>st</sup> of each year, the Director may impose liquidated damages in the amount of up to Three Hundred Dollars (\$300.00) per day for each day or fraction thereof during which the Contractor fails to present the statements.

#### **4.44 BOND REQUIREMENTS**

##### **4.44.1 Proposal Bond**

Each Offeror shall submit with its proposal a Proposal Bond in the amount of Fifty Thousand Dollars (\$50,000.00) to guarantee for one hundred eighty (180) days after the Deadline for Receipt of Proposals the availability of the equipment and services at the offered price. The bond shall be in the form provided in Appendix I and underwritten by a surety company authorized to do business in the State and subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07. A certified check or cashier's check payable to the MLGCA may also serve as a Proposal Bond.

Offerors may request a release of the bond after the date of Contract award in return for a release signed by the Offeror and accepted by the MLGCA.

##### **4.44.2 Litigation/Protest Bond**

Each Offeror must submit with its proposal a Litigation/Protest Bond in the amount of Fifty Thousand Dollars (\$50,000.00). The purpose of the Litigation/Protest Bond is to discourage frivolous lawsuits and protests by permitting the MLGCA to recover, in addition to its attorney's fees, damages that result from delay in implementing a Contract. A claim upon the bond may be made by the MLGCA if:

1. The Offeror brings any legal action or protest against the MLGCA, the Commission, the State, or any individual member thereof, or any employee of the State, over the award of a Contract resulting from this RFP;
2. The MLGCA or such other party is the prevailing party at the conclusion of the action or protest; and
3. The tribunal before which the action was brought, or any other authorized tribunal, determines that the action or any portion thereof was frivolous, was brought in bad faith, or was not based upon reasonable grounds.

The bond shall be in the form of a policy or certificate underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07. Offerors may submit Litigation/Protest Bond in a form as found in

## Appendix H.

The bond shall remain in effect for one (1) year from the Deadline for Receipt of Proposals. Offerors, including the successful Offeror/Contractor, may request a release of the bond after the date of Contract award in return for a Release and Covenant Not To Sue in a form acceptable to the MLGCA, signed by the Offeror, notarized and accepted by the MLGCA.

### **4.44.3 Fidelity Bond**

The Contractor shall submit to the Procurement Officer, within ten (10) Business Days after notice of recommended Contract award, a Fidelity Bond in the amount of One Hundred Thousand Dollars (\$100,000.00) covering any loss to the State due to any fraudulent or dishonest act on the part of the Contractor, and any officer, employee or subcontractor of the Contractor. If coverage for subcontractors is not included in the Fidelity Bond, then the Contractor shall require each subcontractor to provide the Procurement Officer sufficient evidence of its own coverage. The bond must be in the form of a policy or certificate underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07. The Fidelity Bond shall be maintained throughout the term of this Contract, and any Renewal Option Period including the Final Renewal Option Period, if exercised. Evidence of renewal of the Fidelity Bond and payment of the required premium shall be provided to the MLGCA.

**Failure of the Contractor to submit and maintain the required Fidelity Bond coverage, including subcontractor coverage, throughout the term of the Contract, and any Renewal Option Period, if exercised, will constitute an event of Default under the Contract.**

### **4.44.4 Performance Bond**

The Contractor shall submit to the Procurement Officer, within ten (10) Business Days after notice of recommended Contract award, a Performance Bond in the amount of One Hundred Thousand Dollars (\$100,000.00) guaranteeing that the Contractor shall well and truly perform the Contract. The bond shall be in the form provided in Appendix J and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07. The Performance Bond shall be maintained throughout the term of this Contract, and any Renewal Option Period including the Final Renewal Option Period, if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the MLGCA. This bond shall also secure

liquidated damages.

The Performance Bond may be renewable annually. The Contractor shall require that the surety provide to the MLGCA thirty (30) days written notice of non-renewal, cancellation, or material modification of the bond by either the surety or the Contractor. Non-renewal, cancellation or material modification of the bond by the Surety will not constitute an event of default by the Contractor provided that the Contractor obtains an acceptable replacement Performance Bond to be effective prior to the expiration of the thirty (30) day notice period.

**Failure of the Contractor to submit and maintain the required Performance Bond coverage throughout the term of the Contract, and any Renewal Option Period, if exercised, will constitute an event of Default under the Contract.**

After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the MLGCA's sole discretion. If any reduction is granted, the MLGCA shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the Lottery's sole discretion.

The Performance Bond is forfeited to the MLGCA, in whole or in part, if the Contractor defaults in the performance of its contractual obligations or if the MLGCA incurs damages due to the willful or negligent performance of the Contractor or its subcontractors. However, the surety shall have the option within thirty (30) days of notice of default to cure the default or tender funds sufficient to pay the cost of completion up to an amount not to exceed the penal sum of the bond. With the concurrence of the MLGCA, the surety may assume the remainder of the Contract to perform or sublet.

#### **4.44.5 General Bond Information**

**4.44.5.1 Individual Surety:** In accordance with the Maryland Board of Public Works Advisory #2006-04, a bond executed by an individual surety that meets certain specified criteria is also an acceptable form of security.

**4.44.5.2 Surety Bond Assistance Program:** Small businesses may qualify for assistance in obtaining bid, performance and payment bonds through the Maryland Small Business Development Financing Authority (MSBDF). MSBDF can directly issue bid, performance or payment bonds up to \$5 million. MSBDF may also guarantee up to 90% of a surety's losses resulting from a contractor's breach of a bid, performance or payment bond or \$1,350,000, whichever is less. Bonds issued directly by the MSBDF Surety Bond Program (Program) will remain in effect for the term of the contract. Bond guarantees will remain in effect for the term of the bond. To be eligible for bonding assistance, an applicant must:



1. Have its principal place of business in Maryland or be a Maryland resident;
2. First be denied bonding by at least one surety in both the standard and specialty markets within 90 days of submitting a bonding application to MSBDFA;
3. Employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually;
4. Not subcontract more than 75 percent of the work;
5. Have good moral character and a history of financial responsibility;
6. Demonstrate that the contract will have a substantial economic impact; and
7. Never have defaulted on any loan or financial assistance made or guaranteed by MSBDFA.

Applicants are encouraged to apply for assistance under the Program through their respective bonding agents. Questions regarding the bonding assistance program should be referred to:

Maryland Small Business Development Financing Authority  
c/o Meridian Management Group, Inc.  
826 East Baltimore Street  
Baltimore, Maryland 21202  
Phone 410-333-2548  
Fax: 410-333-2552  
Email: [mmgdeal@mmggroup.com](mailto:mmgdeal@mmggroup.com)

#### **4.45 INSURANCE REQUIREMENTS**

The requiring of any and all insurance as set forth in these specifications, or elsewhere, shall be in addition to and not in any way in substitution for the other protection provided under the Contract. The Contractor shall provide evidence of third-party legal liability insurance for itself and any subcontractors under the agreement covering claims arising from the operations and services provided under this Contract. All insurances required by this Section shall be effective when Contract commences and shall remain in full force and effect during the Contract term and Renewal Option Period, if exercised, and any extension.

Certificates of Insurance duly issued and certified by the insurance company and evidence of the payment of premiums shall be furnished to the Procurement Officer within ten (10) business days after notice of recommended Contract award. Insurance Certificates shall indicate effective dates and dates of expiration of policies. In the event the Insurance Certificate is not received within the required time, or is insufficient respecting the limits and scope specified herein, the Procurement Officer may cancel the award because of breach of contract. Time is of the essence.

The Contractor shall not commence work under this Contract until all the insurance required under this section has been obtained and approved by the MLGCA, nor shall the Contractor allow any subcontractor to commence work on its subcontract until the insurance required of the subcontractor has been obtained and approved.

All insurance companies shall be licensed or authorized to do business within the State and subject to approval by the MLGCA. No acceptance and/or approval of any insurance by the MLGCA shall be construed as relieving or excusing the Contractor, or the Surety of its Bonds, from any liability or obligation imposed upon either or both of them by the provisions of the Contract.

It is the sole responsibility of the Contractor to insure that its subcontractors or their subcontractors carry insurance required herein to the extent Contractor wishes to impose on its subcontractor such liability insurance. The Contractor shall be held responsible for compliance and enforcement of the MLGCA's insurance requirements and its own requirements and for any modifications or waivers of these insurance requirements as they apply to subcontractors.

The Contractor shall require that the policies of insurance name the MLGCA as an additional insured and that each insurer shall provide to the MLGCA sixty (60) days written notice of non-renewal, cancellation, or material modification of the insurance policy by either the insurance carrier or the Contractor. Upon notification of non-renewal or cancellation, the Contractor shall provide replacement coverage effective prior to the expiration of the sixty (60) day notice period, or Contractor may be deemed to be in default of this Contract.

By requiring such coverage, the MLGCA shall not be deemed to have waived any immunity from liability which it may otherwise have. An Offeror who seeks to self-insure for the required coverage shall meet all applicable local, State and federal laws and regulations regarding self-insurance and shall submit evidence of such compliance to the MLGCA for approval with its Proposal.

The MLGCA shall have the right to require that the limits of liability set forth in this Section be raised if in its judgment economic or insurance market conditions warrant. If additional costs are incurred because of raised limits, the pre-approved additional cost shall be added to the Contract amount.

If any contract of insurance between the Contractor or any subcontractor and its insurance company shall, to any extent, be determined to be void or unenforceable, it is the intention of the parties that such circumstances shall not otherwise affect the validity or enforceability of Contractor's agreements and obligations under the Contract nor the validity or enforceability of such contract of insurance, each of which shall be enforced to the fullest extent permitted by law.

The furnishing of evidence of insurance by certificate or policy copy that is not in conformance with the requirements shall not constitute a waiver of or amendment to, the aforementioned requirements. Any modification or waiver of the requirements shall be provided by the MLGCA in writing to the Contractor and agreed to by signature of the Contractor.

#### **4.45.1 Property Insurance**

Insurance for extended coverage on all Contractor-owned equipment shall be maintained in the amount of actual replacement cost thereof. The policy shall include an All Risk Property Floater to insure personal property including contents, equipment and mobile items against fire, collision, flood, etc. Neither the State nor the MLGCA will be responsible for any equipment not owned by the State.

#### **4.45.2 Liability Insurance**

The Contractor shall maintain Comprehensive General Liability Insurance covering the full scope of the Contract with limits of at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) for any one person, and Three Million Dollars (\$3,000,000.00) for any one occurrence for death or personal injury, and Three Million Dollars (\$3,000,000.00) for any one occurrence for property damage; or a Combined Single Limit for Bodily Injury or Property Damage in the amount of Six Million Dollars (\$6,000,000.00).

#### **4.45.3 Worker's Compensation**

The Contractor shall maintain Worker's Compensation Insurance, which shall include Employer's Liability coverage, in amounts as required by State law

#### **4.45.4 Errors and Omissions Insurance**

Errors and Omission Insurance with limits of not less than One Million Dollars (\$1,000,000.00) shall be in force and effect during the Contract term.

### **4.46 MINORITY BUSINESS ENTERPRISE COMPLIANCE**

**4.46.1** A minimum certified Minority Business Enterprise participation goal of Twenty-five Percent (25.0%) of the Contract value, on a yearly basis, has been established for this Contract.

The Contractor agrees that at least this dollar value of the Contract shall be performed by a Maryland Department of Transportation (MDOT) certified minority business enterprise(s). (See Sections 3.21.5.2 and 3.21.6) The Contractor further agrees to comply with all requirements and reporting specified in the RFP Appendix D – Minority Business Enterprise Instructions/Forms.

**4.46.2** If the MLGCA determines that material noncompliance with MBE Contract provisions exists and that the Contractor refuses or fails to take the corrective action required by the MLGCA, then the following sanctions may be invoked. (See COMAR 21.11.03.13 C.):

- i. Withholding payment
- ii. Termination of the Contract

- iii. Suspension of the right of the Contractor to participate in any future contracts
- iv. Referral to the Office of the Attorney General for appropriate action
- v. Initiation of any other specific remedy identified by the Contract
- vi. The MLGCA may use any other compliance mechanism authorized in COMAR 21.11.03 or available at law.

**4.46.3** The MLGCA may, upon completion of the Contract and before final payment or release of retainage or both, require that the Contractor submit a final report, in affidavit form and under penalty of perjury, of all payments made to or withheld from MBE subcontractors.

**4.46.4 *Liquidated Damages:*** This Contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$25.00 per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$25.00 per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.

d. Failure to meet the Contractor's total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

e. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this contract: \$50.00 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the Contract and exercise all other rights and remedies provided in the Contract or by law.

#### **4.47 GOOD FAITH**

The parties agree to cooperate fully in good faith and to assist each other to the extent reasonable and practicable to accomplish the objectives set forth in this Contract.

#### **4.48 NEWS/PRESS RELEASES**

The MLGCA is the only entity authorized to issue news releases relating to this Contract and performance thereunder. The Contractor shall not issue any news or press releases or any commercial advertising pertaining to this Contract or to the MLGCA or Commission without the prior written approval of the Procurement Officer.

#### **4.49 SEVERABILITY**

If a court of competent jurisdiction determines any portion of this Contract to be invalid, it shall be severed and the remaining portions of this Contract shall control, at the discretion of the MLGCA, unless otherwise ordered by the court.

#### **4.50 ADVERSE INTEREST**

The Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further agrees that in the performance of this Contract it will not knowingly employ, directly or indirectly, any person having such an interest.

#### **4.51 NON-EXCLUSIVE RIGHTS**

The Contract shall be non-exclusive and nothing in this Contract shall preclude the MLGCA from procuring similar services from another vendor. The MLGCA reserves the right to secure directly the services of third parties to perform any services secured under

this Contract. The Contractor will not be entitled to payment of any fee or otherwise for any services performed by these third parties.

#### **4.52 CONTRACT AFFIDAVIT**

All terms and conditions of the Contract Affidavit, Appendix B of the RFP, are made a part of this Contract.

#### **4.53 COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

Contractor shall comply with the Americans with Disabilities Act of 1990 (ADA), including changes made by the ADA Amendments Act of 2008, any subsequent amendments, and all applicable regulations. To the extent required by the ADA, Contractor's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under this Contract conform to the ADA. Contractor shall indemnify the State in any action brought pursuant to the ADA for all damages, attorney fees, litigation expenses, and costs, if such action or proceeding arises from the acts of Contractor, or of Contractor's employees, agents, or subcontractors.

#### **4.54 COMPLIANCE WITH LIVING WAGE REQUIREMENT**

Contractor shall comply with the Living Wage Requirements as specified in Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. See <http://www.dllr.state.md.us/labor/livingwagefaq.htm>.

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 Lottery may withhold payment of any invoice or retainage. The Lottery may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

#### **4.55 RELATIONSHIP OF THE PARTIES (INDEPENDENT CONTRACTOR)**

During the course of this Contract, the Contractor may enter into agreements with third-parties in order for Contractor to fulfill its contractual obligations and responsibilities under this Contract. Contractor fully understands and agrees that the relationship between the MLGCA (State) and the Contractor is that of client and Independent Contractor, and is not, and shall not be deemed to be, any other relationship, including but not limited to, that of joint venture, partners, joint employers or principal and agent. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

From any amount due the Contractor, there will be no deductions for federal income tax or FICA payments, nor for State income tax, nor for any other purposes that are associated with any employer-employee relationship, unless required by law. Payment of federal income tax, FICA, and State income tax is the responsibility of the Contractor. The Contractor is responsible for complying with all federal and state laws as to taxes and Social Security payments to be withheld from wages paid to its employees and other contractors.

#### **4.55.1 NO LIABILITY BY MLGCA TO THIRD-PARTY VENDORS OR SUBCONTRACTORS**

The MLGCA, Commission and State, have no liability for payment or performance to any third party which enters into an agreement with the Contractor for work related to this Contract. The Contractor does not have the power or authority to sign an agreement in the MLGCA's name or on behalf of the MLGCA, to bind or attempt to bind the MLGCA, Commission or the State, or any employee or official thereof, to any agreement with a third-party vendor, for payment of any monies or other obligations related to, or arising out of that third-party agreement, or to obligate the MLGCA to any liability if the Contractor fails to pay any subcontractor or other third-party vendor. All agreements into which the Contractor enters with subcontractors and other third-party vendors for work to be performed under this Contract shall be in the Contractor's name only and shall not name the MLGCA as a party to the agreement.

#### **4.55.2 CONTRACTOR ACKNOWLEDGEMENT, INDEMNIFICATION AND DUTY TO NOTIFY**

Contractor acknowledges, fully understands and agrees that the MLGCA, Commission or State is not a party to, and is not liable for payment or performance, any third-party agreement that the Contractor may enter into arising out of work related to this Contract. Contractor agrees to remove, redact, or strike any language from agreements it signs with subcontractors and third-party vendors, noting a responsibility or liability by the MLGCA, Commission or State with respect to the payment of any monies or other obligations. Contractor agrees to fully indemnify and hold harmless the MLGCA, Commission and State from any and all liability of any nature arising out of its third-party relationships, and agrees to provide written notice for each agreement it completes with a third-party vendor, notifying such entities of the Independent Contractor relationship.

#### **4.56 PROMPT PAYMENT**

1. If the Contractor withholds payment of an undisputed amount to its subcontractor, the MLGCA, at its option and in its sole discretion, may take one or more of the following actions:
  - 1.1. Not process further payments to the contractor until payment to the

subcontractor is verified

- 1.2. Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - 1.3. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - 1.4. Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - 1.5. Take other or further actions as appropriate to resolve the withheld payment.
2. An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
  3. An act, failure to act, or decision of a procurement officer or a representative of the MLGCA, concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:
    - 3.1. Affect the rights of the contracting parties under any other provision of law;
    - 3.2. Be used as evidence on the merits of a dispute between the MLGCA and the contractor in any other proceeding; or
    - 3.3. Result in liability against or prejudice the rights of the MLGCA.
  4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
  5. To ensure compliance with certified MBE subcontract participation goals, the MLGCA may, consistent with COMAR 21.11.03.13, take the following measures:
    - 5.1. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
    - 5.2. This verification may include, as appropriate:



- 5.2.1. Inspecting any relevant records of the contractor;
- 5.2.2. Inspecting the jobsite; and
- 5.2.3. Interviewing subcontractors and workers.
- 5.2.4. Verification shall include a review of:
  - 5.2.4.1. The contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
  - 5.2.4.2. The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- 5.3. If the MLGCA determines that a contractor is in noncompliance with certified MBE participation goals, then the MLGCA will notify the contractor in writing of its findings, and will require the contractor to take appropriate corrective action.
  - 5.3.1. 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.
- 5.4. If the MLGCA determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the MLGCA requires, then the MLGCA may:
  - 5.4.1. Terminate the contract;
  - 5.4.2. Refer the matter to the Office of the Attorney General for appropriate action; or
  - 5.4.3. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
- 5.5. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

#### **4.57 NOTICES**

The parties agree that all notices given pursuant to the terms of this Contract shall be sufficient if sent in writing by certified mail and marked "Certified Mail—Return Receipt Requested." Any such notice or communication shall be sent to the following addresses or such other address as may be designated from time to time by the parties in writing:

If to the MLGCA: Robert W. Howells, Procurement Officer  
Maryland State Lottery and Gaming Control Agency  
Montgomery Park Business Center, Suite 330  
1800 Washington Boulevard  
Baltimore, MD 21230

If to the Contractor:

**INSERT CONTRACTOR'S NAME & ADDRESS**

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#### **4.58 ENTIRE AGREEMENT**

This Contract, together with the Appendices attached hereto and documents incorporated herein by reference, represents the complete, total, and final understanding of the parties and no other understanding, communication or representations, oral or written, regarding the subject matter of this Contract, shall be deemed to exist or to bind the parties hereto at the time of execution, and shall be deemed to be superseded by this Contract regarding the subject matter of this Contract..

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

IN WITNESS WHEREOF, the parties hereto have caused this Auditing and Accounting Services Contract #2015-04 to be executed as of the day and year first above written.

Witness: \_\_\_\_\_

**CONTRACTOR'S NAME**  
By: \_\_\_\_\_

Name: \_\_\_\_\_  
(Type/Print)

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

Witness: \_\_\_\_\_

**MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY**  
By: \_\_\_\_\_

Director

Approved as to form and legal sufficiency this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Robert T. Fontaine  
Assistant Attorney General

APPROVED BY MARYLAND BOARD OF PUBLIC WORKS: \_\_\_\_\_ ITEM#: \_\_\_\_\_  
(date)

## **SECTION V. TECHNICAL SPECIFICATIONS/SCOPE OF WORK**

### **5.1 GENERAL**

The MLGCA desires to enter into a contract with a qualified CPA firm to provide full auditing, accounting and management services as described herein.

The Contractor shall conduct its audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

The foregoing specifications for Components 1 through 5 shall be accepted as a general outline for the Contract resulting from this RFP. It is not the intention of these specifications to dictate to the Contractor the exact extent of tests and verifications necessary for the issuance of an opinion, so long as these minimum requirements are fulfilled.

**In response to Section 5.2 below, the Offeror must provide in its proposal a statement of intent to comply with the terms, conditions, and requirements of those specifications.**

The following sections describe the **SCOPE OF WORK** for the providing of Auditing, Accounting and Management Services. The Contractor shall deliver all requirements and shall be responsible for all technical functionality and business support. The Contractor shall perform all requirements specified in this Section V.

### **5.2 SPECIFICATIONS**

#### **5.2.1. COMPONENT 1 – FINANCIAL STATEMENT AUDITS**

a. Audit Reports – Monthly

- (1) The MLGCA prepares monthly special purpose financial statements to account for lottery and gaming revenue that is due to the State of Maryland and other entities as required by law, and to present its assets, liabilities and net assets. The Contractor shall be responsible for auditing and issuing an opinion on the monthly financial statements prepared by the MLGCA which will include both lottery and gaming related activity.
- (2) The Contractor shall be required to present draft audited financial statements to the MLGCA for review within three weeks of the date

MLGCA provides the draft financial statements for audit. Upon acceptance of the financial statements by the MLGCA, the Contractor shall complete and deliver twenty (20) copies of the monthly audits to the MLGCA.

(3) Monthly Special Purpose Financial Statements will generally consist of the following, but is not limited to:

(See Appendix N for an example of the monthly special purpose financial statements)

(a) Independent Auditor's Report;

(b) Special Purpose Financial Statements (comparative basis):

- Statements of Assets, Liabilities and Net Position–
- Statements of Allocation Income –

(c) Notes to the Special Purpose Financial Statements; and

(d) Certain Supplementary Information, currently a Schedule of Gross Margin –

b. Fiscal Year-End Financial Statements

(See Appendix O for an example of the year-end financial statements)

(1) The Contractor shall be responsible for auditing the MLGCA's fiscal year-end Generally Accepted Accounting Principles (GAAP) financial statements in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in the Government Auditing Standards, issued by the Comptroller General of the United States. The year-end financial statements are submitted to the State of Maryland for inclusion in the State's GAAP based financial statements. The Contractor shall be required to cooperate and provide the State of Maryland's auditors with the necessary information required to complete the State's report.

(2) The Contractor shall be required to present draft year-end audited financial statements to the MLGCA for review. After acceptance of the statements by the MLGCA, the Contractor shall complete and deliver twenty-five (25) copies of the fiscal year-end audited financial statements and a PDF of said statements to the MLGCA at least three (3) working days prior to the date the year-end financial statements are due to the State of Maryland. The MLGCA will notify the Contractor of the exact date, which is typically on or about

October 1<sup>st</sup> of each year.

- (3) The MLGCA prepares its own Comprehensive Annual Financial Report (CAFR) for submission to the Government Finance Officers Association (GFOA). The Contractor shall be responsible for reviewing the CAFR that is prepared by the MLGCA and for assisting the MLGCA, if needed, in answering any review notes that it receives from GFOA reviewers.

c. Management Letters

The Contractor shall complete two (2) management letters each fiscal year; one letter covering the period from July through December and one letter covering the period from January through June. Twenty (20) copies of these letters and a PDF version shall be due to the MLGCA by the 15<sup>th</sup> day of the second month following the end of the reporting period. For example, the management letter covering the period from July through December is due to the MLGCA by February 15<sup>th</sup>. These letters shall be addressed to the Deputy Director/CFO of the MLGCA. The letters shall contain specific recommendations and/or observations and shall, at a minimum, include the following:

- (1) Comments on the evaluation of internal controls in any MLGCA Division;
- (2) Comments on the MLGCA's accounting practices, policies and procedures with recommendations for improvement, if needed; and
- (3) Comments on any significant accounting/auditing pronouncements that may affect the MLGCA's current practices as well as pronouncements that may improve the MLGCA's practices.

In addition to the formal management letters, the Contractor shall immediately advise the MLGCA of any serious internal control deficiencies that could result in irregularities.

d. MLGCA Commission Meetings

The Contractor may be required to attend Commission Meetings to present the monthly audited financial statements and the year-end audited financial statements. These meetings are held at least once a month at MLGCA Headquarters.

## 5.2.2. COMPONENT 2 – AUDIT OF LOTTERY GAME DRAWINGS

The MLGCA currently conducts three sets of Drawings: Mid-day, Evening and Multi-Match. Mid-day Drawings consist of Pick 3 and Pick 4 and are currently selected live on WBAL-TV 11 Monday through Sunday at varying times. All game drawing times are subject to change at any time by the MLGCA. There shall be no additional charge to the MLGCA in the event the drawing times change.

- a. The Contractor shall witness a minimum of 25% of all of the MLGCA's Draw Games (excluding monitor games) Drawings each year and shall also include any additional Draw Games drawings (excluding monitor games) conducted by the MLGCA at no additional charge. The Contractor shall conduct a **minimum** of one drawing inspection for each of the following drawings: mid-day, evening and Multi-Match, during each calendar week over the term of this Contract, or any extension. No additional charge to the MLGCA shall be permitted if the location for the drawings changes.
- b. The Contractor shall arrive at the drawing location one and one half (1½) hours before the scheduled drawing times and remain until the conclusion of the securing of the drawing equipment, which is approximately one (1) hour after the scheduled drawing occurs.
- c. The Contractor shall observe the Drawings and ensure that the MLGCA's procedures are strictly adhered to. The Contractor shall complete the MLGCA Drawing Inspection Form, which substantiates that the Contractor observed the Drawing and that MLGCA procedures were adhered to. The Contractor shall submit copies of the drawing forms to the MLGCA Contract Manager at the end of each week. Failure to submit the required paperwork will result in the MLGCA withholding payment for the drawing services until the paperwork is received.
- d. If there are any problems with the Drawings that could compromise the integrity of the MLGCA, the Contractor shall interrupt the Drawing and immediately notify MLGCA Security and the Deputy Director/CFO. In addition, the Contractor shall submit a detailed report to MLGCA Security by the end of the working day if the problem occurred on a mid-day Drawing or before 9:00 a.m. on the next working day if the problem occurred during an evening Drawing.

## 5.2.3. COMPONENT 3 – MUSL AGREED UPON PROCEDURES

- a. MLGCA participates in a number of games through the Multi-State Lottery Association (MUSL). Currently those games include Mega Millions and Megaplier and Powerball and Power Play. However, changes to game participation can change during the contract period. MUSL has developed

agreed-upon procedures that are to be performed, on a yearly basis, by participating lotteries' independent auditors. A copy of these agreed upon procedures is included as Appendix O in this RFP.

- b. The Contractor shall be required to perform, on a yearly basis, the agreed upon procedures in accordance with standards established by the American Institute of Certified Public Accountants.
- c. Upon completion of each engagement, the Contractor shall issue a draft report of the findings to the Deputy Director/CFO.
- d. After a review of the draft report by the MLGCA, the Contractor shall issue a final report and provide the MLGCA with twenty (20) copies of the final report and a PDF version.

#### **5.2.4. COMPONENT 4 – ASSESSMENT OF THE MLGCA'S TECHNOLOGY**

The Contractor shall conduct a risk assessment and audit of the MLGCA's Information Technology as described below. The audit team shall consist of individuals with a minimum of five (5) years of Information Technology risk assessment, evaluation, and audit experience.

The scope is to assess the MLGCA's use of IT resources and controls (implemented or planned) to identify, eliminate and/or manage vulnerabilities exploitable by threats internal and external. If exploited, these vulnerabilities could result in:

- 1. Unauthorized disclosure of data
- 2. Unauthorized modification to the system, its data, or both
- 3. Denial of service, access to data, or both to authorized users

This risk assessment shall evaluate the confidentiality (protection from unauthorized disclosure of system and data information), integrity (protection from improper modification of information), and availability (loss of system access) of the MLGCA's network and systems. Recommended security safeguards will allow the MLGCA to make decisions about security-related initiatives. The methodology addresses the following types of controls:

- 1. **Management Controls:** Management of the information technology (IT) security system and the management and acceptance of risk.
- 2. **Operational Controls:** Security methods focusing on mechanisms implemented and executed primarily by people (as opposed to systems),



including all aspects of physical security, media safeguards, and inventory controls.

3. **Technical Controls:** Hardware and software controls providing automated protection to the system or applications (Technical controls operate within the technical system and applications.)

The risk assessment and audit should address at a minimum the following:

**To Be Performed Annually:**

Perform and document an IT Risk Assessment and Evaluation of the MLGCA's network, servers, and desktop computers in accordance with the methodology described in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-30, *Risk Management Guide for Information Technology Systems*. At a minimum it includes the following:

1. Penetration testing
2. Port scanning and exploitation, internal and external
3. Firewall configuration review (settings, ACLs, rules, etc...)
4. Internal network risks analysis
5. External network risks (SQL injections, brute force attacks, IP scan, and attempted access, external facing services) analysis
6. Wireless network configuration review
7. Review and validate the application and configuration of the MLGCA's IPS/IDS
8. Systems and desktop security compliance review
9. Vulnerability Assessment

**To Be Performed Biennially:**

1. The security procedures and features of the information technology equipment and physical site and evaluate the effectiveness and compliance
2. The adequacy of internal systems controls and evaluation of compliance and the effectiveness of the identified controls
3. Proper logical segregation of duties
4. Data processing change control procedures

5. Management and maintenance of system accounts

6. The adequacy of disaster recovery and business continuity plans for the recovery of IT operations including data backup and recovery procedures.

#### **5.2.5. COMPONENT 5 - MANAGEMENT SERVICES**

The Contractor may be requested by the MLGCA to provide technical advice and assistance on various aspects of the MLGCA's operations. Such assistance may include, but is not limited to, the following:

- a. Special projects (for example, further automation of the MLGCA's accounting system, evaluation of the financial condition of an existing MLGCA contractor or a potential MLGCA contractor, consultation on tax related matters, review of internal controls proposed at casinos.);
- b. Perform audits of game show drawings or any other special drawings conducted by the MLGCA; and
- c. Any other management services needed at the discretion of the MLGCA.

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## SECTION VI. FINANCIAL PROPOSAL

### 6.1 GENERAL

**6.1.1** The Offeror must complete and submit the Financial Proposal Sheet provided in Appendix F. The Financial Proposal Sheet shall be a separate Financial Volume of the Offeror's proposal, and shall be submitted separately and clearly marked "Financial Proposal" in accordance with Section 7.2. The Offeror must provide complete price information for all services required. Offers to provide only partial services are not acceptable and shall be rejected. **Do not change or alter this Form or the Offer may be deemed unacceptable.**

**6.1.2** The Offeror's proposed prices shall be fully loaded and expressly include overhead expenses (e.g., fringe benefits, administrative costs, profits, etc.), and all related and incidental expenses (e.g., travel, legal services) associated with providing all services and equipment required by this RFP. No other amounts or costs will be paid to the Contractor. Specifically, no taxes or assessments or license fees or permits of any type will be paid in addition to the price(s) proposed on the Financial Proposal Sheet.

**6.1.3** All Prices proposed shall be firm fixed prices for the term of the Contract, to include the Renewal Option Periods, if exercised, and any other extensions.

**6.1.4** The Contract that results from this RFP will be a Firm Fixed Price Contract as described in COMAR 21.06.03.02 with respect to the services specified in Components 1, 2, 3 and 4; and an Indefinite Quantity Contract with Firm Fixed Unit Prices as described in COMAR 21.06.03.02 and 21.06.03.06 with respect to the services specified in Component 5.

### 6.2 CONTRACT PRICES

#### **For the Initial Three (3) Year Contract Term**

The Offeror shall state on the Financial Proposal Sheet-Appendix F its proposed Firm Fixed Price for the three year base term of the Contract to provide all goods and services, equipment, and personnel for each of the five Components required by this RFP as described in Section V – Technical Specifications/Scope of Work.

#### **For the Renewal Option Periods**

The Offeror shall state on the Financial Proposal Sheet-Appendix F its proposed Firm Fixed Price for the three 1-year Renewal Option periods of the Contract to provide all goods and services, equipment, and personnel for each of the six Components required by this RFP as described in Section V – Technical

Specifications/Scope of Work.

### **6.3 GENERAL INSTRUCTIONS FOR APPENDIX F-FINANCIAL PROPOSAL SHEET**

- Appendix F is to be completed by the Offeror and signed in ink by an individual who is authorized to bind the Offeror to all prices offered. Any erasures or alterations must be initialed by the signer in ink.
- All prices must be recorded with five decimal places if a percentage (e.g. 0.00000) and with dollars and cents if a dollar amount (e.g. \$00.00)
- All prices must be the actual price that the State will pay for the proposed item and may not be contingent on any other factor or condition.
- Nothing shall be entered on the Financial Proposal Sheet that alters or proposes conditions or contingencies on the proposed prices.
- It is imperative that the prices entered on the Financial Proposal Sheet be recorded correctly. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12.

### **6.4 BASIS FOR AWARD**

The Offeror's Proposed "Estimated Total 3-Year Contract Amount" plus the Offeror's Proposed "Estimated Total 3-Year Option Amount" specified on the Financial Proposal Sheet-Appendix F are based on model quantities for the Annual Hours for Component 5 and will be used solely for price evaluation, comparison and selection for recommendation for award. The quantities indicated are not a guarantee of any minimum or maximum amounts under this Contract and may change at any time during the term of the Contract, or Renewal Option Periods, if exercised.

The actual amount to be paid to the Contractor shall be calculated using the Firm Fixed Unit Prices specified on the Financial Proposal Sheet and, for Component 5, the actual number of hours authorized and accepted by the Lottery.

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## **SECTION VII. INFORMATION REQUIRED IN OFFEROR'S PROPOSAL**

### **7.1 TWO VOLUME SUBMISSION**

**THE SELECTION PROCEDURE FOR THIS PROCUREMENT REQUIRES THAT THE TECHNICAL DATA AND FINANCIAL DATA MUST EACH BE SUBMITTED SEPARATELY.** Offerors must submit proposals in two separate volumes, which will be separately evaluated:

- a. Volume I - Technical Proposal
- b. Volume II – Financial Proposal

### **7.2 PROPOSALS**

1. Volume I - Technical Proposal must be sealed separately from the Volume II - Financial Proposal, but submitted simultaneously to the Procurement Officer at the address listed in Section 3.1.1.
2. An unbound original, so identified, six (6) paper copies and one (1) complete and exact electronic copy of each Volume shall be submitted. The electronic copy shall be included with the original paper copy of each respective Volume (technical and Financial).
3. The electronic version of Volume I - Technical Proposal shall be submitted in MS Word or PDF format, and Volume II - Financial Proposal shall be submitted in either MS Word, PDF or Excel format. The electronic versions must include the ability to search, copy and print selected pages and partial pages. Electronic media shall be CD or thumb drive and shall bear the RFP number and name, name of the Offeror, and the Technical or Financial Volume number (Volume I is Technical or Volume II is Financial).
4. The Offeror is required to submit a separate sealed package for each "Volume". Each Volume and each separately sealed package are to be labeled either "Volume I-Technical Proposal" or "Volume II-Financial Proposal".
5. On the outside of each sealed package, the Offeror must include the RFP Title and number, the name and address of the Offeror, the Volume number (I=Technical or II=Financial), and the Deadline for Receipt of Proposals.
6. All pages of each proposal Volume must be consecutively numbered from beginning (Page 1) to end (Page "x"). The final page of each Volume shall state "Final Page".

## **7.3 VOLUME I – TECHNICAL PROPOSAL**

### **7.3.1 Transmittal Letter**

A brief transmittal letter prepared on the Offeror's business stationary must accompany the original Technical Proposal. The purpose of this letter is to transmit the proposal and it shall:

- Acknowledge receipt of all Amendments to the RFP, if any.
- Be signed by an individual who is authorized to commit the Offeror to all services and requirements as stated in the RFP, including the prices contained in its proposal.
- State the Offeror's eMarylandMarketplace vendor number.

### **7.3.2 General Format of Technical Proposal**

If an Offeror is the subsidiary of another entity, all information submitted by the Offeror such as, but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

“(Parent) hereby guarantees absolutely the full, prompt and complete performance by (Offeror) of all the terms, conditions and obligations contained in this License, 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 License, including any and all financial commitments, obligations and liabilities. (Parent) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the Lottery Commission. (Parent) further agrees that if the Lottery Commission brings any claim, action, suit or proceeding against (Offeror), (Parent) may be named as a party, in its capacity as Absolute Guarantor. (Parent) expressly recognizes and agrees that any and all notices, correspondence, or other written or oral communication from the Lottery Commission to (Offeror) shall be conclusively deemed to have been received by (Parent), and (Parent) hereby waives any and all requirements that it receive any such notices, correspondence or written or oral communications, whatsoever.”

This section provides specific instructions for submission of the Offeror's Technical Proposal. Adherence to the required organization and numbering will allow the Evaluation Committee to “map” the RFP requirements directly to the Offeror's

responses by paragraph number and facilitate a fair and uniform review process. In addition, the Proposal shall:

1. Be prepared in a clear and concise manner.
2. Address all points of this RFP. The Offeror shall regard specifications in this RFP as mandatory.
3. Be organized and numbered in the same order as given in the RFP, using the correct subsection and paragraph number for each specification. For example, Section 2.1 Para 1; Section 3.2 Para 4; etc.
4. Not include in the Technical proposal any reference to prices proposed by the Offeror.
5. Include in the Technical Proposal the specific sections as described below in Sections 7.3.3 through 7.3.11.

### **7.3.3 Title and Table of Contents**

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, followed by a table of contents.

Confidential Information: Information that is claimed to be proprietary or confidential is to be labeled accordingly throughout the text and a summary of those sections is to be placed after the Title Page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in the Financial Proposal. Only those portions that can reasonably be shown to be proprietary or confidential may be identified as such.

### **7.3.4 Executive Summary**

1. The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary."
2. The Offeror shall state whether or not it meets the Offeror Minimum Requirements (Section 1.2) and provide verification of compliance.
4. The Summary shall identify any exceptions the Offeror has taken to the requirements of this RFP, the Mandatory Contractual Provisions or any other attachments. If an Offeror takes no exception to the State's terms, conditions and requirements, the Executive Summary should so state. By submitting a proposal in response to this RFP, the Offeror shall be deemed to have agreed to and accepted all mandatory contract terms and conditions set forth in the standard contract form, unless otherwise noted.

**Warning:** If there is any item, including any standard clause provision with

which the Offeror cannot or will not comply, such exception must be clearly noted and explained, including the degree to which the Offeror may consider some degree of compliance. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

5. The Offeror must provide a statement of intent to comply with the terms, conditions and requirements of Sections III. and IV., and provide any information required by these Sections.
6. The Offeror must provide a statement of intent to comply with the terms, conditions and requirements of Section V.

### **7.3.5 Offeror Technical Response to RFP Requirements**

The Offeror shall address each and every requirement in the Technical Proposal and describe how the Offeror proposes to meet the requirements as described in Section V of the RFP. If the Lottery is seeking the Offeror's agreement to a requirement, the Offeror shall state agreement or disagreement. Any paragraph that represents a work requirement shall include a detailed explanation of how the work will be done.

As stated above, any exception to a term, condition or requirement may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.

### **7.3.6 Offeror's Organization and Background**

#### **7.3.6.1 Organization and Structure**

The Offeror should provide any information about its business and/or organization that demonstrates its capabilities to fulfill the scope of services detailed in Section V Technical Specifications of this RFP. The Offeror shall describe its organization and its structure, to include:

1. A brief overview of its history/background.
2. The exact name of the Offeror submitting the proposal; the type of business entity (e.g., corporation, partnership, LLP, etc.), and the place of the Offeror's incorporation, if applicable.
3. The states and countries in which the Offeror is qualified to do business and the nature of any business done in that state or country;
4. The name, title, address and telephone number of a representative to contact regarding all matters pertaining to this procurement;
5. The name, address and telephone number of all attorneys, law firms, or



lobbyists representing the Offeror in the State of Maryland (excluding lawyers or law firms retained exclusively for specific litigation);

6. The name, address and telephone number of all personnel, consultants, sales agents, or other entities involved in aiding the Offeror's efforts to obtain this Contract resulting from this RFP or otherwise assisting the Offeror;
7. An organization chart of the Offeror's organization and staffing plan for the Lottery account showing:
  - a. All major divisions and units;
  - b. Which components will perform the requirements of this Contract;
  - c. Where the management of this Contract will fall within the organization;
  - d. What corporate resources will be available to support this Contract in both primary and secondary, or back-up roles;
  - e. Highlight name/positions on the chart who will work on the Lottery's account and indicate for each the percent of time to be dedicated to the Lottery's account. Include on the chart any new positions that would be created as a result of acquiring the Lottery's account and provide a description of how these positions would be filled and when.
  - f. Number of full time equivalent positions, at minimum, that the Offeror will commit to the Lottery's account.
8. A list of all professional affiliations.

#### **7.3.6.2 Background and Experience**

The Offeror shall describe its background and experience in providing similar engagements, describe how its organization can meet the requirements of this RFP and include:

1. Relevant experience in similar engagements comparable to what is requested in Section V Technical Specifications. The Offeror must describe its most recent three (3) engagements for other clients involving services similar to those requested by this RFP, that were successfully performed by the Offeror;
2. The Offeror must provide examples of audited financial statements that have been completed for its clients that demonstrate its ability to prepare Audit Reports as set forth in Section IV. The examples of the financial statement must be for clients whose operating budgets and assets are at least fifty millions (\$50,000,000.00).

3. Provide a list of current client accounts and billings. Has your organization lost any client accounts within the last three (3) years? Why?
4. Provide a minimum of three (3) client references whose operating budgets and assets are at least Fifty Million Dollars (\$50,000,000) and that are capable of documenting the Offeror's ability to perform projects of comparable size and complexity. Each reference must include the following information:
  - a. Name of client organization;
  - b. Name, title, and telephone number of Point-of-Contact for client organization;
  - c. Value, type, and duration of contract(s) supporting the client organization;
  - d. The services provided, scope of the contract, geographic area being supported, and performance objectives satisfied; and
  - e. An explanation of why the Offeror is no longer providing the services to the client organization, should that be the case.

**NOTE:** The Lottery shall have the right to contact any reference of its own choosing, or any other source, as part of the evaluation and selection process.
5. Provide a list of any current or previous contracts that the Offeror has had with any department or agency of the State of Maryland, to include the contract name and number, contract term and contract amount.

### **7.3.7 Financial Capability and Legal Action Summary**

1. Offerors shall provide evidence of their financial capacity to provide the goods and services required by this RFP, to include:
  - a. The Offeror must provide a statement of its financial condition, prepared in accordance with Generally Accepted Accounting Principles (GAAP). This should contain, at a minimum, a balance sheet and income statement and include any accompanying notes for the last three (3) years of operations, preferably certified by an independent CPA firm.
  - b. A least five (5) financial references from banks or other financial institutions attesting to the Offeror's credit worthiness.

If an Offeror experiences a substantial change in its financial condition during the period prior to the award of any contract pursuant to this RFP, the Offeror shall notify the Procurement Officer in writing of the change at the time the change occurs or is identified. Failure to notify the Procurement Officer of

such a substantial change in financial condition may be sufficient grounds for rejecting an Offeror's proposal.

2. The Offeror shall include the following information regarding legal actions:
  - a. A statement as to whether there are any pending legal actions against the Offeror and a brief description of any such action;
  - b. A brief description of any settled or closed legal actions against the Offeror over the past three (3) years;
  - c. A description of any judgments against the Offeror within the past five (5) years, including the case name, number, court, and what the final ruling or determination was from the court;
  - d. 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, location of the court, and case name and number;
  - e. A statement whether the Offeror, a subsidiary or intermediary company, parent company or holding company was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past five (5) years; and
  - f. A statement whether the Offeror, a subsidiary or intermediary company, parent company or holding company was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past five (5) years.

### **7.3.8 Assigned Personnel's Background and Experience**

Describe the Account Team that will be assigned to service the MLGCA under this Contract. For each key management executive and key staff ("Key Personnel", or individually "Key Person"), the Offeror must state the full name, title and function of each of the Key Personnel who will be directly involved with providing the services rendered under this Contract; state the percent of participation of each Key Person in this Contract; and provide their resume/biography specifically to include experience relevant to the Lottery's account.

At minimum, the Offeror shall provide resumes for the following Key Personnel who will be assigned to the Lottery account.

- a. Primary contact person on Offeror's Account Team;
- b. The Account Team principals that will be assigned to the monthly and year-end audits; and
- c. The Account Team principals that will be assigned to the Information

## Technology Audit.

The Offeror must state, for each person identified as Key Personnel, and other personnel involved in Lottery matters, all relevant information including their full name, business address, business telephone number, five (5) year employment history, and for each person state whether or not, during the last five (5) years, any of the following events occurred:

- a. Such person was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation (excluding traffic violations and other minor offenses).
- b. Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining such person from engaging in any type of professional or business practice or activity.
- c. Such person was the subject of any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of such person to engage in any professional or business practice or activity.

If any significant portion of the work is not expected to be performed by the Offeror, the Offeror must list any subcontractors that are proposed to be used to provide the required products and services, except for MBE contractors used to meet the participation goal.

### **7.3.9 Economic Benefit**

Offerors shall submit with their proposals a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of their performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. (Do not include any detail of the financial proposal with this technical information.)

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

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

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

reporting frequency is stated.

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

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

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

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

1. The contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners.
2. The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Contractor has committed, including contractual commitments at both prime and, if applicable, subcontract levels.
3. Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract.
4. Subcontract dollars committed to Maryland small businesses and MBEs.
5. Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

**NOTE:** Because there is no guarantee of any level of usage under the Contract, the Offeror should state its level of commitment per \$1,000,000 of Contract value. In

other words, for each \$1,000,000 of Contract value, how many Maryland jobs will be created, what Maryland tax revenue will be generated, how much will be paid to Maryland subcontractors, etc.

### **7.3.10 Subcontractors**

Offerors shall identify all subcontractors, if any, including subcontractors used to meet the MBE goal of this RFP, and provide a complete description of the roles these subcontractors will have in the Contract performance.

### **7.3.11 Required Submissions**

Offerors must submit the following items with the *original* Technical Proposal (Note: Offerors need to submit only one (1) paper original of these items):

1. A completed Proposal Affidavit (Appendix A);
2. The MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule (Appendix D; Attachment D-!A);
3. A completed Conflict of Interest Affidavit and Disclosure (Appendix G);
4. A Proposal Bond in the amount of Fifty Thousand Dollars (\$50,000.00) (Appendix I);
5. A Litigation/Protest Bond in the amount of Fifty Thousand Dollars (\$50,000.00) (Appendix H);
6. Statement of Intent to comply (Section 7.3.4, paragraphs 5. & 6. of this RFP);
7. Living Wage - Affidavit of Agreement (Appendix K)
8. Authorization for Release of Information (Appendix L); and
9. Location of Performance of Services Disclosure (Appendix M).

## **7.4 VOLUME II – FINANCIAL PROPOSAL**

This Volume must contain the Offeror's pricing information. The Offeror must submit its prices being proposed on the Financial Proposal Sheet provided in Appendix F. The Financial Proposal Sheet (Appendix F) must be submitted separately and clearly marked as "Financial Proposal" as stated in Section 7.2. The Offeror must provide complete price information for all services required by this RFP.

## **7.5 SUBMISSION DEADLINE**

The Offeror must submit an original, so identified, six (6) paper copies and one (1) complete and exact electronic copy of its Proposal (both Technical and Financial) by the Deadline for Receipt of Proposals specified in Section 3.7 of this RFP.

## **SECTION VIII. EVALUATION AND SELECTION PROCEDURE**

### **8.1 QUALIFYING PROPOSAL**

All Offerors' proposals received by the Deadline for Receipt of Proposals will be first reviewed by the Procurement Officer to determine if the Offeror's Minimum Requirements specified in Section 1.2, if any, have been met and to determine compliance with the submission requirements of the RFP and, in particular, with the requirement for submission of the MBE Forms contained in Attachment D-1A. An Offeror not meeting the Minimum Requirements will be determined to be "not responsible". A proposal that does not include the completed D-1A MBE Form will be determined to be "not reasonably susceptible of being selected for award". If either determination is made, the proposal shall not be further considered and the Offeror's financial proposal shall be returned unopened.

### **8.2 EVALUATION COMMITTEE**

The Evaluation Committee will be appointed by the Director and may include members of the Commission. All proposals from Qualified Offerors ("qualified proposals") will be evaluated by the Evaluation Committee. The Evaluation Committee may request additional assistance from any other source, and may obtain information from any source regarding verification of an Offeror's qualifications.

### **8.3 TECHNICAL EVALUATION**

The Evaluation Committee shall conduct its evaluation of the technical merits of the proposals. The technical evaluation of each proposal will be completed by the Evaluation Committee in accordance with the Evaluation Criteria set forth in Section 8.4 below. If at any time in the evaluation process an Offeror is determined to be not responsible or a proposal is determined to be not reasonably susceptible of being selected for award, the proposal will be dropped from further consideration in the awarding of the Contract and the financial proposal will be returned unopened to the Offeror.

### **8.4 CRITERIA FOR TECHNICAL EVALUATION**

The criteria that will be used by the Evaluation Committee for evaluation of the Technical Proposals are listed below, in descending order of importance, i.e., criterion no. 1 is more important than criterion no. 2, criterion no. 2 is more important than criterion no. 3, etc.

1. Offeror's overall background and experience. (Section 7.3.6)

2. Offeror's capability to provide experienced staff. (Section 7.3.8)
3. Quality of Offeror's references. (Section 7.3.6.2)
4. Offeror's financial condition. (Section 7.3.7)
5. Offeror's proposed economic benefits. (Section 7.3.9)

## **8.5 FINANCIAL EVALUATION**

The separate Financial Volume of each qualified proposal, which consists of the Financial Proposal Sheet provided in Appendix F, will be distributed to the Evaluation Committee following the completion of the technical evaluation.

All qualified Offerors will be ranked from the lowest (best) price to the highest price, based on the Offeror's proposed "Estimated Total Amount" which is composed of the "Estimated Total 3-Year Contract Amount" plus the "Estimated Total 3-Year Option Amount" as specified on the Financial Proposal Sheet - Appendix F.

A resident business preference will be given, if applicable, as described in Section 3.28.

## **8.6 DISCUSSIONS**

The Evaluation Committee may enter into discussions with qualified or potentially qualified Offerors as set forth in COMAR 21.05.03.03.C. Discussions, however, need not occur and the Lottery may make an award without holding discussions (See COMAR 21.05.03.02.A(4)). Offerors may be asked to participate in face to face discussions with the Evaluation Committee or other State representatives concerning their proposals. Discussions may be conducted by telephone, or may be in the form of written questions to be answered by the Offerors and conducted by mail, e-mail, or facsimile transmission at the discretion of the Lottery.

## **8.7 BEST AND FINAL OFFERS**

When it is deemed in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial proposals by submitting a Best and Final Offer (BAFO). The Procurement Officer shall notify each Qualified Offeror of the scope of the requested BAFO (Technical and/or Financial) and shall establish a common date and time for the Offeror's submission. The Procurement Officer may require more than one series of BAFOs and discussions if the Director or designee makes a written determination that it is in



the State's best interest to conduct additional discussions or change the Lottery's requirements and require submission of another BAFO. If more than one BAFO is requested, an Offeror's immediate previous offer shall be construed as its best and final offer unless the Offeror submits a timely notice of withdrawal or another BAFO. The Procurement Officer may consult with and seek the recommendation of the Evaluation Committee during the BAFO process.

## **8.8 FINAL RANKING AND SELECTION**

Upon completion of all discussions and reference checks, the Procurement Officer will recommend award of the Contract to the Responsible Offeror whose proposal is determined to be the most advantageous to the State, considering the technical evaluation factors and price factors as set forth in this RFP.

In making the most advantageous offer determination, technical factors and price factors will be given equal weight.

Recommended contract award, if any, resulting from this RFP, is subject to all appropriate State approvals.

## **8.9 DEBRIEFING OF UNSUCCESSFUL OFFERORS**

Unsuccessful Offerors will be debriefed upon their written request to the Procurement Officer, provided the request is made within a reasonable period of time, not to exceed ten (10) days, after receiving notice from the Procurement Officer of not being recommended for award. Request for debriefings shall be honored by the Lottery at the earliest feasible time after the request has been received. Debriefings shall be held in accordance with COMAR 21.05.03.06.

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## **SECTION IX. APPENDICES**

**APPENDIX A** - Proposal Affidavit. This form must be completed and submitted with the Offeror's Technical Proposal

**APPENDIX B** - Contract Affidavit. It is not required to be submitted with Proposal. It must be completed by the selected Offeror and submitted to the Procurement Officer within five (5) working days after notification of proposed contract award

**APPENDIX C** - Pre-Proposal Conference Response Form

**APPENDIX D** - Minority Business Enterprise (MBE) Instructions/Forms

**ATTACHMENT D-1A** – MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule

**ATTACHMENT D-1B** – Waiver Guidance

**ATTACHMENT D-1C** – Good Faith Efforts Documentation to Support Waiver Request

**ATTACHMENT D-2** – Outreach Efforts Compliance Statement

**ATTACHMENT D-3A** – MBE Subcontractor Project Participation Certification

**ATTACHMENT D-3B** – MBE Prime Project Participation Certification

**ATTACHMENT D-4A** – Prime Contractor Paid/Unpaid MBE Invoice Report

**ATTACHMENT D-4B** – MBE Prime Contractor Report

**ATTACHMENT D-5** – Subcontractor Paid/Unpaid MBE Invoice Report

**APPENDIX E** – Vendor Electronic Funds Transfer (EFT) Registration Request Form

**APPENDIX F** – Financial Proposal Sheet. Must be completed and submitted by the Offeror and comprises the Offeror's Volume II – Financial Proposal.

**APPENDIX G** – Conflict of Interest Affidavit and Disclosure

**APPENDIX H** – Litigation/Protest Bond

**APPENDIX I** – Proposal Bond

**APPENDIX J** – Performance Bond

**APPENDIX K** - Living Wage Requirements for Service Contracts - Affidavit of Agreement must be completed and submitted with the Offeror's Proposal.

**APPENDIX L** – Authorization for Release of Information

**APPENDIX M** – Location of the Performance of Services Disclosure

**APPENDIX N** – Sample/Special Purpose Financial Statements

**APPENDIX O** – Sample/Year End Audited Financial Statements

**APPENDIX P** – Sample/Agreed Upon Procedures Audit Report

**APPENDIX A – PROPOSAL AFFIDAVIT**  
**COMAR 21.05.08.07 (Effective 5/13/2013)**

(This Affidavit is Required to be Completed & Submitted with Offeror’s Proposal)

**Page 1 of 7**

**A. AUTHORITY**

**I HEREBY AFFIRM THAT:**

I, \_\_\_\_\_ (print name)

(title), of \_\_\_\_\_ (print firm name)

possess the legal authority to make this Affidavit.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

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

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

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

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

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

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

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

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

**I FURTHER AFFIRM THAT:**

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

**I FURTHER AFFIRM THAT:**

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or
- (9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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**E. AFFIRMATION REGARDING DEBARMENT**

**I FURTHER AFFIRM THAT:**

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

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

**I FURTHER AFFIRM THAT:**

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

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**G. SUB-CONTRACT AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

**H. AFFIRMATION REGARDING COLLUSION**

**I FURTHER AFFIRM THAT:**

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

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



**I. CERTIFICATION OF TAX PAYMENT**

**I FURTHER AFFIRM THAT:**

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

**J. CONTINGENT FEES**

**I FURTHER AFFIRM THAT:**

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

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

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

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

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

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

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

**I FURTHER AFFIRM THAT:**

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain

information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

**M. ACKNOWLEDGEMENT**

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

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

**Date:**

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

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

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

**APPENDIX B – CONTRACT AFFIDAVIT**

**COMAR 21.07.01.25 (Effective 8/8/2011)**

(This Affidavit is NOT Required To Be Completed & Submitted With Offeror’s Proposal)

**A. AUTHORITY**

**I HEREBY AFFIRM THAT:**

I, \_\_\_\_\_ (print name), \_\_\_\_\_ (title),  
of \_\_\_\_\_ (print firm name) possess the  
legal authority to make this Affidavit.

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

**I FURTHER AFFIRM THAT:**

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

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

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

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

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

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

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

I am aware of, and the above business shall comply with Md. Code Ann., Election Law Article, Title 14, which requires that every person that enters into a contract for a procurement with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall, file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

**E. DRUG AND ALCOHOL FREE WORKPLACE**

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

**I CERTIFY THAT:**

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
  - (i) The dangers of drug and alcohol abuse in the workplace;
  - (ii) The business's policy of maintaining a drug and alcohol free workplace;
  - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
- (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

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

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

(4) I acknowledge and agree that:

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

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

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

**F. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

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

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

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

## APPENDIX C

### PRE-PROPOSAL CONFERENCE RESPONSE FORM

Project Title: **AUDITING AND ACCOUNTING SERVICES (#2015-04)**

A Pre-Proposal Conference will be held at **2:00 p.m. (Local Time), on April 16, 2015**, at:

**Maryland State Lottery and Gaming Control Agency  
Montgomery Park Business Center  
1800 Washington Boulevard, Suite 330  
Baltimore MD 21230**

For directions to the meeting site, you may contact Robert W. Howells at [Robert.howells@maryland.gov](mailto:Robert.howells@maryland.gov) or 410-230-8789.

Please return this form by April 14, 2015 advising whether or not you plan to attend.

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

Robert W. Howells  
Fax: (410) 230-8727  
e-mail: [Robert.howells@maryland.gov](mailto:Robert.howells@maryland.gov)

Please indicate:

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

- 1.
- 2.
- 3.
- 4.

\_\_\_\_\_ **No, we will not be in attendance.**

\_\_\_\_\_  
Company/Firm/Vendor Name

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

## APPENDIX D

### MINORITY BUSINESS ENTERPRISE INSTRUCTIONS/FORMS

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

### INSTRUCTIONS

#### PLEASE READ BEFORE COMPLETING THIS DOCUMENT

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

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only entities certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule.
4. Please refer to the MDOT MBE Directory at [www.mdot.state.md.us](http://www.mdot.state.md.us) to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS, please visit [www.naics.com](http://www.naics.com). Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **WARNING:** If the firm's NAICS Code



is in **graduated status**, such services/products **may not be counted** for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.

5. **NOTE: New Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a contract, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own forces toward fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract. In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the subgoals, the MBE prime must also identify other certified MBE subcontractors (see Section 4B of the MBE Participation Schedule) used to meet those goals or request a waiver. For example, for a construction contract that has a 27% MBE overall participation goal and subgoals of 7% for African American firms and 4% for Asian American firms, subject to Section 4 above and this Section 5, a certified African American MBE prime can self-perform (a) up to 13.5 % of the overall goal and (b) up to 7% of the African American subgoal. The remainder of the overall goal and subgoals would have to be met with other certified MBE firms or a waiver request.

For a services contract with a 30% percent MBE participation goal (overall) and subgoals of 7% for African-American firms, 4% for Asian American firms and 12% for women-owned firms, subject to Sections 4 above and this Section 5, a dually-certified Asian American/Woman MBE prime can self-perform (a) up to 15% of the overall goal and (b) up to four percent (4%) of the Asian American subgoal OR up to twelve percent (12%) of the women subgoal. Because it is dually-certified, the company can be designated as only ONE of the MBE classifications (Asian American or women) but can self-perform up to one hundred percent (100%) of the stated subgoal for the single classification it selects.

6. Subject to the restrictions stated in Section 5 above, when a certified MBE that performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the contract equal to the distinct, clearly-defined portion of the work of the contract that the certified MBE performs with its own forces toward fulfilling the contract goal, and not more than one of the contract subgoals, if any. For example, if a MBE firm is a joint venture partner and the State determines that it is performing with its own forces 35 percent of the work in the contract, it can use this portion of the work towards fulfilling up to fifty percent (50%) of the overall goal and up to one hundred percent (100%) of one of the stated subgoals, if applicable.
7. As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

9. Worksheet: The percentage of MBE participation, calculated using the percentage amounts for all of the MBE firms listed on the Participation Schedule MUST at least equal the MBE participation goal **and** subgoals (if applicable) set forth in the solicitation. If a bidder/offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), the bidder/offeror must request a waiver in Item 1 of the MBE Utilization and Fair Solicitation Affidavit (Attachment \_\_\_-1A) or the bid will be deemed not responsive, or the proposal determined to be not susceptible of being selected for award. You may wish to use the Subgoal summary below to assist in calculating the percentages and confirm that you have met the applicable MBE participation goal and subgoals, if any.

**Subgoals (if applicable)**

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

**Overall Goal**

Total MBE Participation (include all categories):	_____	%
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**MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &  
MBE PARTICIPATION SCHEDULE**

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

In connection with the proposal submitted in response to RFP #2015-01, I affirm the following:

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

I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of 25.0% percent.

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11.

**OR**

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. Within 10 Working days of receiving notice that our firm is the apparent awardee or as requested by the Procurement Officer, I will submit the completed Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all required waiver documentation in accordance with COMAR 21.11.03.

**2. Additional MBE Documentation**

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

- (a) Outreach Efforts Compliance Statement (Attachment D-2);
- (b) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (c) Any other documentation, including waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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

### **3. Information Provided to MBE firms**

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

**[CONTINUED ON NEXT PAGE]**

#### 4. MBE Participation Schedule

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

Prime Contractor	Project Description	Project/Contract Number

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

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

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

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

**CONTINUE ON SEPARATE PAGE IF NEEDED**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

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

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

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

#### **I. Definitions**

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

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

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

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

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

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

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

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

#### **1. Identified Items of Work in Procurements**

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

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

#### **2. Identified Items of Work by Offerors**

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

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

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

#### **1. MBE Firms Identified in Procurements**

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

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

#### **2. MBE Firms Identified by Offerors**

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

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



### **C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The offeror should:

(a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the offeror has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the offeror provides written solicitations.

3. "Electronic Means" includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE Directory, unless the offeror has a valid basis for using different contact information; or

(b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

### **D. Negotiate With Interested MBE Firms**

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

(a) the names, addresses, and telephone numbers of MBE Firms that were considered;

(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

2. An offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **III. Other Considerations**

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

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

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

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

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

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

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

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

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

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

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

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

1. For each MBE Firm that the offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

2. For each certified MBE Firm that the offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by a MBE Unavailability Certificate (see Exhibit A to this Part 1) signed by the MBE contractor or a statement from the offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

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

2. Submit any other documentation the offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**Exhibit A - MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of Minority firm)

located at \_\_\_\_\_  
(Number) (Street)  
\_\_\_\_\_  
(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

in \_\_\_\_\_ County by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

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

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

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

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

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
MDOT Certification #

\_\_\_\_\_  
Telephone #

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

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

\_\_\_\_\_  
Signature of Prime Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# MBE ATTACHMENT D-1C

## GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

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

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

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

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

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

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

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

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST  
PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment 1-B). If the bidder/offeror used a Non-MBE or is self-performing the identified items of work, Part 4 must be completed.

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

Please check if Additional Sheets are attached.



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

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

PAGE \_\_\_ OF \_\_\_

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 1 indicates that a MBE quote was rejected because the bidder/offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

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

Please check if Additional Sheets are attached.

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

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

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

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

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

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

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4. **Please Check One:**

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

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5. **Please Check One:**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

## ATTACHMENT D-3A

# MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

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

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

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

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

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

**PRIME CONTRACTOR**

Signature of Representative:

\_\_\_\_\_

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

\_\_\_\_\_

Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

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

\_\_\_\_\_

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

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

**SUBCONTRACTOR**

Signature of Representative:

\_\_\_\_\_

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

\_\_\_\_\_

Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

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

\_\_\_\_\_

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

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

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

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

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

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

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

**ATTACHMENT D-4A**  
**Maryland State Lottery and Gaming Control Agency**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Prime Contractor: Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b>	Contract Amount: _____
	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
<b>Note: Please number reports in sequence</b>	Services Provided: _____

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	Fax:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	Fax:		
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<u>Invoice#</u>	<u>Amount</u>	
1.			1.
2.			2.
3.			3.
4.			4.
<b>Total Dollars Paid: \$</b> _____		<b>Total Dollars Unpaid:</b> \$ _____	

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

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

(Required)

_____ Contract Monitor
_____ Contracting Unit
Maryland State Lottery and Gaming Control Agency
_____
_____

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

(Required)

**ATTACHMENT D-4B**  
**Maryland State Lottery and Gaming Control Agency**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

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

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

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

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

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

_____ Contract Monitor _____ Contracting Unit Maryland State Lottery and Gaming Control Agency _____ _____ _____
---

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

(Required)

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

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

MBE Subcontractor Name:		
MDOT Certification #:		
Contact Person:	E-mail:	
Address:		
City:	State:	ZIP:
Phone:	Fax:	
<b>Subcontractor Services Provided:</b>		
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>		<b>List dates and amounts of any unpaid invoices over 30 days old.</b>
<u>Invoice Amt</u>	<u>Date</u>	<u>Invoice Amt</u>
1.		1.
2.		2.
3.		3.
<b>Total Dollars Paid: \$</b> _____		<b>Total Dollars Unpaid: \$</b> _____
Prime Contractor:		Contact Person:

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

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

_____ Contract Monitor
_____ Contracting Unit
Maryland State Lottery & Gaming Control Agency
_____
_____
_____

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



**APPENDIX E**

**VENDOR ELECTRONIC FUNDS TRANSFER (EFT)**

**REGISTRATION REQUEST FORM**

**State of Maryland  
Comptroller of Maryland**

Date of Request \_\_\_\_\_

**Business Identification Information (Address to be used in case of default to check):**

Business Name \_\_\_\_\_

Address Line 1 \_\_\_\_\_

Address Line 2 \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip code

**Taxpayer Identification Number:**

Federal Employer Identification Number:

(or) Social Security Number:

Business contact name, title, e-mail and phone number including area code. (And address if different from above):

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

**Financial Institution Information:**

Name and address \_\_\_\_\_

Contact name, phone number (include area code), \_\_\_\_\_  
\_\_\_\_\_

ABA Number

Account Number

ACCOUNT TYPE CHECKING  MONEY MARKET

Format Desired: \_\_\_\_\_ CCD \_\_\_\_\_ CCD+ \_\_\_\_\_ CTX\* (Check one.)

\*Note – There may be a charge to you by your bank with this format.

**A VOIDED CHECK from the bank account must be attached.**

**Transaction Requested:**

1. \_\_\_ Initiate all disbursements via EFT to the above account.
2. \_\_\_ Discontinue disbursements via EFT, effective \_\_\_\_\_.
3. \_\_\_ Change the bank account to above information – a copy of the approved Registration Form for the previous bank account must be attached.

I am authorized by \* \_\_\_\_\_  
 (hereinafter Company) to make the representations contained in this paragraph. Company authorizes the Comptroller and the Treasurer of Maryland to register it for electronic funds transfer (EFT) using the information contained in this registration form. Company agrees to receive all funds from the State of Maryland by electronic funds transfer according to the terms of the EFT program. Company agrees to return to the State of Maryland any EFT payment incorrectly disbursed by the State of Maryland to the Company's account. Company agrees to hold harmless the State of Maryland and its agencies and departments for any delays or errors caused by inaccurate or outdated registration information or by the financial institution listed above.

\*Name of registering business entity

\_\_\_\_\_  
 Signature of company treasurer, controller, or chief financial officer and date

**Completed by GAD/STO**

Date Received \_\_\_\_\_

GAD registration information verified \_\_\_\_\_ Date to STO \_\_\_\_\_

STO registration information verified \_\_\_\_\_ Date to GAD \_\_\_\_\_

R\*STARS Vendor No. and Mail Code Assigned:

\_\_\_\_\_

\_\_\_\_\_  
 State Treasurer's Office approval date

\_\_\_\_\_  
 General Accounting Division approval date

**To Requestor:**

Please retain a copy of this form for your records. Please allow approximately 30 days from the date of your request for the Comptroller's and Treasurer's Offices to process your request. Failure to maintain current information with this office could result in errors in payment processing. If you have any questions, please call the EFT registration desk at 410-260-7375.

**Please submit form to:** EFT Registration, General Accounting Division  
 Room 205, P.O. Box 746  
 Annapolis, Maryland 21404-0746

Instructions: Electronic Funds Transfer instructions are located: <http://compnet.comp.state.md.us/gad>. Questions may be requested by email, [gad@comp.state.md.us](mailto:gad@comp.state.md.us). Or call 1-888-784-0144.  
 COT/GAD

**APPENDIX F**

**FINANCIAL PROPOSAL SHEET**

**AUDITING AND ACCOUNTING SERVICES (#2015-04)**

**This form must be completed in its entirety and submitted by the Offeror with its Financial Proposal.  
Do Not change or alter this form.**

All Prices proposed shall be firm fixed prices for the term of the Contract, to include the Renewal Option Periods, if exercised, and any other extensions. Offerors are reminded that there is no guarantee of any minimum or maximum amounts under the Contract anticipated to result from this RFP, and thus no earnings are guaranteed to the Offeror.

**For the Initial Three (3) Year Contract Term**

The Offeror shall state on the Financial Proposal Sheet-Appendix F its proposed Firm Fixed Price for the three year base term of the Contract to provide all goods and services, equipment, and personnel for each of the five Components required by this RFP as described in Section V – Technical Specifications/Scope of Work.

**For the Renewal Option Period**

The Offeror shall state on the Financial Proposal Sheet-Appendix F its proposed Firm Fixed Price for the three 1-year Renewal Option periods of the Contract to provide all goods and services, equipment, and personnel for each of the five Components required by this RFP as described in Section V – Technical Specifications/Scope of Work.

**Price Model – Base Contract Term**

**Component 1 – Audit Reports**

Base Contract Term	Monthly Fee	Months	3-Year Contract Amount
Years 1-3	\$ _____	X 36	\$ _____

**Component 2 – Audit of Lottery Game Drawings**

Base Contract Term	Monthly Fee	Months	3-Year Contract Amount
Years 1-3	\$ _____	X 36	\$ _____

**Component 3 – MUSL Agreed Upon Procedures**

**Mega Millions/Megaplier Agreed Upon Procedures**

Base Contract Term	Yearly Fee	Years	3-Year Contract Amount
Years 1-3	\$ _____	X 3	\$ _____

**Powerball/Power Play Agreed Upon Procedures**

Base Contract Term	Yearly Fee	Years	3-Year Contract Amount
Years 1-3	\$ _____	X 3	\$ _____

**Component 4 – Assessment of MLGCA’s Technology**

Base Contract Term	Flat Fee
Year 2 only	\$ _____

**Component 5 – Management Services**

Base Contract Term	Hourly Fee	Estimated Annual Hours x 3 Years	3-Year Contract Amount
Years 1-3	\$ _____	X 100 x 3	\$ _____

**Summary of Projected 3 Year Base Contract Term Compensation**

Component 1 – Audit Reports	\$ _____
Component 2 – Audit of Lottery Game Drawings	\$ _____
Component 3 – MUSL Agreed Upon Procedures	\$ _____
Component 4 – Assessment of MLGCA’s Technology	\$ _____
Component 5 – Management Services	\$ _____

**Base Contract Term**  
**Estimated Total 3-Year Contract Amount** \$ \_\_\_\_\_ (l)  
 (Total of Components 1 + 2 + 3 + 4 + 5 )

**Price Model – Renewal Option Periods**

**Component 1 – Audit Reports**

Renewal Option Period	Monthly Fee	Months	3-Year Option Amount
Years 4-6	\$ _____	X 36	\$ _____

**Component 2 – Audit of Lottery Game Drawings**

Renewal Option Period	Monthly Fee	Months	3-Year Option Amount
Years 4-6	\$ _____	X 36	\$ _____

**Component 3 – MUSL Agreed Upon Procedures**

**Mega Millions/Megaplier Agreed Upon Procedures**

Renewal Option Period	Yearly Fee	Years	3-Year Option Amount
Years 4-6	\$ _____	X 3	\$ _____

**Powerball/Power Play Agreed Upon Procedures**

Renewal Option Period	Yearly Fee	Years	3-Year Option Amount
Years 4-6	\$ _____	X 3	\$ _____

**Component 4 – Assessment of MLGCA’s Technology**

Renewal Option Period	Flat Fee
Year 2 only	\$ _____

**Component 5 – Management Services**

Renewal Option Period	Hourly Fee	Estimated Annual Hours x 3 Years	3-Year Option Amount
Years 4-6	\$ _____	X 100 x 3	\$ _____

**Summary of Projected 3 Year Renewal Option Compensation**

Component 1 – Audit Reports	\$ _____
Component 2 – Audit of Lottery Game Drawings	\$ _____
Component 3 – MUSL Agreed Upon Procedures	\$ _____
Component 4 – Assessment of MLGCA’s Technology	\$ _____
Component 5 – Management Services	\$ _____

**Renewal Option Periods**

**Estimated Total 3-Year Option Amount** \$ \_\_\_\_\_ (II)

(Total of Components 1 + 2 + 3 + 4 + 5)

**Basis of Award**

Estimated Total 3-Year Contract Amount Total of Components 1+2+3+4+5	\$ _____ (I)
Estimated Total 3-Year Option Amount Total of Components 1+2+3+4+5	\$ _____ (II)
<b>Estimated Total Amount</b>	\$ _____ (I + II) <b>(Basis of Award)</b>

- The Offeror’s Proposed “Estimated Total 3-Year Contract Amount” plus “Estimated Total 3-Year Option Amount” specified above will be the basis for the award. The number of hours for Component 5 – Management Services is based on model quantities and will be used solely for price evaluation, comparison and selection for recommendation for award. The quantities indicated are not a guarantee of any minimum or maximum amounts under this contract and may change at any time during the term of the Contract, or Renewal Option Period if exercised.
- The Offeror’s proposed prices are to be fully loaded rate and to expressly include overhead expenses (e.g., fringe benefits, administrative costs, profits, etc.), and all related and incidental expenses (e.g., travel, legal, etc.) associated with providing this service.
- There is no guarantee of any minimum or maximum amounts under this Contract.
- The actual amount to be paid to the Contractor shall be calculated using the Firm Fixed Unit Prices specified on the Financial Proposal Sheet and, for Component 5, the actual number of hours authorized and accepted by the Lottery.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Offeror/Contractor

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(Printed or Typed)

Company: \_\_\_\_\_ Federal Tax ID#. \_\_\_\_\_

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

**APPENDIX G**

**CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**  
**(THIS AFFIDAVIT IS REQUIRED TO BE SUBMITTED WITH THE OFFEROR'S PROPOSAL)**

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

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

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

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

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

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

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

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

**APPENDIX H**  
**LITIGATION/PROTEST BOND**

BOND NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS THAT \_\_\_\_\_  
having its principal office at \_\_\_\_\_  
\_\_\_\_\_ as Principal and \_\_\_\_\_

\_\_\_\_\_ authorized to transact business in the State of Maryland, as Surety and held and firmly bound to the State of Maryland, as obligee in the sum of Fifty Thousand and 00/100 Dollars (\$50,000). As a condition of the Maryland State Lottery Agency's Request for Proposals #2015-04, this bond must be supplied with the Proposal with provision that a claim may be made upon this bond in accordance with Section 4.45.2 of the Maryland State Lottery Agency's Request for Proposals #2015-04 "Auditing and Accounting Services", the terms of which are incorporated into this document.

PRINCIPAL AND SURETY bind themselves, their heirs, assigns, executors and administrator, jointly and severally, conditioned that this obligation shall remain in full force and effect for a period of one (1) year from the Deadline for Receipt of Proposals. Provided, however, the Surety shall not be liable for the sum greater than the penal sum of this bond.

IN WITNESS WHEREOF, the said Principal's hand and seal have been set hereunto and the said Surety has caused these presents to be signed by its Attorney to become effective on this, the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

SURETY: \_\_\_\_\_

WITNESS: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_



**APPENDIX I**

**PROPOSAL BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_  
(Offeror)

as Principal, hereinafter called the Principal, and

\_\_\_\_\_  
(Bonding Company)

a corporation duly organized under the laws of the state of \_\_\_\_\_, as Surety, hereinafter called the Surety, are held and firmly bond unto the State of Maryland, hereinafter called "State" for the sum of Fifty Thousand and 00/100 Dollars (\$ 50,000.00), for the payment of which sum, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a proposal for \_\_\_\_\_  
Auditing and Accounting Services (#2015-04)  
(Identify project by number and brief description)

NOW, THEREFORE, if the Principal, upon acceptance by the State of its proposal identified above, within the period specified herein for acceptance for one hundred-twenty (120) days, shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the proposal as accepted within the time specified ten (10) days if no period is specified) after receipt of the forms, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the State for any cost of procuring the work which exceeds the amount of its proposal, then the above obligation shall be void and of no effect.

The Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the proposal that the Principal may grant to the State, notice of which extension(s) to the Surety being hereby waived; provided that such waiver of notice shall apply only with respect to extensions aggregating not more than ninety (90) calendar days in addition to the period originally allowed for acceptance of the proposal.

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

In Presence of: **INDIVIDUAL PRINCIPAL**  
Witness \_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

In Presence of: **CO-PARTNERSHIP PRINCIPAL**  
Witness \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
(Name of Co-Partnership)  
\_\_\_\_\_ as to BY: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)  
\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

**CORPORATE PRINCIPAL**  
Attest: \_\_\_\_\_  
(Name of Corporation)  
\_\_\_\_\_ BY: \_\_\_\_\_ AFFIX  
Corporate Secretary President CORPORATE  
SEAL

**SURETY**  
Attest: \_\_\_\_\_  
(Name of Surety)  
\_\_\_\_\_ BY: \_\_\_\_\_ AFFIX  
Secretary President CORPORATE  
SEAL

Bonding Agent's Name \_\_\_\_\_  
Agent's Address \_\_\_\_\_  
\_\_\_\_\_  
Business Address of Surety \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPENDIX J**  
**PERFORMANCE BOND**

**PAGE 1 OF 3**

Principal

Business Address of Principal

Surety  
a corporation of the State of \_\_\_\_\_  
and authorized to do business in  
the State of Maryland

Obligee: STATE OF MARYLAND  
By and through the following  
Administration: Lottery & Gaming Control

\$100,000

Penal Sum of Bond (express in words and figures)

\_\_\_\_\_, 20\_\_\_\_  
Date Bond Executed

Contract Number: #2015-04

Description of Contract:

Auditing and Accounting Services

\_\_\_\_\_, 20\_\_\_\_

Date of Contract

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

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

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

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

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

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

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

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

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

In Presence of: **INDIVIDUAL PRINCIPAL**  
Witness \_\_\_\_\_ as to \_\_\_\_\_(SEAL)

In Presence of: **CO-PARTNERSHIP PRINCIPAL**  
Witness \_\_\_\_\_(SEAL)  
\_\_\_\_\_  
(Name of Co-Partnership)

\_\_\_\_\_ as to BY : \_\_\_\_\_(SEAL)

\_\_\_\_\_ as to \_\_\_\_\_(SEAL)

\_\_\_\_\_ as to \_\_\_\_\_(SEAL)

**CORPORATE PRINCIPAL**

Attest: \_\_\_\_\_  
(Name of Corporation)

\_\_\_\_\_ BY: \_\_\_\_\_  
Corporate Secretary President

AFFIX  
CORPORATE  
SEAL

**SURETY**

Attest:  
\_\_\_\_\_  
Signature BY: \_\_\_\_\_  
AFFIX  
CORPORATE  
SEAL

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

\_\_\_\_\_  
(Business Address of Surety)

Bonding Agent's Name \_\_\_\_\_ - \_\_\_\_\_

Agent's \_\_\_\_\_ Address  
\_\_\_\_\_

## APPENDIX K

### **LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

- A. This Contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State Contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract. The Living Wage Law does not apply to an employee who works less than thirteen consecutive weeks and full-time on a Contract subject to the Living Wage.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
    - (A) has a State Contract for services valued at less than \$100,000; or
    - (B) employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A Subcontractor who:
    - (A) performs work on a State Contract for services valued at less than \$100,000;
    - (B) employs 10 or fewer employees and performs work on a State Contract for services valued at less than \$500,000; or
    - (C) performs work for a contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
  - (3) Contracts involving services needed for the following:
    - (A) Services with a Public Service Company;
    - (B) Services with a nonprofit organization;
    - (C) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
    - (D) Services between a Unit and a County or Baltimore City.

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

**AFFIDAVIT OF AGREEMENT**

**Maryland Living Wage Requirements - Service Contracts**

**Affidavit of Agreement**

Maryland Living Wage Requirements-Service Contracts

Contract No. 2015-04

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

Address \_\_\_\_\_

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

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

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

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

**If the Contract is a Living Wage Contract**

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



**Affidavit of Agreement**  
**Maryland Living Wage Requirements-Service Contracts**

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

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

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

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

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

\_\_\_\_\_  
Title

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

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

**APPENDIX L**

**AUTHORIZATION FOR RELEASE OF INFORMATION**

\_\_\_\_\_ *(Insert Name of Offeror)* has submitted a proposal in response to RFP #2015-04 issued by the Maryland State Lottery Commission (“Commission”). As part of the Commission’s evaluation of the proposal, it will be contacting other entities that have had business relationships with Offeror.

This document, signed by an authorized representative of Offeror, demonstrates the desire of Offeror to:

1. Allow representatives of the Commission unfettered access to any and all monitoring reports, licensing or certification documents, and records of evaluations related to the experiences of Offeror in its prior or current contracts for lottery related services, as well as the experiences of any of its parent or subsidiary corporations or other entities with which it has been associated;
2. Allow the same access afforded by the previous section 1 above to apply to situations in which Offeror may have functioned as a subcontractor;
3. Grant representatives of the Commission unfettered access to discuss openly the performance of Offeror related to the experiences set out in sections 1 and 2 above; and
4. Expressly authorize that any and all of the information conveyed to representatives of the Commission be kept in confidence by the Commission without any expectation or requirement that the content of such information shall ever be released to Offeror or any other entity, except where otherwise required by law.

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

*(Name of Offeror)* \_\_\_\_\_

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

**APPENDIX M**

**LOCATION OF THE PERFORMANCE OF SERVICES DISCLOSURE**

Pursuant to State Finance and Procurement Article, § 12-111, Annotated Code of Maryland, and in conjunction with the offer submitted in response to RFP #2015-01, the following disclosures are hereby made:

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

\_\_\_ have plans

\_\_\_ have **no** plans

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

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

a. Location(s) services will be performed:

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

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

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

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

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

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

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

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

**APPENDIX N – Sample/Special Purpose Financial Statements  
(PDF File Attached)**

**APPENDIX O – Sample/Year End Audited Financial Statements  
(PDF File Attached)**

**APPENDIX P – Sample/Agreed Upon Procedures Audit Report  
(PDF File Attached)**