



**REQUEST FOR PROPOSALS (RFP)**

**Maryland State Arts Council ARTS in Education  
Consultant Services**

**SOLICITATION #T00R0600894**

**ISSUE DATE: October 2, 2019**

**NOTICE TO OFFERORS**

**NOTICE**

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

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO  
RESPOND TO THIS SOLICITATION.**

**NOTICE/VENDOR FEEDBACK FORM**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Section 1.2 for contact information).

**Title: Maryland State Arts Council ARTS in Education Consultant Services**  
**Solicitation No: T00R0600894**

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

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

REMARKS:

\_\_\_\_\_  
\_\_\_\_\_

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

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

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

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

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## **SECTION I: INSTRUCTIONS TO OFFEROR**

### **1.1 PURPOSE**

The Department of Commerce/Maryland State Arts Council (MSAC) seeks Two (2) Arts in Education Consultants that will conduct field observations to provide feedback and coaching to the teaching artists presently on the Maryland State Arts Council roster. The Arts in Education Consultants will also prepare quarterly reports. They will identify new qualified artists to join the Maryland State Arts Council roster who reflect the diversity of the State of Maryland.

### **1.2 ISSUING OFFICE AND PROCUREMENT OFFICER**

Issuing Department:	Department of Commerce
Issuing Office:	Office of Contracts & Procurement
Address:	401 East Pratt Street, Room 1013 Baltimore, Maryland 21202
Procurement Officer:	Brenda Lee
Phone:	410-767-2345
E-Mail:	brenda.lee@maryland.gov

The Procurement Officer is responsible for all matters arising prior to and including final award of the contract and for (1) all purchase orders, changes or modifications; and (2) all disputes arising under the contract subsequent to final award. The Procurement Officer may designate a Procurement Representative to act on his/her behalf. The State may change the Procurement Officer or Procurement Representative or change the limits of their authority at its discretion.

The sole point of contact in the State for purposes of this RFP is the Procurement Officer as indicated above, or if unavailable, another Procurement Representative. No other employee, official or representative has authority to change requirements of the contract except the Procurement Officer, subject to the limits of his/her authority and other limitations imposed by law.

### **1.3 CONTRACT MONITOR**

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

Contract Monitor:	Precious Blake Maryland State Arts Council 175 W. Ostend St. Suite E Baltimore, Maryland 21230
Phone:	410-767-6476

E-Mail: [precious.blake@maryland.gov](mailto:precious.blake@maryland.gov)

#### 1.4 SCHEDULE OF EVENTS

Pre-Proposal Conference/Site Visit: Tuesday, October 15, 2019 @ 10:30 a.m.  
Maryland State Arts Council  
175 W. Ostend St. Suite E  
Baltimore, Maryland 21230

Deadline for Questions: October 21, 2019 @ 12:00 noon

Proposal Due (Closing) Date, Time and Location: October 28, 2019 @ 2:00 pm

Maryland Department of Commerce

World Trade Center

401 E. Pratt Street, Suite 1013

Baltimore, MD 21202

Attention: Brenda Lee, Procurement Officer

**Note: Late proposals will not be accepted**

#### 1.5 QUESTIONS AND INQUIRIES

All communications regarding this solicitation are to be made solely through the Procurement Officer or his/her designee. Only information communicated by the Procurement Officer or the Procurement Representative shall be the official position of the State. Questions regarding this solicitation may be directed verbally to the Procurement Officer or the Procurement Representative; however, the State reserves the right to require that the Offeror submit the question in writing if required for answers and viewing by all Offerors.

All questions, both oral and written should be submitted to the Procurement Officer no later than October 21, 2019 at 12:00 Noon.

#### 1.6 PROCUREMENT METHOD

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

#### 1.7 CONTRACT TYPE

The contract for services performed will be a firm, fixed price contract each year for three (3) years.

## **1.8 PRE-PROPOSAL CONFERENCE**

There will be a Pre-Proposal Conference for this solicitation on:  
October 15, 2019 @ 10:30 a.m.  
Maryland State Arts Council  
175 W. Ostend St. Suite E  
Baltimore, MD 2123

## **1.9 PROPOSAL DUE (CLOSING) DATE AND TIME**

All Proposals are to be received by the Procurement Officer at the Maryland Department of Commerce, Office of Contracts and Procurement by mail or hand delivery no later than October 28, 2019 @ 2:00 p.m. to the Maryland Department of Commerce, World Trade Center, 401 E. Pratt Street, Suite 1013, Attention: Brenda Lee. **Late Proposals will not be accepted.**

## **1.10 PROPOSAL FORMAT**

Offerors shall submit Proposals in separate volumes:

- Volume 1 – TECHNICAL PROPOSAL
- Volume 2 – FINANCIAL PROPOSAL

Offerors shall provide their Proposals in two separately sealed and labeled packages as follows:

Volume I - Technical Proposal consisting of:

- 1) One (1) original executed Technical Proposal and all supporting material marked and sealed,
- 2) Four (4) duplicate copies of the above separately marked and sealed,

Volume II - Financial Proposal consisting of:

- 3) One (1) original executed Financial Proposal and all supporting material marked and sealed,
- 4) four (4) duplicate copies of the above separately marked and sealed,

Volume I - The Technical Proposal shall include the following documents:

- Cover Letter
- Resume
- Conflict of Interest Affidavit – Attachment B
- Bid/Proposal Affidavit – Attachment C
- At least three (3) professional references are requested from customers who are capable of documenting the Offeror's ability to provide the services specified in this bid. Provide references:
  - a. Name of client organization;
  - b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
  - c. Value, type, duration, and description of services provided.

The Maryland Department of Commerce reserves the right to request additional references or utilize references not provided by an Offeror.

## **Skills and Qualifications**

The Offeror shall submit any minimum qualifications documentation that are required, see below:

- Bachelor's degree in one of the following fields, or a related area of study:
  - Education
  - Fine Arts with an emphasis in Education
  - or a minimum of 3 years of relevant experience.
- Deep knowledge of the Arts Education field, experience evaluating teaching artists, and effective written and oral communication
- Proficiency in using Google Suite, and Microsoft products.
- Communication skills to effectively interact with MSAC staff to determine project needs and specifications, to interact with teaching artists, to meet expectations and deadlines, and to work collaboratively with the Arts in Education Program Director.
- Analytical skills to prioritize and work with minimal direction with high quality accuracy and to provide authoritative recommendations on methods, systems, and processes.
- Ability to take constructive criticism and change direction when needed.

Volume II – Financial Proposal shall include the following document:

- Financial Proposal - Attachment A.

#### **1.11 INSURANCE REQUIREMENTS**

- a. If awarded the contract, the Offeror/Offeror shall, at his own expense, procure and maintain during the entire performance period of the contract, insurance of at least the kinds set forth below in the minimum amount specified herein or in writing by the Procurement Officer. An insurance certificate with the following coverages will be required from the awarded Offeror/Offeror as follows:
  - i. Worker's Compensation Insurance, in accordance with Maryland Statute;
  - ii. Public Liability Insurance, covering Comprehensive basis, including Contingent Liability, in an amount in accordance with Maryland Statute;
  - iii. Automobile Liability Insurance, covering all owned, non-owned, and hired vehicles, used in connection with the work;
  - iv. Owner's Protective Liability Insurance, issued in the name of the Department of Commerce, in amounts as indicated in (ii) above. Notwithstanding the requirement of the Offeror/Offeror to furnish certificates of insurance evidencing insurance coverage, the Offeror/Offeror shall furnish a policy of Owner's Protective Liability Insurance set forth herein. This policy must be endorsed to indicate that any premium, whether deposit or final, will be the sole obligation of the Offeror/Offeror.
- b. The Public Liability Insurance coverage as required in paragraph (ii) above, shall include those classifications, as listed in Standard Liability Insurance Manuals which are applicable to the operations of the Offeror/Offeror in the performance of the contract.
- c. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Maryland, with the following qualifications as to management and financial strength. The Company shall be rated no less than "A" as to management, and no less than "AAA" as to strength, by the latest edition of Best's Insurance Guide, published by Alfred M. Best Co., Inc.

- d. **The awarded Offeror/Offeror shall furnish Certificate of Insurance to the Procurement Officer prior to commencing any operations under this contract.** Certificate shall clearly indicate the classifications, as required for strict compliance with this Article. The said certificates must provide that in the event of any material change in or cancellation of the policies reflecting the required coverage, the Department of Commerce will be given thirty (30) days advance notice thereof.
- e. Compliance with the foregoing requirements as to the carrying of insurance shall not relieve the Offeror/Offeror from his liability under any other portions of the awarded contract.
- f. The Offeror/Offeror shall indemnify and defend the Department of Commerce, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of or relate to the performance by the Offeror/Offeror, its employees or agents, of the awarded contract. This provision shall not be construed as a waiver by the Department of Commerce, or its employees and agent, of sovereign or any other immunity.

#### **1.12 DURATION OF PROPOSAL**

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

#### **1.13 AWARD BASIS**

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP for providing the goods and services as specified in this RFP.

#### **1.14 AWARD DETERMINATION**

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

#### **1.15 CONTRACT DURATION**

The anticipated contact period is three (3) years and is anticipated to be from November 1, 2019 through October 31, 2022.

#### **1.16 BID BOND NOTICE**

There are no bonding requirements for this contract.

#### **1.17 PUBLIC INFORMATION ACT NOTICE**

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



information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.

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

#### **1.18 CONFLICTS OF INTEREST**

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

#### **1.19 MINORITY BUSINESS ENTERPRISE GOAL AND SUBGOAL**

There is no MBE subcontract participation goal established for this procurement but it is encouraged.

#### **1.20 ARREARAGES**

By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract if selected for contract award.

#### **1.21 BID/PROPOSAL AFFIDAVIT**

The Bid/Proposal Affidavit, included as part of this solicitation as Attachment C, must be submitted with the vendor's proposal.

#### **1.22 REVISIONS TO THE RFP**

The State reserves the right to amend this RFP at any time prior to the proposal due date. If it does become necessary to amend any part of this RFP, the Procurement Officer will furnish an addendum to all prospective Offerors known by the Department as having received a copy. All addenda will be identified as such and will be sent by email, notification. Vendors are required to acknowledge the receipt of all amendments, addenda, and changes issued. Addenda will be distributed within a reasonable time to allow vendors to consider them in preparing their Proposals. If the due date for submission of Proposals does not permit adequate time for consideration of the addendum by vendors in their Proposals, the Proposal due date will be extended.

#### **1.23 CANCELLATION OF REQUEST FOR PROPOSALS**

As provided by COMAR 21.06.02.02(B), the State may cancel this RFP, in whole or in part, when this action is determined to be fiscally advantageous or otherwise in the State's best interest.

## **1.24 REJECTION /CANCELLATION/DISCUSSIONS OF PROPOSALS**

As provided by COMAR 21.06.02.02(C), the Maryland Department of Commerce reserves the right to accept or reject all Proposals submitted, in whole or in part, when this action is determined to be fiscally advantageous or otherwise in the State's best interest. As provided by COMAR 21.06.02.03, the State of Maryland may reject any proposal submitted, in whole or in part. Commerce may also conduct discussions or negotiations with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State of Maryland.

## **1.25 MINOR IRREGULARITIES IN PROPOSALS**

As provided in COMAR 21.06.02.04, the Department reserves the right to waive or permit cure of minor irregularities.

## **1.26 CONTRACT AND CONTRACT AFFIDAVIT**

This Contract and Contract Affidavit is included in this RFP as Attachments D and E and is for information purposes only. If a contract is awarded as a result of this procurement, only the successful offeror will be required to complete the Contract and Contract Affidavit and submit to the Procurement Officer within five (5) days from notification of proposed award.

## **1.27 INCURRED EXPENSES**

The State is not responsible for any expenses incurred by vendors in preparing and submitting proposals in response to this RFP.

## **1.28 EXECUTION OF PROPOSALS**

All Proposals shall be typewritten or written in ink. All Proposals shall be signed in ink. Proposals are required to be executed as follows, depending on the vendor's form of training organization:

- **Sole Proprietorship** - Signed by proprietor with full name and address.
- **Partnership and Joint Venture** - If a Proposal is to be submitted by a partnership (including a joint venture), it must be submitted in the partnership name. The partnership name and the identity of each general partner must be made clear and all affidavits and certificates must be executed on behalf of the partnership or on behalf of each general partner. No provision of any agreement among partners will be binding on the State unless it is disclosed in the bid. Reasonable evidence satisfactory to the State of the authority of one partner to bind other purported partners also must be given in the bid. It is recommended that the bid contain a copy of the partnership agreement, if one exists. If no partnership agreement exists and if the number of general partners is reasonably small, each general partner should execute all required documents, including proposals. At the State's option, all general partners may be required to sign the contract. Failure to present the State with satisfactory information concerning a purported partnership may be grounds for finding a Bid unacceptable.
- **Corporation** - An officer or authorized agent of the corporation shall sign his/her full name, indicate his/her title and include the name and address of the corporation. In the case of an authorized agent, a letter from an officer of the corporation authorizing said individual to act on behalf of the corporation must be included.

### **1.29 DISCREPANCIES, EXPLANATIONS AND CLARIFICATIONS**

Should a offeror find discrepancies in the specifications or contract provisions included in this RFP, or should there be doubt as to the meaning or intent of any section or subsection herein, the Offeror must request clarification from the Procurement Officer. Failure to request a clarification prior to the Proposal due date will bind the Offeror to the State's interpretation of the contract. Explanations and clarifications desired by a prospective Offeror shall be requested in accordance with the instructions contained in Section I, "Questions and Inquiries."

### **1.30 CONTRACTOR RESPONSIBILITIES**

The successful Offeror shall be responsible for all materials and services required by this RFP.

Damages or penalties will not be assessed for delays or non-performance where performance of the Contractor's obligations is prevented or delayed by natural disasters, freight embargoes, strikes, fire or acts of God, provided the Contractor notifies the State's contract administrator and/or project manager of such circumstances and the State's contract administrator/project manager reasonably determines that the failure to perform within the specified time was beyond the control and without fault or negligence of the Contractor.

The State will not be bound to accept any substitutions or change in contract requirements by virtue of approval or acceptance of any submittal, drawing, specification, description, or other document unless the Contractor expressly brings to the State's attention, in writing, contained in the same document in which the substitution or change is proposed, the fact that a substitution or change is proposed. The State will not be bound to a substitution or change documentation in which the substitution or change is somehow referred to, unless the Contractor expressly brings it to the State's attention, in writing, and the State's expressly approves the substitution or change, in writing. The State will not be bound to accept any product or service not in accordance with the contract just because the State made a payment for it.

### **1.31 REQUIRED CONTRACT PROVISIONS**

Proposals submitted and the contract executed with the selected vendor is subject to the all provisions of this solicitation. **Offerors who propose modifications to the solicitation terms will have their offer rejected.**

### **1.32 PAYMENT TO THE CONTRACTOR**

Contractor shall be paid for services satisfactorily performed and upon project completion thirty (30) days after receipt and approval of invoice to Commerce.

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

### **1.33 ORDER OF PRECEDENCE**

The contract between the parties will be embodied in the contract documents. The contract documents will consist of:

- The contract

- The RFP and any Addenda
- Proposal

In the event of a conflict between provisions of the contract documents, the controlling provisions shall be, in this order: First those of the contract including contract modifications; second: those of the RFP; and third: those of the Contractor's Proposal.

### **1.34 COMPLIANCE WITH LAW**

By submitting a proposal in response to this RFP, the vendor, if selected for award, agrees that it will comply with all federal, State, and local laws, rules, regulations, and ordinances applicable to its activities and obligations under the contract.

### **1.35 RECIPROCAL PREFERENCE - RESIDENT OFFEROR**

The provisions of State Finance and Procurement Law 14-402 and COMAR 21.11.07.02 shall apply to this solicitation. A "Resident Offeror" is defined as a training enterprise that has a Maryland address, is registered to do training in the State of Maryland, employs Maryland residents, and regularly conducts training within the State. The term includes subsidiaries, divisions and branches of trainings headquartered outside of the State of Maryland. (BPW Advisory No.: P-003-95, dated October 16, 1995).

Nonresident Offerors submitting a bid for this solicitation shall attach to the bid 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.

A preference shall be identical to the preference that the other state gives to its residents.

### **1.36 MULTIPLE OR ALTERNATE PROPOSALS**

Neither multiple nor alternate Proposals will be accepted.

### **1.37 FALSE STATEMENTS**

Offerors are advised that section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland provide 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 5 years or both.

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## **SECTION II: SCOPE OF WORK**

### **Scope of Work**

The Arts in Education Consultants (2) will conduct field observations to provide feedback and coaching to the teaching artists presently on the Maryland State Arts Council roster. The Arts in Education Consultants will also prepare quarterly reports. They will identify new qualified artists to join the Maryland State Arts Council roster who reflect the diversity of the state of Maryland.

### **Contract Period**

November 1, 2019 - October 31, 2022

### **General Arts in Education Consultant Responsibilities**

1. Drafting/Refining an observation feedback rubric that defines a criteria of excellence, to inform teaching artists, presently on the roster, about the quality and effectiveness of their classroom and professional development work.
2. Drafting/Refining an observation feedback rubric, that defines a criteria of excellence, to inform teaching artists, presently on the roster, about the quality and effectiveness of their performances.
3. Observing teaching artists using the rubrics described above.
4. Providing feedback and coaching to teaching artists based on the outcomes of the observation rubric.
5. Providing a quarterly report to the Executive Director, Arts in Education Program Director, and Council.
6. Defining a criteria and procedure for teaching artists to remain on the MSAC roster.
7. Drafting/Refining an observation feedback checklist for PTA/Principals/ Community Sponsors that will inform teaching artists, presently on the roster, about the quality and effectiveness of their classroom and professional development work.
8. Drafting/Refining an observation feedback rubric for PTA/Principals/Community Sponsors that will inform teaching artists, presently on the roster, about the quality of their performances.
9. Networking to find, cultivate and nurture new teaching artists to join the MSAC roster that reflect the diversity of the state of Maryland.

**ATTACHMENT A – FINANCIAL PROPOSAL FORM**

**FINANCIAL PROPOSAL FORM**

The Financial Proposal Form shall contain all price information in the format specified on these pages. Do not amend, alter or leave blank any items on the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

<u>Monthly Flat Fee</u>	<u>Months</u>	<u>Total Annual Amount</u>
a.\$ _____	x 12	= \$ _____ YEAR 1
b.\$ _____	x 12	= \$ _____ YEAR 2
c.\$ _____	x 12	= \$ _____ YEAR 3
<b><u>TOTAL PRICE FOR YEARS 1 THROUGH 3 ( add a+b+c)</u></b>		<b><u>= \$ _____ (Basis For Award)</u></b>

Submitted by:

Signature of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

Offeror Company Name: \_\_\_\_\_

Offeror Company Address: \_\_\_\_\_

Location(s) from which goods/services will be provided/performed (City/State):

FEIN Number: \_\_\_\_\_ eMMA: \_\_\_\_\_

**ATTACHMENT B – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

**SUBMITTED WITH OFFER**

**Reference COMAR 21.05.08.08**

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

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

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

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

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

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

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

By: \_\_\_\_\_

(Authorized Representative and Affiant)

## **ATTACHMENT C – BID/PROPOSAL AFFIDAVIT**

### **SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

#### **A. AUTHORITY**

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

#### **B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all Proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland.

"Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

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

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

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

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the Bid/Proposal



submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal.

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

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

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

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

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

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

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

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

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

(a) §7201, Attempt to Evade or Defeat Tax;

(b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,

(c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,

(d) §7205, Fraud and False Statements, or

(e) §7207, Fraudulent Returns, Statements, or Other Documents;

(10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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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. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

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

**I FURTHER AFFIRM THAT:**

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

**M. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the Bid or Proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

**N. ACKNOWLEDGEMENT**

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

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

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

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

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

**ATTACHMENT D – CONTRACT**

**(Do Not Submitted with Proposal)**

**MARYLAND STATE LARGE PROCUREMENT CONTRACT**

THIS CONTRACT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (“Execution Date”) by and between \_\_\_\_\_ and the **MARYLAND DEPARTMENT OF COMMERCE**.

IN CONSIDERATION of the premises and the covenants herein contained, the adequacy and sufficiency of which are duly acknowledged by the parties, the parties agree as follows:

**1. Definitions**

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

- 1.1 ARTS in Education Consultant services means those services described in Exhibit A attached to this Contract.
- 1.2 “Contract” means this Contract for the provision of ARTS in Education Consultant Services by the Contractor.
- 1.3 “Contractor” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_.
- 1.4 “Contract Monitor” means Precious Blake or a successor designated by the Department. The Contract Monitor is the State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, and achieving completion of the Contract on budget, on time, and within scope.
- 1.5 “Department” or “Commerce” means the Maryland Department of Commerce.
- 1.6 “MSAC” means the Maryland State Arts Council.
- 1.7 “Parties” means Contractor and Commerce collectively.
- 1.8 “Procurement Officer” means Brenda Lee or a successor designated by the Department.
- 1.9 “State” means the State of Maryland.

**2. Scope of Work**

2.1 The Contractor shall provide ARTS in Education Consultant Services for Commerce. These services shall be provided in accordance with this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference:

- Exhibit A – RFP and any Addenda
- Exhibit B – Contract Affidavit
- Exhibit C – Financial Proposal Form



If there are any inconsistencies, differences, discrepancies, or conflicts between this Contract and the Exhibits, the terms of this Contract shall control. If there is any inconsistency, difference, discrepancy, or conflict among the Exhibits, the following order of precedence shall determine the prevailing provision: (1) Exhibit B, (2) Exhibit A.

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Article 8, Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

### **3. Time for Performance**

The Contractor shall begin providing services under this Contract on the \_\_\_\_\_. Unless terminated earlier as provided in this Contract, the Contractor shall continue to provide services until \_\_\_\_\_. Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration of the Contract.

### **4. Consideration and Payment**

4.1 In consideration of the satisfactory performance of the services set forth in this Contract, the Department shall pay the Contractor \_\_\_\_\_. Except with the express written consent of the Procurement Officer, payment to the Contractor for the services required under this Contract shall not exceed \_\_\_\_\_.

4.2 Unless a payment is unauthorized, deferred, delayed, or set off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. The Contractor may be eligible to receive late payment interest at a rate of 9% per annum if: (1) The Contractor submits an invoice for the late payment interest within 30 days after the date of the State's payment of the amount on which the interest accrued; and (2) A Contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland. The State is not liable for interest: (1) accruing more than one year after the 31st day after the agency receives the proper invoice; or (2) on any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable. Each invoice for services rendered must include the Contractor's social security number \_\_\_\_\_. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. Electronic funds transfer shall be used by the State to pay the Contractor pursuant to this Contract and any other State payments due the Contractor unless the State Comptroller's Office grants the Contractor an exemption.

4.3 In addition to any other available remedies if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or

limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer pursuant to this Contract.

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

## **5. Rights to Documents, Products, and Property; Intellectual Property**

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

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

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

5.4 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party’s patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor’s expense and will pay all damages, costs, and attorneys’ fees that a court finally awards, provided the State: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 5.5 below.

5.5 If any products furnished by the Contractor become, or in the Contractor’s opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the State the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item’s specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

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

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

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

## **6. Confidential or Proprietary Information and Documentation**

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

6.2 This Section 6 shall survive expiration or termination of this Contract.

## **7. Non-Hiring of Employees**

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

## **8. Disputes**

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

## **9. Maryland Law; Consent to Jurisdiction and Forum Selection; Consent to Service of Process**

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland, excluding Maryland law applicable to choice of law and choice of forum. Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended. Primary jurisdiction for disputes arising out of or relating to this Contract shall lie with the Maryland State Board of Contract Appeals in accordance with §15-211 of the State Finance and Procurement Article of the Maryland Annotated Code, as revised from time to time, and Contractor hereby consents and submits to the personal jurisdiction and venue of the Maryland State Board of Contract Appeals. Commerce and the Contractor further agree that after the parties shall have exhausted

all administrative remedies available under Maryland procurement law and regulations for the resolution of disputes under this contract, exclusive jurisdiction over all disputes arising out of this contract shall lie in the Courts of the State of Maryland and all actions or proceedings arising in connection with this Contract shall be tried and litigated exclusively in the Courts of the State of Maryland located in Baltimore City, State of Maryland. The aforementioned choice of forum and venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this contract in any jurisdiction other than the State of Maryland. The contractor waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section, and stipulates that the Courts of the State of Maryland located in Baltimore City, State of Maryland shall have *in personam* jurisdiction and venue over the contractor for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this contract. The contractor hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this section by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this contract, or upon the Contractor's resident agent as may be designated by the contractor and appearing from time to time on the registered organization records of Maryland.

#### **10. Nondiscrimination in Employment**

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

#### **11. Contingent Fee Prohibition**

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

#### **12. Termination for Default**

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

#### **13. Termination for Convenience**

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

#### **14. Delays and Extensions of Time**

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

14.2 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.

#### **15. Suspension of Work**

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

#### **16. Pre-Existing Regulations**

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

#### **17. Financial Disclosure**

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

#### **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 or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

## **19. Documents Retention and Inspection Clause; Right to Audit**

19.1 The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the State, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

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

19.3 Upon three (3) Business Days' notice, the Contractor and/or any subcontractors shall provide the State reasonable access to their respective records to verify conformance to the terms of the Contract. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy, at its own expense, any record related to the services performed and provided under this Contract.

19.4 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s) that provide essential support to the Contract services. The Contractor and/or subcontractor(s) shall ensure the Department has the right to audit such subcontractor(s).

19.5 The Contractor and/or subcontractors shall cooperate with Department and Department's designated accountant or auditor and shall provide the necessary assistance for the Department or Department's designated accountant or auditor to conduct the audit.

19.6 This Section 19 shall survive expiration or termination of the Contract.

## **20. Compliance with Laws**

The Contractor hereby represents and warrants that:

20.1 Contractor is qualified to do business in the State and that Contractor will take such action as, from time to time hereafter, may be necessary to remain so qualified;

20.2 Contractor is qualified to do business in the jurisdiction in which any of the services or work performed under this Contract shall take place and that Contractor will take such action as, from time to time hereafter, may be necessary to remain so qualified;

20.3 Contractor is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that Contractor shall not become so in arrears during the term of this Contract;

20.4 Contractor shall comply with all federal, State and local laws, regulations, and ordinances applicable to Contractor's activities and obligations under this Contract; and

20.5 Contractor shall obtain, at Contractor's expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of Contractor's obligations under this Contract.

## **21. Responsibility of Contractor**

21.1 Contractor shall perform the services under this contract with that level of professional care, skill, and diligence usually provided by a contractor in the performance of similar services. If Contractor fails to so perform the services and such failure is made known to Contractor within two years after expiration of this Contract, it shall, if required by Commerce, perform at its own expense and without additional cost to Commerce, those services necessary for the correction of any deficiencies or damage resulting from Contractor's failure. This obligation is in addition to and not in substitution for any other remedy available to Commerce.

21.2 This Section 21 shall survive expiration or termination of the Contract.

## **22. Cost and Price Certification**

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

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

## **23. Subcontracting; Assignment**

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

## **24. Indemnification**

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

24.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the State against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the State or the State's employees.

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

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

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

24.6 The State shall have no obligation to indemnify the Contractor under this Contract.

24.7 This Section 24 shall survive expiration or termination of this Contract.

## **25. Living Wage**

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

## **26. Commercial Non-Discrimination**

26.1 As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test 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 Contractor retaliate against any person for reporting instances of such discrimination. The 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. The Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the 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.



26.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.

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

## **27. Breaches and Remedies**

### **27.1. Breaches**

The following events, without limitation, shall constitute a Breach under this Contract:

(a) The failure of the Contractor to perform any obligation, covenant, representation, warranty, or other provision of this Contract or to provide the agreed upon work or services in accordance with the specifications of the Scope of Work and Exhibit A or the Contractor's breach of any other of the terms, conditions and provisions of this Contract, which breach is not cured within 10 calendar days from the date the Contractor receives (as provided in Section 28.2) written notice of the breach from Commerce; provided, however that the Contractor shall not receive a 10 calendar day cure period under this subsection for any breach for which there is a specific Default set forth in this Section;

(b) Any court of competent jurisdiction makes a final order (i) adjudicating the Contractor a bankrupt, (ii) appointing a trustee or receiver of a substantial part of the property of the Contractor, (iii) approving a petition for, or affecting an arrangement in, bankruptcy, a reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the Department, (iv) assuming custody or sequestering any substantial part of the property of the Contractor, or (v) attaching or garnishing any substantial part of the property of the Contractor; or if the Contractor (A) files such petition, or (B) takes or consents to any other actions seeking any such judicial order, or (C) makes an assignment for the benefit of creditors, or (D) fails to pay debts generally as they become due, or (E) makes an admission in writing of inability to pay debts generally as they become due;

(c) Without the prior written consent of Commerce, the Contractor (i) sells or transfers all or substantially all of its business assets, (ii) begins any proceeding to dissolve or liquidate, (iii) changes the form of business entity through which it presently conducts its business, or (iv) merges or consolidates;

(d) Without the prior written consent of Commerce, the Contractor is dissolved by operation of law or in any other manner.

### **27.2. Remedies**

(a) Commerce may at any time proceed to protect the interest of the State and to enforce all rights and remedies available to the State under this Contract, including, without limitation, any provision of this Contract for liquidated damages, or by law or regulation, by termination or by any other action or

proceedings, whether for specific performance of any agreement contained in this Contract, damages, or other relief available to the State under law or regulation.

(b) All remedies provided for in this Contract or by law or regulation are cumulative and are concurrent and in addition to any other rights and remedies available to Commerce under the terms of this Contract or pursuant to law or regulation. The exercise of any right or remedy by the State shall not constitute a cure or waiver of any Breach by the Contractor, nor invalidate any act done pursuant to any notice of Breach, nor prejudice the State in the exercise of those rights. The exercise of any one such right, power, or remedy of the State pursuant to this Contract or under law or regulation shall not preclude the simultaneous or later exercise by the State of any other right, power or remedy. The State reserves the right to terminate the Contract pursuant to the provisions of this Contract and applicable law and regulations and to exercise any and all other rights and remedies provided in the Contract or by law.

(c) The failure of the State to insist upon performance of any term of this Contract shall not constitute a waiver of any term of this Contract. No act of the State shall be construed as an election to proceed under any one provision in this Contract to the exclusion of any other provision.

**28. Administrative**

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

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

If to the State: Brenda Lee  
Procurement Officer  
Maryland Department of Commerce  
World Trade Center Baltimore, 10<sup>th</sup> Floor  
401 East Pratt Street  
Baltimore, MD 21202

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**29. Contract Affidavit.**

All terms and conditions of the Sole Source Contract Affidavit, attached as Exhibit B, are made a part of this contract.

**30. Binding Nature; Contingency for DBM and BPW Approval**

This Contract shall come into force and effect and shall be binding on Commerce and the State of Maryland only (i) after this Contract shall have been first approved by the Department of Budget and Management or the Board of Public Works, unless such approval is not required under Maryland Procurement Law, the Maryland Procurement Regulations, and the directives of the Board of Public Works, and (ii) after this Contract shall have been signed on behalf of Commerce and the State of Maryland by the Secretary of Commerce or his or her designee. After this Contract shall have been signed by or on behalf

of Commerce and the Contractor, it shall be binding upon the parties and their respective legal successors and permitted assigns.

### **31. Counterparts**

This Contract may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties.

### **32. Rules of Construction**

The paragraph and section headings used in this Contract are for reference and convenience only, do not constitute substantive or operative provisions of this Contract, and shall not enter into the construction or interpretation of this Contract. Words of any gender used in this Contract shall be construed to mean and include corresponding words of any other gender. Words in the singular number shall be construed to mean and include corresponding words in the plural, when the context so requires.

### **33. Severability**

If this Contract in its entirety is declared or found to be illegal or unenforceable or void then both parties shall be relieved of all obligations arising under this Contract and the parties shall proceed as in the case of termination for the convenience of the State. If any provision of this Contract is declared or found to be illegal or unenforceable or void then both parties shall be relieved of all obligations arising under such provision, but if such provision does not relate to the compensation to be paid to Contractor by Commerce and if the remainder of this Agreement shall not be affected by such declaration or finding, then each such provision not so affected shall be enforced to the extent provided by law. If this Contract in its entirety or any provision of this Contract is declared or found to be voidable by the State, the State may at its option (i) declare by written notice to the Contractor that this Contract, or the voidable provision, as the case may be, is void, whereupon both parties shall be relieved of all obligations arising under this Contract, or the voidable provision, as the case may be, or (ii) declare by written notice to the Contractor that this Contract, or the voidable provision, as the case may be, shall remain in force and effect. If the State elects to void the entire contract, the parties shall proceed as in the case of termination for the convenience of the State. If the State elects to declare void the voidable provision, and if such provision does not relate to the compensation to be paid to Contractor by Commerce and if the remainder of this Agreement shall not be affected by the voiding of the provision in question, then each such provision not so affected shall be enforced to the extent provided by law and the State may by written notice to the Contractor require the Contractor to continue its performance under the remaining terms of this Contract and to complete the work and services that are the subject of the Contract, in which case Commerce shall compensate the Contractor to the extent, if any, that the Contractor may be entitled to compensation as provided in this Contract. If the State elects to declare that the voidable Contract in its entirety, or the voidable provision, as the case may be, will remain in force and effect, the State shall by written notice to the Contractor require the Contractor to continue its performance under the terms of this Contract and to complete the work and services that are the subject of the Contract, in which case Commerce shall compensate the Contractor to the extent, if any, that the Contractor may be entitled to compensation as provided in this Contract.

### **34. Attorney's Fees**

If any administrative proceeding, legal action or other proceeding is brought for the construction, interpretation, or enforcement of this Contract or of any provision hereof, or because of any claim, dispute, alleged default, breach or other claim or cause of action in connection with this Contract, Commerce and Contractor agree that each party shall bear its own legal expenses and other costs of all kinds incurred in that action or proceeding. Any provision of law or of this Contract to the contrary notwithstanding, the Contractor hereby waives expressly and irrevocably any statutory or other right it has or may have to

recover from Commerce or the State of Maryland legal expenses and other costs of all kinds that it may incur in such an action or proceeding with respect to this Contract.

### **35. Relationship of Parties**

The relationship of Commerce and the Contractor shall be that of independent contractors. This Contract is not intended by the parties to constitute, and shall not be construed as constituting, a partnership, joint venture, agency or any other form of business association between Commerce and the Contractor. Neither party shall have any right to obligate or to bind the other party in any manner whatsoever. Nothing herein contained shall give, or is intended to give, any rights of any kind to third parties, provided, however, that the Contractor acknowledges and agrees that Commerce and the State of Maryland are charged with the protection and advancement of the public interest of the State of Maryland and its people.

### **36. No Waiver**

Except as to matters expressly waived by a party as expressly provided elsewhere in this Contract, the failure of any party to insist upon or demand the prompt and punctual performance of any term or condition of this Contract, or the failure of any party to exercise any right or remedy provided in this Contract, by law or otherwise, on any one or more occasions shall not constitute a waiver of that or any other term, condition, right or remedy on that or any subsequent occasions.

### **37. Recovery of Advance, Interim or Progress Payments**

If (a) the Procurement Officer shall at any time determine upon investigation that the work or services performed or delivered by the Contractor from time to time during the course of the Contractor's performance of its obligations under this Contractor fails to meet the requirements and specifications for such work or services incorporated in and made a part of this Contract, or are otherwise unsatisfactory or defective, or (b) the Procurement Officer shall at any time determine upon investigation that any work or services required to be performed under the terms of this Contract have not been timely and fully completed, then the Procurement Officer may by written notice to the Contractor make demand upon the Contractor for the immediate repayment by Contractor to Commerce of any advance or progress payments or other interim payments made by Commerce to Contractor or such part thereof as the Procurement Officer shall reasonably determine. Upon receipt of the notice and demand from the Procurement Officer, the Contractor shall immediately remit to Commerce the amount demanded by the Procurement Officer. If the Contractor disputes the Procurement Officer's determination, the Contractor shall nonetheless immediately remit to Commerce the amount demanded by the Procurement Officer. The Contractor may pursue its remedies for the resolution of disputes as provided elsewhere in this Contract and by the Maryland State Procurement Law and Procurement Regulations.

### **38. Taxes**

Commerce shall have no responsibility or obligation for the payment of any federal, state or local taxes of any kind or type whatsoever 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 by the Comptroller of the State upon request.

### **39. Prompt Pay Requirements**

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

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

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

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

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

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

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

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

- a. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
  - i. Inspecting any relevant records of the Contractor;
  - ii. Inspecting the jobsite; and
  - iii. Interviewing subcontractors and workers.

Verification shall include a review of the:

- i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
  - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- b. If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- c. If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
- i. Terminate the contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- d. Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

**40. Parent Company Guarantee**

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

**41. Order of Precedence of Terms**

The foregoing Maryland State Large Procurement Contract shall prevail, control and take precedence over the Contractor's terms and conditions, in whatever form, to the extent of any inconsistency, difference, discrepancy, or conflict with this Maryland State Large Procurement Contract. The Contractor's obligations for providing services are defined in order of precedence by 1) the Maryland State Large Procurement Contract, 2) Exhibit B, and 3) Exhibit A.

**42. Entire Contract**

This Contract, together with the Exhibits incorporated by reference, represents the complete and final understanding of the parties. No other understanding, oral or written, regarding the subject matter of this Contract, may be deemed to exist or to bind the parties at the time of execution.

**IN WITNESS WHEREOF**, the parties have executed this Contract on or before the date first set forth herein.

**Accepted for CONTRACTOR:**

**Accepted for COMMERCE:**

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name:  
Title:

**Witnessed for CONTRACTOR:**

\_\_\_\_\_  
Name:  
Title:

**Approved as to Form and Legal Sufficiency:**

\_\_\_\_\_  
William J. Chen, III  
Assistant Attorney General  
Maryland Department of Commerce

**Attachments:**

- Exhibit A: RFP
- Exhibit B: Contract Affidavit

**ATTACHMENT E – CONTRACT AFFIDAVIT**

**(Submitted with Awarded Contract Only)**

**Contract Affidavit.**

Mandatory contract addendum. The contract addendum shall be in substantially the same form as follows:

**A. AUTHORITY**

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

The training 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 training 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 training 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 training will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every training that enters



into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the training 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 training.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

(2) By submission of its bid or offer, the training, 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 training 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 training's 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 training 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 training 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 training'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 training 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 training 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/Bid Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

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

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

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

**ATTACHMENT F – ARTS IN EDUCATION CONSULTANT SERVICES TIMELINE AND DELIVERABLES**

Month/Year	Activity	Deliverable
November, 2019	Complete all rubrics for staff review. Finalize all rubrics after staff input.	Finalized rubrics.
December, 2019	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
January, 2020	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations. Council report. Meeting agenda.
February, 2020	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
March, 2020	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations. Council report. Meeting agenda.
April, 2020	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations. Council report. Meeting agenda.
May, 2020	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
June, 2020	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations. Council report. Meeting agenda.

July, 2020	Update all rubrics for staff review. Finalize all rubrics after staff input.	Finalized rubrics.
August, 2020	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
September, 2020	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
October, 2020	Conduct site evaluative site visits.  Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations.  Council report. Meeting agenda.
November, 2020	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
December, 2021	Conduct site evaluative site visits.  Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations.  Council report. Meeting agenda.
January, 2021	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
February, 2021	Conduct site evaluative site visits.  Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations.  Council report. Meeting agenda.
March, 2021	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
April, 2021	Conduct site evaluative site visits.  Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations.  Council report. Meeting agenda.

May, 2021	Update all rubrics for staff review. Finalize all rubrics after staff input.	Finalized rubrics.
June, 2021	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
July, 2021	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
August, 2021	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations. Council report. Meeting agenda.
September, 2021	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
October, 2021	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations. Council report. Meeting agenda.
November, 2021	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
December, 2021	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations Council report. Meeting agenda.
January, 2022	Conduct site evaluative site visits. Meet with Arts in Education Program Director.	Documented observations and evaluations. Meeting agenda.
February, 2022	Conduct site evaluative site visits. Prepare Council report. Meet with Arts in Education Program Director.	Documented observations and evaluations. Council report. Meeting agenda.