



STATE OF MARYLAND
MARYLAND LOTTERY AND GAMING CONTROL
AGENCY(MLGCA)
REQUEST FOR PROPOSALS (RFP)
ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB &
SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES
RFP NUMBER 2023-07

ISSUE DATE: 09/09/2024

NOTICE

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace (eMMA) <https://procurement.maryland.gov> should register on eMMA. See **Section 4.2**.

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

Solicitation #: 2023-07

VENDOR FEEDBACK FORM

To help improve the quality of State solicitations and to make the procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return any 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 Key Information Summary Sheet below for contact information).

Title: ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES Solicitation No: 2023-07

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 Proposal is insufficient
 - Start-up time is insufficient
 - Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
 - Proposal requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
 - MBE or VSBE requirements (Explain in REMARKS section)
 - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
 - Payment schedule too slow
 - Other: _____

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

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) ____ - _____

Address: _____

E-mail Address: _____

Solicitation #: 2023-07

STATE OF MARYLAND
MARYLAND LOTTERY AND GAMING CONTROL AGENCY (MLGCA)
KEY INFORMATION SUMMARY SHEET

Request for Proposals	Services - ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES
Solicitation Number:	2023-07
RFP Issue Date:	09/09/2024
RFP Issuing Office:	Maryland Lottery and Gaming Control Agency (MLGCA)
Procurement Officer: e-mail: Office Phone:	John P Lloyd 1800 Washington Blvd., Suite 330, Baltimore, MD 21230 John.Lloyd@maryland.gov 410-230-8886
Proposals are to be sent to:	1800 Washington Blvd., Suite 330, Baltimore, MD 21230 Attention: John P Lloyd
Pre-Proposal Conference:	09/26/2024 Local Time 13:00 hrs. (1 p.m.) 1800 Washington Blvd., Suite 330, Baltimore, MD 21230 See Attachment A for directions and instructions.
Questions Due Date and Time	10/18/2024 Local Time 1700 hrs. / 5:00 p.m.
Proposal Due (Closing) Date and Time:	11/15/2024 2:00 p.m. Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page iv).
MBE Subcontracting Goal:	Functional Area 1 MBE Goal - 30% with no sub-goals Functional Area 2 MBE Goal – 5% with no sub-goals
VSBE Subcontracting Goal:	Functional Area 1 VSBE Goal - 1% Functional Area 2 VSBE Goal – 1%
Contract Type:	Firm Fixed Price
Contract Duration:	Three (3) year base period with Two (2) two-year option periods
SBR Designation:	NO
Federal Funding:	NO

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1 Minimum Qualifications

1.1 Offeror Minimum Qualifications

1.1.1 Functional Area I – Creative Development and Production Services

As part of the determination to be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that, it meets or exceeds the following requirements:

- A. Offeror should have at least three (3) years' experience providing creative development and production services; and
- B. Offeror should have billed a minimum of \$2 million for creative development and production services within:
 - 1) Calendar year 2023; or
 - 2) Within the past 24 months that a financial statement is available.

1.1.2 Functional Area II – Media Planning and Buying Services

As part of the determination to be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that, it meets or exceeds the following requirements:

- A. Offeror should have at least three (3) years' experience providing media planning and buying services; and
- B. Offeror should have planned and purchased media for one or more clients of at least \$1 million each in annual paid media billings in each of the past two (2) calendar years (2022 and 2023).

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

The Maryland Lottery and Gaming Control Agency (“MLGCA”) is issuing this Request for Proposals (RFP) in order to invite qualified Offerors to submit proposals to provide advertising, marketing, media digital, web and social media, research, and related services, including creative development and production, and media planning, negotiating and buying.

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

The MLGCA intends to make a single contract award for each of the two following service categories (“Functional Areas”):

- A. Functional Area I- Creative Development, Production, Digital, Website and Research Services (RFP Section 2.3); and
- B. Functional Area II Media Planning and Buying Services (RFP Section 2.4).
 - 1) The MLGCA’s existing contract for Advertising, Marketing, Media, Digital, Web & Social Media, Research, and Related Services (#2018-07) expires on June 30, 2025. The Contract(s) resulting from this RFP will be for a term of approximately three (3) years, beginning on or about July 1, 2025 and extending through June 30, 2028 (“Initial Contract Term”). The MLGCA shall have, at its sole discretion, the unilateral right to renew the Contract for two (2) additional two (2) year option periods, for a total potential Contract Term of approximately seven (7) years. The Initial Contract Term plus any renewal options exercised by the MLGCA is hereinafter the “Contract Term”.
 - 2) An Offeror may submit a proposal encompassing one or both Functional Areas. Proposals containing any limiting conditions or in any way contingent upon the Offeror receiving a contract award for more than one Functional Area will not be accepted. A Contract award does not ensure a Contractor will receive all or any State business under the Contract.
 - 3) An Offeror, either directly or through subcontractor(s), shall be able to provide all services and meet all of the requirements requested in this RFP for each Functional Area. The successful Offeror (“Contractor”) shall remain responsible for Contract performance regardless of any subcontractor participation in the work.

2.2 Background, Purpose and Goals

- A. The MLGCA, an independent agency of the State of Maryland, began operations in January, 1973. Over the last fifty years it has grown tremendously, while also frequently

evolving to adapt to the challenging retail environment. The mission of the MLGCA is to generate revenue for the State both through the sale of traditional Lottery products and through the administration of other gaming activities including casino gaming and sports wagering. MLGCA is the fifth largest source of general fund revenue, after income taxes, sales taxes, corporate taxes and taxes on insurance companies. While raising revenue is its top priority, the MLGCA recognizes the importance of satisfying the public's appetite for fun and entertaining games of chance which has led to the popularity and stability of the brand for five decades. The brand enjoys broad appeal, as approximately 74% of adult Marylanders have played the Lottery within the past 12 months. Even those who don't play regularly view the MLGCA positively.

- B. MLGCA is not involved in any of the marketing activities for casino gaming or sports wagering.
- C. As an agency of the State of Maryland, the MLGCA marketing programs must adhere to advertising and marketing guidelines as found in **Appendix 3**.
- D. More specific information relating to advertising guidelines and responsible gaming guidelines for messaging that is required may be found in **Appendix 4**:
 - 1) Maryland Lottery and Gaming Control Agency Responsible Gaming Marketing and Advertising Policies and Standards
 - 2) The Maryland Lottery Programming 'To Avoid' Guidelines.
 - 3) Acceptable and Unacceptable List of Broadcast and Cable Programming

2.2.2 Project Goals

The MLGCA's goal is to provide revenue for Maryland's General Fund through the sale of Lottery products that support State programs and services benefiting the citizens of Maryland. The Contractor(s) shall work with the MLGCA in the development and execution of its integrated marketing program with the following overall objectives:

- A. Effectively communicate with the MLGCA's target audiences, including:
 - 1) Players and prospective players for all Lottery games;
 - 2) Retailers to motivate them to sell more tickets with the assistance of a retail merchandising support program and Point of Sale ("POS") advertising materials; and,
 - 3) Other audiences who may influence public attitudes and perceptions of the MLGCA;
- B. Maximize net profits by:
 - 1) Expanding participation among current, lapsed, and less frequent players;

- 2) Attracting new players with a clear, targeted, efficient presentation of the current game menu; and
- 3) Introducing new games or delivery channels;
- C. Increase players' and prospective players' understanding of MLGCA products and reinforcing the MLGCA's mission of raising revenue for the general fund;
- D. Improve Retailers' understanding, advocacy, and promotion of the MLGCA and its products;
- E. Reinforce the credibility, integrity, and transparency of the MLGCA throughout all communications;
- F. Position MLGCA products as a fun entertainment option by maintaining a strong competitive position with other providers of entertainment;
- G. Communicate the MLGCA's responsible gaming program and informing consumers of the resources available for problem gambling; and
- H. Create an integrated marketing program that accomplishes the goals and objectives set forth in this RFP.

2.2.3 Existing Obligations

The MLGCA has several sponsorships, media commitments and business services established with subcontractors via the current contractor. These items vary in nature and range from sponsorships with venues and sports teams, to billboards equipped to digitally display current jackpots, mobile application development, maintenance and hosting. A current list of these items may be found in **Appendix 5** FY'25 Contracts and Commitments to be honored by the Contractors.

2.2.4 MLGCA Staff and Roles

In addition to the Procurement Officer, there is an MLGCA Project Manager who is the Director of Creative Services (or designee). The MLGCA Project Manager will be responsible for managing all ongoing aspects of this RFP.

The MLGCA's Project Manager (or designee) for these contracts will:

- A. Initiate and authorize projects;
- B. Provide feedback, approvals, or both for various work products provided by the Contractor(s);
- C. Monitor timelines to ensure projects are completed on time;
- D. Monitor budgets to ensure compliance with spend plan and MBE/VSBE goals;
- E. Act as the intermediary between MLGCA Management and Contractor(s) with respect to projects and budgets;

- F. Provide the MLGCA’s final approval of projects (commercials, ads, media buys, etc.) to Contractor(s) account team lead; and
- G. Review and approve or provide feedback to Contractor(s) related to invoices or delegate that responsibility.

2.2.5 Other State Responsibilities

- A. The State will not provide office working facilities and equipment necessary for Contractor performance under the Contract. State will provide any special requirements (e.g., reprographic services, computer time, key data entry) identified by the Contractor(s) in its Proposal and accepted by the MLGCA.
- B. The State is responsible for providing required information, data, documentation, and test data to facilitate the Contractor’s performance of the work, and will provide such additional assistance and services as is specifically set forth in this RFP.

2.3 RESPONSIBILITIES AND TASKS: FUNCTIONAL AREA I (Creative Development and Production Services)

2.3.1 Dedicated Account Management

The Contractor shall provide an experienced account team that:

- A. Works collaboratively with the MLGCA’s Marketing Department to manage the daily activities of the account;
- B. Is knowledgeable of the MLGCA’s business objectives, sales performance, product developments and lottery industry trends;
- C. Ensures that consumer-centric strategies are developed that tie into the MLGCA’s business objectives;
- D. Has account experience in mass merchandisers, retail grocery, or convenience stores;
- E. Consist of competent team members and appropriate staffing levels with a mix of experienced and less experienced personnel led by a dedicated Account Director and Creative Director;
- F. Maintains regular communications between themselves, the MLGCA’s Media Agency, and other MLGCA vendors to ensure seamless integration of the advertising program; and
- G. Participates in routine meetings held at MLGCA’s Headquarters (in person or virtual), as required by MLGCA;

2.3.2 Development of Creative Concepts and Production: Deliverables

Creative work includes, but is not limited to, television, video, radio, print, out of home, various digital and social advertising, plus an array of merchandising items and point of sale materials for a network of approximately 4,400 Retailers. The Contractor may also be required to assist the MLGCA in developing game names, product logos or artwork for other uses. The Contractor shall develop effective, creative concepts and produce campaigns with high quality production standards while maintaining cost-effectiveness. Deliverables for each project shall include at minimum:

- A. Creative Brief. The MLGCA will provide the Contractor with a summary document for each advertising initiative that includes a product overview, general strategies, budget, and other relevant information. The Contractor's team shall then develop a creative brief which will provide strategy recommendations, messaging priorities, and other details. Once approved by the MLGCA, this creative brief will be used by the Contractor to guide the project's creative development. Creative work produced by the Contractor will be evaluated, in part, based on its delivery against this creative brief.
- B. Creative Concept Recommendations. The Contractor shall develop advertising and marketing creative concept recommendations. The Contractor shall offer alternative campaigns for each game or promotion. The Contractor shall offer at least three versions of: television commercials, radio scripts, out of home units, digital ads, and other creative products. The Contractor shall obtain approval from the MLGCA Project Manager prior to the presentation if three versions are not feasible.
- C. Other Creative Deliverables. The Contractor shall provide copywriting, graphic design and studio services as directed by the MLGCA. This includes, but is not limited to, creation and maintenance of the MLGCA's Brand Style Guide(s) and related materials; logo development; publication and newsletter design and production; meeting, conference, or special presentation materials; display materials; annual reports; specialty items, etc. Contractor shall also provide various copywriting and proofing support services that may not be related to specific advertising initiatives, as requested by MLGCA.
- D. Supported File Formats. Contractor shall have the ability to email graphic files, including vector files in a variety of commonly used formats (e.g., .eps, .ai). Files may also be posted on secure websites or FTP sites. Contractor shall be capable of delivering art electronically, or as otherwise requested by MLGCA, to selected media or the MLGCA, within 48 hours of MLGCA final approval.
- E. Detailed Development and Production Schedules. The Contractor shall provide and follow a creative development schedule for each project that allows sufficient time for developing and presenting integrated creative solutions, editing, revising selected options, obtaining final approvals from the MLGCA or MLGCA licensing partners, producing the final products, and delivering the finished products according the

MLGCA specifications. The Contractor shall also provide and follow a detailed production schedule with task milestones for each project.

- F. Casting and Talent Recommendations and Payments. The Contractor shall make talent recommendations, and alternative recommendations, to the MLGCA for all projects. Contractor shall provide to the MLGCA the recordings of on-camera or voice talent casting auditions associated with the Contractor's talent recommendations. The MLGCA shall be allowed a reasonable time for review and approval. Once talent is approved by the MLGCA, the Contractor shall manage talent use agreements and coordinate talent payments.

Note: The MLGCA has been using SAG-AFTRA talent in its productions for some time, including talent eligible through the Taft Hartley waiver provision.

- G. Final Production. The Contractor shall be responsible for producing and delivering all creative materials; including but not limited to broadcast, video, print, out of home, digital, social media etc. The Contractor shall negotiate with and enter into any contracts necessary to complete the materials, including conducting production shoots and acquiring talent. All project details shall be discussed with the MLGCA prior to finalization and a detailed cost estimate must be approved by the MLGCA prior to implementation.
- H. Competitive Bids. For any production project with an estimated cost of \$25,000 or more, the Contractor shall obtain a minimum of three (3) bids from qualified subcontractors. These bids shall be submitted to the MLGCA for approval with a recommendation as to which provides the best value for the MLGCA.
- I. Other Production Related Functions. The Contractor shall also be responsible for the following:
- 1) Trafficking all creative materials to media outlets and managing Industry Standard Commercial Identification (ISCI), or similar, commercial codes;
 - 2) Providing Internet (web or digital) advertising traffic services to the Media Agency, third party vendors, media outlets/vendors or an ad server for each project;
 - a. Includes: sending banner ads, rich media, online video and other web advertising elements, and traffic instructions while including appropriate tracking mechanisms;
 - 3) Working through a third-party ad server to ensure proper reporting.
- J. Legal Clearances. Contractor shall obtain a written legal clearance letter for all intellectual property prior to production of the creative work. Such written legal clearance letters may include trademark, copyright, or other intellectual property issues

and are subject to review and approval by the Office of the Attorney General. As directed by the MLGCA, the Contractor shall be responsible for copyrighting or registering trademarks, logos, commercials, or other intellectual property.

- K. Graphic Design Services. As requested by MLGCA, the Contractor shall provide graphic design concepts and artwork to be displayed on MLGCA's assets, including, but not limited to, the Lottery in Motion (LIMS) advertising monitors at retailer locations, Keno and Racetrax game monitors, the My Lottery Rewards player loyalty program website, other MLGCA websites, MLGCA mobile apps and social media and email graphics. Graphic Design Services may support publicity for new product launches, high jackpots, promotions, special drawings, winners, or other MLGCA news which may be part of a larger advertising campaign or of a standalone nature.

Note: the volume of work required in this area is quite large, often averaging fifty to seventy-five plus executions of varying sizes per month.

- L. Digital Production Services. The Contractor shall provide digital production services including, but not limited to, mechanical assembly of art files for production, digital proofs, PDF proofs or comparable files, scans, digital imaging or file prep, file conversion, proofreading, or creation or duplication of DVDs, thumb drives, or any current method of storing and transferring advertising and graphic files.
- M. Digital Marketing and Advertising Campaigns. The Contractor shall create innovative digital marketing campaigns for all digital consumer touch points, with an emphasis placed on creativity and effectiveness of digital initiatives. Key Performance Indicators (KPI) and measurement tools should be established with the MLGCA and the MLGCA's Media Planning and Buying Services Contractor prior to the development of key campaigns. Digital programs shall work in cooperation with other advertising communications to achieve stated goals. The Contractor shall remain current on all emerging technologies and provide the MLGCA with recommendations for digital marketing opportunities. The Contractor's responsibilities include, but are not limited to, digital strategy development, content and creative development and production, including confirming specs for each digital asset, obtaining MLGCA approval on creative content, and finalizing all builds either through in-house capabilities or through a third-party vendor; and digital campaign analysis, including working with the MLGCA's Media Planning and Buying Services Contractor to provide input in the overall performance of the creative units.
- N. Accounting Annual Advertising Budget. The Contractor shall develop an annual budget for all advertising and other services required by the Contract. MLGCA will determine the level of anticipated annual spending based on projections contained in

the annual product and promotion plan. The MLGCA will provide the Contractor with an annual “not to exceed” budget amount for advertising services and the Contractor shall develop a plan that is responsive to the MLGCA’s marketing needs and subject to MLGCA’s approval. The Contractor shall recommend ways to generate cost savings wherever possible. The Contractor shall review the plan on a monthly basis and shall revise it as required by the MLGCA. The Contractor shall not make any commitments on behalf of the MLGCA in accordance with paragraph O. and Section 2.3.6, Agreements with Subcontractors or Third Parties. Any commitments to be made by the Contractor to third-parties for work related to the Contract may not be made without prior written approval of the MLGCA Contract Monitor, or designee.

O. Estimates. The Contractor shall prepare a written estimate for any expenditure.

- 1) All costs relating to work required to complete the initiative, project or job (including subcontractors) shall be detailed in a written estimate submitted to the MLGCA for approval.
- 2) The Contractor shall obtain the MLGCA’s written approval before making any commitment to third-parties for work related to the Contract. Unless otherwise specified in writing, approval must be obtained from MLGCA Director, Managing Director of Sales and Marketing, Director of Creative Services or Marketing designee.
- 3) MLGCA will not be responsible for any expenditure that it has not pre-approved or that exceed the approved estimate.
- 4) The Contractor may submit revised estimates for consideration if it appears that the cost of a particular estimate will exceed the originally approved amount. The approval of any such revised estimate will be contingent upon the subsequent submission and approval of required documentation.
- 5) All estimates must be segregated by fiscal year and by budget category, as defined by the MLGCA.
- 6) Each estimate shall be identified by a unique identification number which will be included on the invoice for reference.
- 7) The Contractor shall maintain a list of all MLGCA-approved estimates, including the amount and description of the expenditure. This list shall be provided to the MLGCA on a monthly basis by the 15th of each month. The summary shall include the current amount billed to the MLGCA during the year, amounts committed that have not yet been billed to MLGCA, and the remaining balance of the “not to exceed” budget.

P. Production Estimates.

- 1) The Contractor shall submit for MLGCA approval all production estimates. Production Estimates shall list the name and work site of any subcontractors or other parties that will be involved in the production work.
 - 2) Whenever possible, the Contractor shall complete production work within the State. The Contractor must obtain MLGCA pre-approval for any production work to be conducted at a location outside of the State. MLGCA preapproval will be granted for out-of-State production work only where the Contractor demonstrates that there were no locations or facilities within the State adequate for the production work.
- Q. Accounting Services. The Contractor shall utilize experienced accounting staff support for all accounting services required under the Contract.

2.3.3 Development of Creative Concepts and Production: Responsibilities

- A. Production Shoot. If applicable, the Contractor shall conduct a production shoot after MLGCA approves the creative work. The Contractor shall provide to MLGCA the recording files for review and approval. The Contractor shall negotiate with and enter into any contracts necessary to conduct the production shoots.
- B. Creative Approvals. The Contractor shall obtain prior written approval from the MLGCA before producing any advertisement or marketing items. When producing any creative work, the Contractor shall not vary from MLGCA-approved scripts, storyboards, or layouts without additional approval from the MLGCA. The Contractor, and not MLGCA, shall be responsible for all costs associated with production if Contractor fails to adhere to MLGCA-approved scripts, storyboards, or layouts.
- C. Storage of Materials. The Contractor shall provide appropriate storage for creative work produced and materials for the MLGCA.
- D. Ownership of Creative Work. All creative work including outtakes, extra footage, unproduced concepts, as well as print, radio, and collateral jobs shall be the sole property of the MLGC and, at the expiration or termination of the Contract, all documents and materials shall be returned to the MLGCA or transferred to a repository designated by the MLGCA with no further compensation to the Contractor.
- E. Social Media Management.
 - 1) The Contractor shall work with the MLGCA's Digital Manager, MLGCA's Marketing Department, and MLGCA's Media Planning and Buying Services Contractor to enhance and manage the MLGCA's social media communications platforms.
 - 2) The goals of the social media program are to:
 - a. Increase engagement with the Lottery brand among existing and future players;

- b. Communicate brand, and product news; and
 - c. Reinforce the MLGCA's advertising and marketing initiatives in the social space.
- 3) The Contractor's social media management responsibilities include, but are not limited to:
- a. Strategy development;
 - b. Content and creative development and production;
 - c. Assistance with scheduling and posting;
 - d. Community management, contest and giveaway assistance;
 - e. Audience targeting and performance analysis; and
 - f. Reporting.
- 4) Development and management of content creator (influencer) campaigns. Duties include, but are not limited to
- a. developing influencer strategies,
 - b. identifying potential partners,
 - c. developing messaging guidelines and guardrails,
 - d. vetting content and platforms for brand safety,
 - e. coordinating statements of work and contracts with each creator.
 - f. Contractor also responsible for providing post campaign analysis, reporting on mutually identified KPIs.

The Contractor shall stay up-to-date with new social media trends, platforms and functionalities and incorporate them into the MLGCA's social strategy when appropriate.

F. Email Marketing, Database Management and Customer Relationship Marketing.

- 1) The Contractor shall work with the MLGCA and its contractors to develop and implement a comprehensive strategy for developing, expanding, and maintaining a customer base that is loyal to the MLGCA brand. This may be achieved by:
- a. Reviewing and enhancing an existing email marketing program;
 - b. Developing and implementing couponing and other incentive programs;
 - c. Providing database management services;

- d. Recommending targeting and segmentation of the database;
 - e. Developing comprehensive reporting and other tactics to achieve the MLGCA's business goals.
- 2) Upon request, the Contractor shall provide strategic direction on the development, implementation, and expansion of the MLGCA's My Lottery Rewards program, other related loyalty programs, and on-line second chance drawing platforms.
 - 3) Upon request, the Contractor shall provide materials to the Player's Club Contractor for promotion campaign and/or brand integration.
 - 4) The Contractor shall provide other Customer Relationship Management ("CRM") services, including but not limited to: list management, program creation, development and production, tracking and other fulfillment and reporting services Development of Creative Concepts and Production.
- G. Cost Savings. The Contractor shall make the MLGCA aware of any cost savings that might be achieved by the expedited payment of media or other invoices.

2.3.4 Reports

The Contractor shall provide, at minimum, the following reports:

- A. Weekly Status Report. Provides details and the status of all current projects, including timelines for next steps and deliverables, taking into account adequate time for review and approval by MLGCA;
- B. Quarterly Advertising Plan. To be created in partnership with the MLGCA's Marketing Department and includes innovative approaches for advertising Lottery business initiatives and a general breakdown of proposed spending;
- C. Minutes, Summaries or Conference Reports. Summarizes and highlights the action items resulting from meetings and discussions with MLGCA about the status of projects;
- D. Monthly and Quarterly Digital, Email and Social Media Recap Reports. Summarizes the MLGCA website traffic and mobile app activity; and
- E. Other Required Reports. Any other report required by MLGCA, as needed.

2.3.5 Invoicing and Payments

- A. General. Except as stated in Paragraph B of this Section, MLGCA will not provide advance payment to the Contractor. Payment to the Contractor will be made only after the completion of services or delivery of goods authorized in an MLGCA-approved invoice.

B. Television Production Costs.

- 1) Advance Payments. The Contractor may submit an invoice for advance payment for an amount not greater than 50% of the television production estimate. All invoices for advance payment shall include appropriate details and include backup documentation. Documentation shall verify the total cost of the television production.
- 2) Remaining Balance. The cost of the television production not invoiced for advance payment shall be requested by Contractor in no more than two invoices depending on the type of production after the service is performed and shall include detailed backup for the entire job. Contractor may not submit invoices for payment until it completes the job milestones established by MLGCA.

2.3.6 Agreements with Subcontractors or Third Parties

The Contractor shall have no power or authority to sign an agreement on behalf of the MLGCA, to bind the MLGCA, the Commission, or the State to any agreement, or to obligate the MLGCA to any liability if the Contractor fails to pay any subcontractor or other third-party vendor. All agreements into which the Contractor enters with subcontractors and other third-party vendors for work to be performed under this Contract shall be in the Contractor's name only and shall name the MLGCA only as a client of the Contractor and shall not name the MLGCA as a party to the agreement. Contractor shall provide legal review of all agreements generated as a result of this contract at the Contractor's expense.

2.3.7 Budget and Spending Reports

Following approval of the MLGCA's annual budget, the Contractor shall work with MLGCA's Creative Services staff to develop plans and ensure that budgets are not exceeded. Additionally, the Contractor shall provide the MLGCA with the following budget related reports:

- A. Monthly Budget Recap Report. This report includes expenditures for fiscal year to date, approved commitments for planned expenditures, and any budget balances remaining or available. This report shall be submitted by the 15th day of the month following the month that is the subject of the report.
- B. Year-end Summary. This report summarizes the expenditures by type and product. The summary shall be submitted to the MLGCA forty-five (45) days after the end of the State's fiscal year for each Contract year.

2.3.8 Timelines

The Contractor shall provide the MLGCA with a response to its marketing and advertising needs within agreed upon timelines. Contractor shall be responsible for all additional costs incurred due to missed timelines caused by the Contractor, unless pre-approved in writing by the MLGCA.

2.3.9 Research

- A. Research Responsibilities. The Contractor shall work with the MLGCA's Marketing Department to obtain consumer feedback, retailer feedback, or both. Contractor responsibilities include:
- 1) General. Provide insight and analysis into consumer behaviors as requested by the MLGCA;
 - 2) Vendor Interaction. Recommend, manage, and procure research vendors as required for various projects. The Contractor shall work with vendors to provide insight and analysis into research findings as well as develop timelines, questionnaires, or discussion guides; coordinate meetings; prepare presentations or reports that summarize the results and next steps; and invoice and process payments to the vendor.
 - 3) Testing. Facilitate testing of scratch-off designs, new game and promotion concepts, advertising concepts, brand positioning, or any other testing requested by MLGCA.
 - 4) Market Research. Conduct other formal market research as requested by the MLGCA including, but not limited to, marketing effectiveness, brand and product health, brand and product opportunities, value segmentation, product spending and consumer intelligence.
 - 5) Research Assignments. When assigned a research project by the MLGCA, the Contractor shall complete, or manage the completion of the project, in a timely manner with several milestones or deliverables throughout. These milestone and deliverables typically include, but are not be limited to:
 - a. Define research objectives and methodology selection recommendation;
 - b. Provide participant screener criteria and questionnaire or discussion guide design;
 - c. Conduct the research project;
 - d. Provide data analysis and formulate conclusions and recommendations;
 - e. Submit to MLGCA a written summary of the key research results or findings; and
 - f. Communicate research results to the MLGCA, as requested by MLGCA.

- B. Ownership of Research Product. The MLGCA shall own all research results, materials, and databases generated for this Contract or arising out of this Contract for the benefit of the MLGCA.

2.3.10 Comprehensive Merchandising Program

The Contractor shall assist Marketing staff to develop a comprehensive merchandising program that includes but is not limited to the following:

- A. General. The Contractor shall develop concepts for retail merchandising, point of sale (“POS”) collateral, and signage that complement the advertising campaigns or standalone promotions with a goal of improving Lottery visibility and engagement at retail locations. This requirement includes such items as game brochures and posters, decals, branding identification for retail locations, digital displays, and other POS collateral. Depending on the application, POS collateral may be printed or digital.
- B. POS packages. Develop and implement POS kits or packages for Retailers as needed; which may include production and shipment of kits or packages;
- C. Signage for Events. Develop and produce POS and signage for use at fairs, events, or other promotions as needed and directed by the MLGCA;
- D. Self-Service Kiosks. Design elements for increased exposure of Lottery self-service kiosks (PHD’s and other variations) and other hardware enhancements;
- E. Corporate Accounts. Develop and design Corporate Account POS and other retail merchandising needs for this specialized group of locations. Also integrate these materials into the general POS program as directed by the MLGCA;
- F. Non-English-Speaking Retailers. Provide coordination and logistical support in the development of sell-in materials for non-English speaking Retailers as directed by the MLGCA;
- G. Retailer Sell Sheets. Lead the development of Retailer sell sheets or other Retailer focused communications. The MLGCA calls these sell-in sheets; and
- H. Signage. Design and produce interior and exterior signage which identifies retail locations as Lottery Retailers. Such signage is generally intended for permanent or long-term use.
- I. Installation of Signage. Some of these tasks may require the Contractor to source and then utilize a subcontractor to assist in hanging, display or installation of these materials within retailer locations.
- J. Corporate Accounts. As required by the MLGCA, the Contractor shall develop concepts for retail merchandising, POS collateral, and signage that complement the advertising campaigns at specific corporate accounts (e.g., Walmart, Royal Farms).

The Contractor shall produce the POS collateral from those concepts and may be required to install approved materials that increase the Lottery's brand awareness.

- K. Production Assistance. As required by the MLGCA, the Contractor shall assist MLGCA in the production of retail merchandising, POS collateral, and signage including providing detailed production specifications. The MLGCA is primarily responsible for procuring and producing retail merchandising materials and POS collateral through a third-party Maryland State vendor; however, there may be instances where the Contractor will be asked to complete these tasks
- L. Solving Problems. As requested by the MLGCA, the Contractor shall conceptualize and develop new POS collateral to address a new need, solve a problem at retail, and be innovative in how the Lottery reaches potential customers in store.

2.3.11 Strategic Planning

The Contractor may be asked to provide ongoing strategic planning for the MLGCA's lottery products and corporate brand by providing direction on initiatives, marketing, communication, and development issues:

- A. Product and Promotions Plans. As requested by the MLGCA, participate in the development of the annual MLGCA's product and promotion plans;
- B. Situation Analysis. Assist in situation analysis and development of overall goals, objectives, and strategies;
- C. Sales and Marketing Opportunities. Advise the MLGCA regarding advertising, marketing, communications, and sales opportunities via digital, social, mobile and other such channels;
- D. Field Market Checks. Perform routine field market checks to provide the MLGCA with additional strategic feedback on retail trends, products and programs; and
- E. Industry Conferences. As directed by MLGCA, participate in select lottery industry conferences. The Contractor shall pay for travel expenses, registration fees and all other fees incurred when attending these conferences.

2.3.12 Web Design, Implementation and Management

The Contractor shall design, develop, implement, secure, and maintain the MLGCA's various web properties; there are currently four sites (mdlottery.com; mdgaming.com, marg.org, retailercorner.mdlottery.com). These responsibilities shall include, but are not limited to:

- A. Website Hosting. Create, manage, configure, and maintain the complete website hosting platform; Linux, Apache, MySQL, and PHP (LAMP) stack. This includes development and production systems. Work with the hosting provider to ensure the proper infrastructure, system and network components are in place and properly

- configured. The hosting platform (LAMP) software shall be kept up to date via software patches and version updates.
- B. Working with Hosting Provider. The Contractor shall work with the hosting provider and the MLGCA to ensure the websites are secure, perform software updates and other changes to the environment without affecting the availability of the sites. The Contractor shall ensure data exchanges are complete and accurate and that performance and functionality provide an exceptional customer experience for players on the MLGCA's digital properties.
 - C. Updating Databases and Applications. Create, implement, maintain, and upgrade databases and applications including but not limited to jackpots, winning numbers results database, scratch-off prizes remaining, and content delivery network. Data may be provided through data feeds from Central system service provider.
 - D. Firewalls. The Contractor must support Web Application firewalls currently provided by the hosting provider.
 - E. Standards. Design, deploy, and maintain all website and software solutions at the highest reasonably achievable and accessible functionality as defined by the Worldwide Web Consortium (W3C). The website shall perpetually meet these standards as they evolve.
 - F. Compliance with Accessibility Requirements. Design, deploy and maintain all website development work and software solutions to meet ADA compliance as defined by the most recent version of the Web Content Accessibility Guidelines (WCAG) at level AA, and the State's Department of Information Technology. Create and deliver documentation that describes how the site is compliant.
 - G. Uptime Performance Websites shall be available online 99.9% of any given 24 hour period, 365 days per year.
 - H. Site Availability. The current contractor is providing website hosting services through a subcontractor and it is expected that the Offeror selected for award will do the same. Selected Offeror will work with a hosting provider to design, develop, and implement systems and processes to ensure the sites are highly available and to mitigate downtime.
 - I. Version Control. Implement a version control process and provide the MLCGA with the source code after significant changes occur.
 - J. Source Coding. Implement secure coding practices in the development of the web application as prescribed by the Open Web Application Security Project (OWASP) organization.
 - K. Vulnerability Scans. Utilize a web application vulnerability scanner as part of the development process to frequently scan the sites for security vulnerabilities. Scanning shall occur at least monthly and the results of the scans shall be reported to the

- MLGCA. Security vulnerabilities shall be addressed and evidence of the resolution shall be provided. Scanning shall be performed statically and dynamically.
- L. Vulnerability Assessment. Contract with a third party to obtain an annual security vulnerability assessment for the web application code, remediate all confirmed vulnerabilities identified by the assessment, document the process, and retain this documentation for future reference. The results of the assessment and evidence of the remediation shall be provided to the MLGCA.
 - M. Security Measures. Implement other security measures as required by the MLGCA.
 - N. Artwork. Develop, produce, and implement all artwork required to update and maintain the MLGCA's websites, and promotional landing pages.
 - O. Content Management. Provide content management for all MLGCA websites and landing pages, and assist in the implementation as directed by the MLGCA.
 - P. Integration of Graphics. Provide front end programming services to implement and integrate all graphics, contests and content into MLGCA's web properties.
 - Q. Customer Engagement. Recommend various functional options to improve and enhance customer engagement with the MLGCA's web properties, and upon approval, implement or integrate these features into the MLGCA's web properties.
 - R. Microsites. Design, develop, and deploy promotional microsites or landing pages that are required for limited time MLGCA promotions or contests.
 - S. Collaboration with MLGCA. Work cooperatively with the MLGCA's Drawings team, IT Department and the MLGCA's Lottery Central Monitoring and Control System Contractor on various projects requiring data feeds or exchanges of information (i.e., Scratch-Off prizes remaining, current jackpots, etc.); all providing valuable digital content on an automated basis.
 - T. Languages. Provide multi-language support for all web properties. MLGCA currently utilizes Google Translate to provide these services.
 - U. Analytics. Implement analytics tracking, and provide monthly analytical dashboards that include report traffic, downloads, and other pertinent information, and provide suggestions for improvement.
 - V. Other Items. Implement any and all other items required to provide fully operational and secure sites as defined by the MLGCA.
 - W. Testing. The Contractor shall have the ability to monitor, troubleshoot and test applications following server maintenance or updates as well as have the ability to provide knowledgeable staff to respond to server alerts that may occur at any hour.

2.3.13 Mobile Application Design, Implementation and Management

The Contractor shall design, develop, implement, secure, and maintain the MLGCA's various mobile application properties. These responsibilities shall include, but are not limited to:

- A. Existing Mobile Contracts. The Contractor shall take over all responsibilities associated with the MLGCA's existing mobile application contracts. The existing contracts include the design, development, implementation, management, security, and hosting of the applications. The Contractor shall manage all aspects of the existing contracts for the successful operation, maintenance, and deployment of the MLGCA's mobile applications.
- B. Mobile Applications. As directed by the MLGCA, the Contractor, either in conjunction with a subcontractor or on its own, shall lead the design, development, implementation, maintenance, and hosting for current and future mobile applications. At a minimum, the applications shall be developed to operate on recent versions of iOS and Android platforms, and on smartphone and tablet devices.
- C. Mobile Standards. Design, deploy, and maintain all mobile solutions at the highest reasonably achievable and accessible functionality as defined by the W3C. The applications must perpetually meet these standards as they evolve.
- D. Security. Implement application security measures as defined by the MLGCA, and to meet industry best practices.
- E. Version Control. Implement a version control process and provide the MLCGA with the source code after significant changes occur.
- F. Artwork. Develop, produce, and implement all artwork required to update and maintain the MLGCA's mobile applications.
- G. Content Management. Provide content management and implementation for all mobile applications as directed by the MLGCA.
- H. Programming Services. Provide programming services to implement and integrate all graphics, contests and content into MLGCA's mobile applications.
- I. Customer Engagement. Recommend various functional options to improve and enhance customer engagement with the MLGCA's mobile applications and, upon approval, implement or integrate these features into the MLGCA's mobile applications.
- J. Collaborate with MLGCA. Work cooperatively with the MLGCA's Drawings team, IT Department and the MLGCA's Lottery Central Monitoring and Control System Contractor on various projects requiring data feeds or exchanges of information (i.e. winning numbers, current jackpots, etc.); all providing valuable digital content on an automated basis.
- K. Analytics. Implement analytics tracking, and provide monthly analytical dashboards that include report traffic, download counts, and provide suggestions for improvement.

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- L. Mobile Availability. Work with the provider to design, develop, and implement systems and processes to ensure the applications are highly available and to mitigate downtime.
- M. Industry Standards. Application performance shall meet or exceed industry standards.
- N. Accessibility. Design, deploy and maintain all software solutions to meet ADA compliance as defined by the most recent version of the Web Content Accessibility Guidelines (WCAG) at level AA, and the State's Department of Information Technology. Create and deliver documentation that describes how the site is compliant.
- O. Auditing. Any hosting services provided by the contractor or its subcontractors shall engage an independent auditing firm to conduct annual SOC 2 Type 2 reviews. All SOC reports related to MLGCA hosting shall be promptly provided to the MLGCA. The reports shall be reviewed by the MLGCA, and the Contractor to ensure satisfactory assurance as to the adequacy and operational effectiveness of the controls protecting the hosting, and to ensure that any material security concerns identified in the reports are promptly addressed. The review process shall be documented, and retained for future reference.

2.3.14 Subcontractors

The MLGCA recognizes that the Contractor may not have the ability to perform or complete all of the above requirements in-house and that many tasks may require the use of a subcontractor. With prior written approval from the MLGCA in the form of an itemized cost estimate, the Contractor may subcontract certain elements of a given project or task if the expertise required is not available from the Contractor. Examples include, but are not limited to: various technical resources, database administrators, broadcast and video production services, research providers. The Contractor may not subcontract any services required under the Contract to an affiliated entity.

Competitive Bids - The Contractor shall provide at least three (3) competitive bids for outside supplier expenditures for broadcast or out-of-home production or any other products or services that the MLGCA designates when such purchases exceed \$25,000.

2.4 RESPONSIBILITIES AND TASKS: FUNCTIONAL AREA II: Media Planning and Buying

2.4.1 Dedicated Account Management

The Contractor shall provide an experienced media account team that works collaboratively with the MLGCA's Marketing Department to manage the daily activities of the account. The account team shall participate in regular communications with the Creative Development and Production Services Contractor to ensure seamless integration of the advertising program. Members of the Contractor's account team shall attend (either in person or virtual) various planning meetings with MLGCA staff or other MLGCA

Contractors. The team shall be available for in-person or video call discussions with the MLGCA on a weekly basis, at minimum. The frequency of such discussions and number of Contractor personnel involved will depend on the scope and number of the projects underway.

2.4.2 Reports

The Contractor shall prepare provide to MLGCA the following reports:

- A. Weekly Status Reports. Provides details and the status of all current projects and initiatives, including timelines for next steps, deliverables and deadlines, considering adequate time for review and approval by MLGCA;
- B. Flowcharts. All media activity, both current and planned, shall be displayed in flowcharts prepared and maintained by the Contractor. The Contractor shall include details of the Media type, timing, Gross Rating Point (“GRP”) levels, impressions, projected reach and frequency, and costs for each campaign shall be detailed;
- C. Minutes, Summaries or Conference Reports. Summarizes and highlights the action items resulting from meetings and discussions with MLGCA about the status of projects;
- D. Valuations. When requested by the MLGCA, the Contractor shall provide an evaluation on the value, effectiveness and suitability of any media opportunity presented to the MLGCA; and
- E. Other Reports. Any other report required by MLGCA, as needed including spending reports by media market, media type, station or vendor, or MLGCA product.

2.4.3 Media Research and Strategy Development

The Contractor shall utilize a wide range of syndicated and proprietary research tools to obtain consumer behaviors and media consumption patterns and keep on top of media trends and emerging technologies to ensure that effective communications plans are developed and executed for the MLGCA.

2.4.4 Strategic Media Buying, Planning and Placement

- A. Multichannel Advertising Program. The Contractor shall deliver innovative and effective solutions for the MLGCA’s statewide, multichannel advertising program utilizing the most inventive and effective media for the individual campaign goals and objectives as determined by the MLGCA. Media for the MLGCA typically includes, but is not limited to, television, cable, video on demand, over the top, terrestrial and streaming audio, print, out of home, digital and social media, event marketing, event and sports sponsorships;
- B. Strategic Media Planning. The Contractor shall use all the research, analytical tools and sales data at its disposal to develop the most creative and effective media plans to achieve stated objectives and drive business outcomes for the MLGCA.

- C. Media Briefs and Plans. At the beginning of each project or initiative, the Contractor shall prepare media briefs and plans which include recommendations for the following:
 - A. Definition of target audience;
 - B. Media and day part mix with appropriate rationale for recommendation;
 - C. Target cost per point and/or cost per thousand and/or projected budget;
 - D. Projected allocation of dollars by media type and market;
 - E. Recommended dates and flighting; and
 - F. Gross rating points and/or impression objectives with reach/frequency goals.
- D. Buy Specifications. The Contractor shall provide the MLGCA with detailed buy specifications for all approved media plans or buys in a timely manner. Buy specifications or media authorizations shall be approved by the MLGCA and shall include any pertinent information, such as: target audience, flight dates or timing, budgets or anticipated costs, geography/markets, media type, GRPs, impressions, number of insertions or placements, added value goals, etc.
- E. Cost. Prior to a buy being finalized or executed, Contractor shall provide the MLGCA with the total cost of the buy, specific media vendors being recommended (e.g., broadcast stations, print vendors, websites, social media placements), media weight recommended for each vendor (e.g., GRPs, impressions, number of placements), recommended spend by vendor, added value, and any other applicable cost.
- F. Buy Reports. The Contractor shall provide to the MLGCA or its contractors the buy reports detailing the buy specifics with sufficient time to implement actions required to fulfill the buy report.
- G. Purchase and Placement – The Contractor shall be responsible for the placement and purchase of all media. The Contractor’s experience and buying power in the local media markets should provide cost savings for the MLGCA for upfront as well as last minute buys related to jackpots (see Section 2.4.4 N. Jackpot Support). In negotiating media purchases, the Contractor shall make the MLGCA aware of any savings that might be achieved through long-term commitments or other specialized programs.
- H. Placement Verification. The Contractor shall ensure that all media is broadcast or published according to contracts or placement instructions.
- I. Evaluation. The Contractor shall track and evaluate advertising programs utilizing timely post-buy evaluation and reporting methodologies to ensure buys are delivered as ordered and to provide recommendations on future placements.
- J. Monitoring. The Contractor shall negotiate appropriate “make good” schedules and credits for buys under-delivering or not meeting the approved media specifications (i.e., curing deficiencies that occurred). The Contractor shall monitor all buys while in

- progress. Unless otherwise specified by the MLGCA, all broadcast post-buy analyses are due to the MLGCA within 3 days following the conclusion of the broadcast buy.
- K. Tracking. The Contractor will work with a third-party ad server to create tracking tags. The Contractor will then optimize all on-line media buys using an independent tracking service. This includes in-flight optimizations as well as post-buy analysis of the campaign. The Contractor will also work with an independent Brand Safety service to ensure the MLGCA's digital media is viewed by real people with appropriate content. The Contractor shall provide wrap-up reports for each campaign and review the report with the MLGCA.
 - L. Social Media. Contractor will monitor the placement of all social media posts and campaigns and will provide a social media wrap-up report.
 - M. Invoices. Contractor shall reconcile all media invoices. Contractor shall review and verify the accuracy of all invoices received from media vendors to ensure all advertisements and sponsorships run as ordered and are billed correctly. The Contractor will credit invoices for media that did not run as ordered. These credits will be applied by the MLGCA to future invoices.
 - N. Jackpot Support. The current strategy for supporting high level jackpots includes purchasing media on short notice up to the evening of the high jackpot drawing. However, since these jackpot amounts cannot be predicted in advance, the media shall be purchased in a timely and dynamic fashion in the event that a jackpot reaches a certain predetermined threshold. This requires that the Contractor shall remain vigilant with the jackpots and that it shall also be nimble, diligent and responsive in negotiating and implementing such last-minute incremental media plans.

2.4.5 State and Local Marketing Programs

The Contractor shall work with the MLGCA to select, develop, negotiate and contract for sponsorships with local venues, sports teams, concerts, promotional events and activities, and other State and local marketing programs.

- A. Free Tickets and Other Benefits. Sponsorships often carry with them an offer for free tickets to events, premium items and other special benefits. All such benefits provided to the Contractor in relation to a sponsorship purchased for work related to the Contract for the benefit of the MLGCA shall be fully disclosed and documented. The Contractor may not utilize any such items for its own benefit or for the benefit of other clients. No such item shall be provided to an employee of the MLGCA.
- B. MLGCA Right of Refusal. The MLGCA reserves the right to accept or reject the offer of any such items or benefits offered in association with a sponsorship or other media buy.

2.4.6 Agreements with Subcontractors or Third Parties

The Contractor shall have no power or authority to sign an agreement on behalf of the MLGCA, to bind the MLGCA, the Commission, or the State to any such agreement, or to obligate the MLGCA to any liability if the Contractor fails to pay any subcontractor or other third-party vendor. All agreements into which the Contractor enters with subcontractors and other third-party vendors for work to be performed under this Contract shall be in the Contractor's name only and shall name the MLGCA only as a client of the Contractor and shall not name the MLGCA as a party to the agreement. Contractor shall provide legal review of all agreements generated as a result of this contract at the Contractor's expense.

The MLGCA has legacy relationships with subcontractors that are MBE print publications. It is the intent of the MLGCA to include these agreements moving forward. Maintaining these subcontracts will assist in attaining socioeconomic goals set forth in the Key Information Summary Sheet (ref. page 4).

2.4.7 Accounting Annual Advertising Budget

- A. Annual Media Budget. The Contractor shall develop an annual budget for all media-related advertising expenditures required by the Contract. MLGCA will determine the level of anticipated annual spending based on projections contained in the annual product and promotion plan. The MLGCA will provide the Contractor with an annual "not to exceed" budget amount for media advertising services and the Contractor shall develop a plan that is responsive to the MLGCA's marketing needs and subject to MLGCA's approval. The Contractor shall recommend ways to generate cost savings wherever possible. Periodic changes to the budget allocation by initiative or media type should be anticipated;
- B. Updates to the Budget. The Contractor shall review the budget on a monthly basis and shall revise it as required by the MLGCA. The Contractor shall not make any commitments on behalf of the MLGCA in accordance with Section 2.4.6., Agreements with Subcontractors or Third Parties. Any commitments to be made by the Contractor to third-parties for work related to the Contract may not be made without prior written approval of the MLGCA Contract Monitor, or designee.

2.4.8 Accounting Services

The Contractor shall provide experienced accounting staff support to implement timely and accurate reports and billing to meet MLGCA specifications. The Contractor shall provide to the MLGCA monthly by the 15th of the month a summary of all approved expenditures to date for the current fiscal year. The summary shall indicate the current amount billed to the MLGCA during the year, amounts committed that have not been billed and any funds remaining.

2.4.9 Cost Savings - Expedited Payments

The Contractor shall make the MLGCA aware of any cost savings that might be achieved by the expedited payment of media or other invoices.

2.4.10 Estimates

- A. Estimates Required. The Contractor shall prepare a written estimate or authorization for any expenditure.
- 1) All costs relating to work required to complete the initiative, project or job (including subcontractors) shall be detailed in a written estimate submitted to the MLGCA for approval.
 - 2) The Contractor shall obtain the MLGCA's written approval before making any commitment to third-parties for work related to the Contract. Unless otherwise specified in writing, approval must be obtained from MLGCA Director, Managing Director of Sales and Marketing, Director of Creative Services or Marketing designee.
 - 3) MLGCA will not be responsible for any expenditure that it has not pre-approved or that exceeds the approved estimate.
 - 4) The Contractor may submit revised estimates for consideration if it appears that the cost of a particular estimate will exceed the originally approved amount. The approval of any such revised estimate will be contingent upon the subsequent submission and approval of required documentation. Each estimate shall be identified by a unique identification number which will be included on the invoice for reference.
 - 5) All estimates must be segregated by fiscal year and by budget category, as defined by the MLGCA.
 - 6) Each estimate shall be identified by a unique identification number which will be included on the invoice for reference.
 - 7) The Contractor shall maintain a list of all MLGCA-approved estimates, including the amount and description of the expenditure. This list shall be provided to the MLGCA on a monthly basis by the 15th of each month. The summary shall include the current amount billed to the MLGCA during the year, amounts committed that have not yet been billed to MLGCA, and the remaining balance of the "not to exceed" budget.

2.4.11 Budget Reports

The Contractor shall provide the MLGCA with the following budget related reports:

- A. Monthly Budget Recap Report. This report includes expenditures for fiscal year to date, approved commitments for planned expenditures, and any budget balances

remaining or available. This report shall be submitted by the 15th day of the month following the month that is the subject of the report.

- B. Year-end Summary. This report summarizes the expenditures by type and product. The summary shall be submitted to the MLGCA forty-five (45) days after the end of the State’s fiscal year for each Contract year.

2.5 FUNCTIONAL AREA ASSIGNMENTS – QUALIFIED OFFERORS ONLY

2.5.1 Instructions for Assignments.

- A. General. The Assignments listed by Functional Area below are presented at this time for informational purposes only. These Assignments are not to be included in the Offeror’s initial Technical Proposal.
- B. Qualified Offerors. After its review of initial Technical Proposals, MLGCA will invite Qualified Offerors to submit a Functional Area Assignment response for each Functional Area for which the Qualified Offeror submitted a proposal. This response must include a written response and an oral presentation to the MLGCA Evaluation Committee.
- C. Format of Submission. For each Functional Area for which you are submitting a proposal, provide a clear, concise case study examples of work your organization has performed for a client within the past two (2) years that demonstrate how your organization was effective in helping the client achieve goals similar to those of the MLGCA. Strategy statements, assignment briefs, work plans, and any relevant deliverables (spots, reports, etc.) should be included. The written proposal should be no more than ten (10) pages. For any item requested below, if the Contractor does not have a sample or example the response should be annotated as “Not Available.”

2.5.2 Functional Area I - Creative Development and Production Services: Case Study Examples

Unless a shorter look-back time period is specified, the Qualified Offeror should submit case study examples of advertising it created, produced, and executed in the past two (2) years, unless a different time-period is identified, in the following areas:

- A. Television. Up to three (3) different television ads or campaigns. If possible, provide at least one (1) example of “Use of Humor” and “Coordinated Campaign”. Please include the approximate production budget and year produced for each case study example.
- B. Radio. Up to three (3) different radio ads.
- C. Outdoor. Up to three (3) different outdoor ads.

- D. Retail Merchandising. Up to three (3) examples of planned and executed client merchandising strategies and materials. Include sales results if available.
- E. Digital Marketing. Up to three (3) examples of digital marketing that your organization has developed and implemented within the past twelve (12) months. Examples can be either three different campaigns or three executions within one campaign. Examples should be of:
 - 1) Digital advertising executions and include standard display ads and any rich media and, if possible, provide performance measures or results; and
 - 2) Websites, microsites or promotion landing pages.
- F. Social Media. Describe two (2) promotions or campaigns where your organization has utilized social media to achieve a client's business objectives within the past twelve (12) months. Include a brief summary of each campaign, including objectives, tactics utilized, and results.
- G. Email Marketing. Describe two (2) email marketing promotions or campaigns where your organization has utilized CRM tactics to drive business objectives for clients within the past twelve (12) months. Include a brief summary of each campaign, including objectives, tactics utilized, and results.
- H. Market Research. Describe your organization's market research resources and capabilities. Identify any market research techniques or approaches you would recommend for the MLGCA.

2.5.3 Functional Area I - Creative Development and Production Services: Respond to Questions

The Qualified Offeror should provide their organization's response to the following questions:

- A. Describe two (2) of the most effective marketing or advertising strategies or trends currently being employed in the advertising industry and describe how they might work for the MLGCA.
- B. The MLGCA currently has several owned media channels that it actively uses to promote product launches, promotions and responsible gambling messages. Qualified Offerors should provide their recommendations on how best to utilize these owned media channels, including but not limited to the Lottery's website (mdlottery.com), mobile app, social media platforms (Facebook, Instagram), text marketing, email marketing, and other emerging digital marketing mediums and technologies to reach and engage players.
- C. Please describe which personnel in your agency provide design work for website content, landing pages, mobile apps, digital advertising units, email marketing and social media. If different from your core creative teams, how do they interface?

2.5.4 Functional Area II - Media Planning and Buying Services Assignment: Case Study Examples

Unless a shorter look-back time period is specified, the Qualified Offeror should submit case study examples of advertising it created, produced, and executed in the past two (2) years in the following areas:

- A. Product Launches. Up to three (3) examples of product launches or initiatives. The MLGCA supports several product launches or initiatives in a fiscal year. These initiatives are each assigned a media budget and the plans range from a digital or social media only initiative to a multi-media plan.
- B. Media Plans. Up to three (3) sample media plans it has developed for a client that, if possible, demonstrate a range of strategic thinking and budget levels.
 - 1) At least one (1) media plan should be for the Maryland or Washington, D.C. area. Please be specific about how you recommend that the MLGCA effectively communicate to the Washington DC DMA; and
 - 2) At least one (1) media plan should reflect a multi-media campaign.
 - 3) All elements of the media plan should be provided, including, but not limited to: Media brief, Media plan, Flowchart, Buy summaries, and any other reports or summaries that support your approach.
 - 4) The Qualified Offeror should provide the MLGCA with any additional information surrounding its media planning approach or steps it takes to ensure the best result for its clients.
- C. Sponsorships. Up to three (3) current or previous client sponsorships that provide an overview of the Qualified Offeror's experience in developing, evaluating, and negotiating sponsorships. The Qualified Offeror should describe its role with the sponsorships and how it worked with the vendor and the client, the details of the sponsorship, the assets included, and to the extent possible, any results achieved through the program. In FY 2023 the MLGCA spent approximately \$2.5 million of its media budget with sport and event sponsorships. MLGCA sponsorships have included partnerships with all major sports teams in Maryland, event and venue sponsorships, and sponsorships secured through media partners. The MLGCA's relationship with these entities is an important one as some have become the backbone for the development of scratch-off games, product promotions and unique second-chance contests.
- D. Media Billings. The Qualified Offeror shall provide its total gross annual media billings by media (television, radio, print, outdoor, sponsorships, digital, etc.) for the past three (3) fiscal years. The Qualified Offeror should indicate the amount spent in Maryland and Washington, D.C. media markets and specify the accounts.

- E. Digital and Social Media. Two (2) digital media plans and two (2) social media plans it has developed and executed in the past two (2) years. The Qualified Offeror should detail the strategy and, if applicable, how it works in conjunction with other advertising efforts. The Qualified Offeror should provide detail plan specifics, including any program goals, the type of units selected, the sites or networks chosen and why. The Qualified Offeror should describe the process it takes to analyze a digital plan, any third-parties used to track or manage the data, and a sample digital report.

2.5.5 Functional Area II - Media Planning and Buying Services Assignment: Respond to Questions

The Qualified Offeror should provide their organization's response to the following questions:

- A. Describe two (2) of the most effective marketing or advertising strategies or trends currently being employed in the advertising industry and describe how they might work for the MLGCA.
- B. Describe the consumer and media research tools the Qualified Offeror utilizes and why.
- C. With the plethora of digital options available, describe how the Qualified Offeror evaluates new digital opportunities.
- D. Provide your experience performing media mix modeling ("MMM") and whether the Qualified Offeror performs MMM in-house.

2.6 Deliverables During the Contract

2.6.1 Contractor's Submission of a Deliverable

- A. Submission of Deliverable. In order to ensure that the Contractor has properly submitted a deliverable, the Contractor shall request the Contract Monitor confirm receipt of that deliverable by sending an e-mail identifying the deliverable name and date of receipt.
- B. Review Time-Frame. A standard deliverable review process will be discussed in detail and agreed-upon between the State and the Contractor. This review process begins once the Contractor submits a deliverable.

2.6.2 MLGCA Acceptance of a Contractor's Deliverable

- A. Functional Area I. Please refer to Functional Area I, Technical Requirements, Section 2.3 of this RFP for details.
- B. Functionals Area II. Please refer to Functional Area II, Technical Requirements Section 2.4 of this RFP for details.

3 Contractor Requirements: General

3.1 Contract Initiation Requirements

The Contractor shall schedule and hold a kickoff meeting within 10 Business Days of the Notice to Proceed (“NTP”) Date. At the meeting, the Contractor shall provide an updated Transition Project Schedule describing the activities for the Contractor, the State, and any third parties.

3.2 End of the Contract Transition

3.2.1 Contract Transition: General

For a period up to 60 days prior to the Contract’s end date, or notice as to the earlier termination of the Contract, the Contractor shall assist in the transition of the Contract to the State or a subsequent contractor. In order to facilitate the orderly transfer of services, transition efforts shall consist of, but not be limited to:

- A. Additional Support. As requested by the MLGCA, the Contractor shall provide additional services and support to successfully complete the transition;
- B. Maintain Existing Services. The Contractor shall continue to maintain the services required under the Contract without lowering any standards or proficiency;
- C. System Documentation. The Contractor shall provide updated System Documentation (see Appendix 1); and
- D. Operating Procedures. The Contractor shall provide current operating procedures.
- E. Timely Transition. In accordance with the direction of the Contract Monitor, the Contractor shall work toward a prompt and timely transition. There may be additional instructions prior to the Contract end date, that the Contract Monitor will provide to the Contractor in order to meet specific transition requirements.
- F. Transfer of Materials. The Contractor shall ensure that all necessary information and materials are transferred to the State or as directed by the Contract Monitor to a third party.

3.2.2 Contract Transition: Technical and Project Support

The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to:

- A. Transition-Out Plan. One hundred twenty (120) Business Days prior to the Contract end date, the Contractor shall provide a draft Transition-Out Plan to the MLGCA. The Transition-Out Plan shall address at a minimum the following:
 - 1) Staffing. Any staffing concerns or issues related to the closeout of the Contract;

- 2) Communications Process. The process for communicating and reporting information between the Contractor, the MLGCA, and the Contract Monitor;
- 3) Security. Identify individuals with access to the MLGCA's systems and identify the timing and process for removal of their access to the MLGCA's systems;
- 4) Inventory. An inventory of the hardware and software used or maintained by the Contractor and the process for the transfer of this to MLGCA;
- 5) Transfer of Licensing. An inventory of any software licenses the Contractor holds or maintains for MLGCA and the point of contact. Alternatively, Contractor may transfer the license for those software licenses to the MLGCA or its designee, but shall still provide an inventory of software licenses;
- 6) Training. A schedule and itinerary for any final training for MLGCA staff;
- 7) Connectivity Services. A list of any connectivity services (e.g. internet service provider) that Contractor provides to MLGCA and identify approximate timelines and actions required to transition out of those services;
- 8) Transfer of Information, Creative Materials and Files – New Contractor and MLGCA. The Contractor shall transfer to the MLGCA and a new contractor the following:
 - a. All creative art files, images, video and audio files, etc., that the Contractor has produced during the prior contract period. All logos, style guides and general documents should be up to date and available to be transferred;
 - b. Information concerning the current system environments;
 - c. General business practices of the MLGCA
 - d. The procedures and practices that support the business process and current system environments;
 - e. Information concerning all technical and functional matters associated with the Solution, its architecture, data file structure, interfaces, any batch programs, and any hardware or software tools utilized in the performance of the Contract;
 - f. Documentation that lists and describes all hardware and software tools utilized in the performance of the Contract; and
 - g. Information concerning all utilities and corollary software products used in support and operation of the Solution.
- 9) Complete Tasks. The Contractor shall plan to complete any tasks that remain open and unfinished work items including open change requests and known bugs or issues; and

- 10) Risk Factors. The Contractor shall identify any risk factors associated with timing on the Transition-Out Schedule and more generally with the transition process. The Contractor shall provide possible solutions to mitigate these risks.
- B. Current and Complete Documentation. The Contractor shall provide a current and completed electronic and hard copy of all documentation and data including, but not limited to, System Documentation and current operating procedures. The electronic copy shall be in a format prescribed by the Contract Monitor.
- 1) Daily and Weekly Backups. The Contractor shall provide copies of current daily and weekly back-ups to the MLGCA or a third party as directed by the Contract Monitor as of the final date of transition, but no later than the final date of the Contract.
- 2) Furnished Product and Services. Access to any data or configurations of the furnished product and services shall be available after the expiration of the Contract as described in Section 3.2.4.

3.2.3 Return and Maintenance of State Data

Upon termination or the expiration of the Contract Term, the Contractor shall:

- A. General. Return to the State all State data in either the form it was provided to the Contractor or in a mutually agreed format along with the schema necessary to read such data;
- B. Protect. Preserve, maintain, and protect all State data until the earlier of a direction by the State to delete such data or the expiration of 90 days (“the retention period”) from the date of termination or expiration of the Contract;
- C. Disposal. After the retention period, securely dispose of and permanently delete all State data in all of its forms, such as disk, CD or DVD, backup tape and paper such that it is not recoverable, according to National Institute of Standards and Technology (NIST)-approved methods with certificates of destruction to be provided to the State;
- D. Accounting for State Data. Prepare an accurate accounting for taking these actions for the maintenance of State Data from which the State may reconcile all outstanding accounts. The final monthly invoice for the services provided hereunder shall include all charges for the 90-day data retention period.
- E. Service Suspension. During any period of service suspension, maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor;

3.2.4 Post-Termination Assistance.

As it relates to the services, provide or make available any post Contract termination or expiration assistance to the MLGCA or the State.

3.3 Invoicing

3.3.1 General

The Contractor shall:

- A. Invoices to Contract Monitor. E-mail each original invoice and signed authorization related to the invoice to the Contract Monitor at: jill.baer@maryland.gov and the MLGCA's Accounts Payable Department at ap.mlgcap@maryland.gov
- B. Verification in Invoices. Verify all invoices for services as accurate at the time of submission.

3.3.2 Proper Invoice

- A. Requirements for Proper Invoices. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
 - 1) Contractor name and address;
 - 2) Remittance address;
 - 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
 - 4) Invoice period (i.e., time period during which services covered by invoice were performed);
 - 5) Invoice date;
 - 6) Invoice number;
 - 7) State assigned Contract number;
 - 8) State assigned (Blanket) Purchase Order number(s);
 - 9) Goods or services provided;
 - 10) Amount due; and
 - 11) Any additional documentation required by regulation or the Contract.
- B. Right to Reduce or Withhold Payment. The MLGCA reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the MLGCA with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

- C. Disputes. Any action on the part of the MLGCA, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- D. Taxes. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- E. Final Payment. Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

3.3.3 Invoice Submission Schedule

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

- A. One-Time Pricing. For items of work for which there is one-time pricing (see **Attachment B** – Financial Proposal Form) those items shall be billed in the month following the acceptance of the work by the MLGCA.
- B. Payment Upon Completion of Services. Payment in full will be made only after the completion of services or delivery of goods authorized in an approved invoice. However, in an acknowledgement to industry standards, the MLGCA may allow the Functional Area I Contractor to pre-bill no more than 50% of a television production estimate prior to service receipt. All pre-bills the MLGCA authorizes should include appropriate detailed backup. Documentation should verify that the remaining 50% was invoiced after the service was performed and should include detailed backup for the entire job.
- C. Annual Pricing Items.
 - 1) General. For items of work for which there is annual pricing, see **Attachment B** - Financial Proposal Form, those items shall be billed in equal monthly installments for the applicable Contract year in the month following the performance of the services.

3.3.4 Invoices Not Deemed Payable

For the purposes of the Contract an amount will not be deemed due and payable if:

- A. Inconsistent. The amount invoiced is inconsistent with the Contract;
- B. Not Received. The proper invoice has not been received by the party or office specified in the Contract;
- C. Dispute. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- D. No Acceptance. The item or services have not been accepted by the MLGCA;

- E. Inaccurate Quantity. The quantity of items delivered is less than the quantity ordered;
- F. Poor Quality. The items or services do not meet the quality requirements of the Contract;
- G. Progress Payments. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- H. Retainage. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
- I. Unsatisfactory Documentation. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

3.3.5 Travel Reimbursement

- A. Routine Travel. There shall be no reimbursement for routine travel.
- B. Non-Routine Travel. Contractor shall not be reimbursed for non-routine travel without prior Contract Monitor approval.
- C. Definition of Non-Routine Travel. Non-routine Travel is defined as travel beyond the 50-mile radius of MLGCA's headquarters, as identified in the RFP, or the Contractor's facility, whichever is closer to the consulting site. Non-routine travel will be reimbursed according to the State's travel regulations and reimbursement rates, which can be found at: www.DBM.maryland.gov - search: Fleet Management. If non-routine travel is conducted by automobile, the first 50 miles of such travel will be treated as routine travel and as described in **Section 3.3.5.A**, and will not be reimbursed. The Contractor may bill for labor hours expended in non-routine traveling beyond the identified 50-mile radius, only if so specified in the RFP or Work Order.

3.4 Liquidated Damages

3.4.1 MBE Liquidated Damages

MBE liquidated damages are identified in Attachment M.

3.4.2 Liquidated Damages other than MBE

- A. General. Contractor acknowledges that the actual damages likely to result from breach of this Contract are difficult to estimate on the date of this agreement and would be difficult for MLGCA to prove. The parties intend that Contractor's payment of the Liquidated Damages Amount would serve to compensate MLGCA for any breach by Contractor of its obligations under this Contract, and they do not intend for it to serve as punishment for any such breach by Contractor.

- B. Liquidated Damages Due. Liquidated damages shall become due within thirty (30) calendar days after written notification by the MLGCA. The MLGCA may, at its sole discretion, deduct liquidated damages from payments due to the Contractor.
- C. Failure to Meet Required Delivery Date. In the event the Contractor fails to meet a required delivery or completion date, without the prior written approval of the MLGCA, the Director may impose liquidated damages in the amounts listed below by Functional Area and type of project, for each day that the Contractor does not meet the specified delivery or completion. Liquidated damages vary, depending upon the type of project for which the Contractor fails to meet the required delivery or completion date.
- 1) Functional Area I:
 - a. Failure to complete television commercial for air by required delivery date—\$5,000 per day.
 - b. Failure to complete a radio commercial, digital ad (standard banner or rich media unit) or any video units for OTT, CTV, social media or other media placements - \$1,000 per day.
 - c. Failure to complete design, production and delivery of any materials required for out of home or print media placement - \$500 per day.
 - 2) Functional Area II. Failure to complete and place media buys by the required due date - \$1,000 per day.
- D. Continued Performance. Nothing in this provision shall be construed as relieving the Contractor from performing all Contract requirements whether listed herein or not, nor is the MLGCA's right to enforce or to see other remedies from failure to perform any other Contract duty hereby diminished.
- E. No Limitation of Rights and Remedies. Remedies of the MLGCA specified in this section or elsewhere in the Contract for breach or failure of performance by the Contractor shall in no way limit any other remedies available to the MLGCA under the Contract; under any statute or regulation; or at law or in equity including, without limitation, all remedies of a buyer under the Uniform Commercial Code. All rights, powers and remedies shall be cumulative and concurrent. Any failure of the MLGCA to exercise a remedy shall not be a waiver of any breach or non-performance by the Contractor nor shall it prevent the MLGCA from later exercising that or any other remedy.
- F. Severability of Individual Liquidated Damages Clauses. If any portion of any provision on liquidated damages in this Contract is determined to be unenforceable in one or more of its applications, the remaining portion remains in effect in all applications not determined to be invalid that are severable from the invalid

applications. If any portion of this liquidated damages provision is determined to be unenforceable in total, the other portions shall remain in full force and effect.

3.5 Disaster Recovery and Data

The following requirements apply to the Contract:

3.5.1 Redundancy, Data Backup and Disaster Recovery

- A. Disaster Avoidance Procedures. Unless specified otherwise in the RFP, the Contractor shall maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the Contract Term. Any force majeure provisions of the Contract do not limit the Contractor's obligations under this provision.
- B. Contingency and Disaster Recovery Plans. The Contractor shall have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
 - 1) The Contractor shall furnish a DR site.
 - 2) The DR site shall be at least 100 miles from the primary operations site, and have the capacity to take over complete production volume in case the primary site becomes unresponsive.
- C. Restoration of Services. The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.
- D. Testing of Contingency and Disaster Recovery Plans. The Contractor shall test the contingency and DR plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination shall be made with the State to ensure limited system downtime when testing is conducted. At least one (1) annual test shall include backup media restoration and failover/fallback operations at the DR location. The Contractor shall send the Contract Monitor a notice of completion following completion of DR testing.
- E. Inspection of Contingency and Disaster Recovery Plans. Such contingency and DR plans shall be available for the MLGCA to inspect and test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

3.5.2 Data Export and Import

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- A. General. The Contractor shall, at no additional cost or charge to the State, in an industry standard and non-proprietary format:
- 1) Perform a full or partial import or export of State data within 24 hours of a request; or
 - 2) Provide to the State the ability to import and export data at will and provide the State with any access and instructions which are needed for the State to import or export data.
- B. Secure Format. Any import or export shall be in a secure format per the Security Requirements.

3.5.3 Data Ownership and Access

- A. General. Data, databases and derived data products created, collected, manipulated, or directly purchased as part of an RFP are the property of the State. The purchasing State agency is considered the custodian of the data and shall determine the use, access, distribution and other conditions based on appropriate State statutes and regulations.
- B. Public Jurisdiction. Public jurisdiction user accounts and public jurisdiction data shall not be accessed, except:
- 1) In the course of data center operations,
 - 2) In response to service or technical issues,
 - 3) As required by the express terms of the Contract, including as necessary to perform the services hereunder; or
 - 4) At the State's written request.
- C. Possession of State Data. The Contractor shall limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and shall train such Contractor Personnel on the confidentiality obligations set forth herein.
- D. Only for State Use. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- E. Limited to Contract Use. The Contractor shall not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

3.5.4 Survival of Provisions

Provisions in Section 3.5.1 – 3.5.3 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.5.1– 3.5.3 (or the substance thereof) in all subcontracts.

3.6 Insurance Requirements

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised. The following type(s) of insurance and minimum amount(s) of coverage are required:

3.6.1 Commercial General Liability

Commercial general liability insurance of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella or excess liability policies.

3.6.2 Errors and Omissions or Professional Liability

Errors and Omissions or Professional Liability of \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.

3.6.3 Crime Insurance / Employee Theft Insurance

Crime Insurance and Employee Theft Insurance to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the MLGCA should be added as a "loss payee."

3.6.4 Cyber Security / Data Breach Insurance

The Contractor shall possess and maintain throughout the term of the Contractor and for three (3) years thereafter, cyber risk and data breach insurance (either separately or as part of a broad Professional Liability or Errors and Omissions Insurance) with limits of at least five million dollars (\$5,000,000) per claim. Any "insured vs. insured" exclusions will be modified accordingly to allow the State additional insured status without prejudicing the State's rights under the policy(ies). Coverage shall be sufficiently broad to respond to the Contractor's duties and obligations under the Contract and shall include, but not be limited to, claims involving privacy violations, information theft, damage to or destruction of electronic information, the release of Sensitive Data, and alteration of electronic information, extortion, and network security. The policy shall provide coverage for, not by way of limitation, breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

3.6.5 Worker's Compensation

The Contractor shall maintain worker's compensation insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.

3.6.6 Automobile or Commercial Truck Insurance

The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

3.6.7 State as an Additional Insured

The State and MLGCA shall be listed as an additional insured on the policies and the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.

3.6.8 Cancellation or Nonrenewal

All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.

3.6.9 Carriers Authorized to do Business in the State

Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

3.6.10 Current Certificates

- A. Recommended Awardee. The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) Business Days from notice of recommended award.
- B. During the Contract. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor.

3.6.11 Subcontractor Insurance

The Contractor shall require any subcontractors to obtain and maintain comparable levels of coverage and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

3.7 Information Technology

3.7.1 General

Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all

such revisions. Updated and revised versions of the State IT Policy and Standards are available online at: www.doit.maryland.gov – keyword: Security Policy.

3.7.2 Connectivity to State LAN/WAN

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

3.7.3 Contractor Responsibilities

The Contractor shall:

- A. Safeguards. Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below;
- B. Data Protection and Privacy Laws. Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and
- C. Other Laws and Policies. The Contractor, and Contractor Personnel, shall (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: <https://doit.maryland.gov/policies/Pages/default.aspx>.

3.8 Problem Escalation Procedure

3.8.1 General

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

3.8.2 Contact Information

The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.

3.8.3 Timing

The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided

within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP.

3.8.4 Contents of PEP

The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

- A. Process. The process for establishing the existence of a problem;
- B. Personnel Involved in Process. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
- C. Maximum Time Until Escalation. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
- D. Expedited Escalation. Expedited escalation procedures and any circumstances that would trigger expediting them;
- E. Feedback. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
- F. After Business Hours Contacts. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
- G. Notification. A process for updating and notifying the Contract Monitor of any changes to the PEP.

3.8.5 No Limitation of Rights

Nothing in this Section 3.8 shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

3.9 SOC 2 Type 2 Audit Report

3.9.1 General.

A SOC 2 Type 2 Audit applies to the Contract (see Section 2.3.13). The applicable trust services criteria are: Security, Availability, Processing Integrity, Confidentiality, or Privacy – The MLGCA to choose which of the five trust services criteria apply as defined in the Guidance document identified in Section 3.9.2.

3.9.2 Guidance.

In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor's handling of Sensitive Data or the MLGCA's critical functions. Critical

functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the “Information Functions and Processes.” Such audits shall be performed in accordance with audit guidance: Reporting on an Examination of Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the MLGCA to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- A. Time Period Covered by Audit. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Audit” or “SOC 2 Report”). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.
- B. Suitability of Design and Operating Effectiveness. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in Section 3.7, relevant to the trust services criteria identified in 3.9.1: as defined in the aforementioned Guidance.
- C. Changes to Scope Each Year. The audit scope of each year’s SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services criteria of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year’s SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- D. Scope of Audit. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the Task Order Contractor or essential support to the Information Functions and Processes provided to the MLGCA under the

- Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.
- E. No Additional Expense. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the MLGCA.
- F. Timing and Corrective Action Plan. The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- G. Alternative Assessments Possible. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the MLGCA under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the MLGCA will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).
- H. MLGCA Right to conduct Independent Audit. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.9.2.A**, the MLGCA shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The MLGCA will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.
- I. Survival of Provisions. Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

3.10 Experience and Personnel

The following experience is expected and will be evaluated as part of the Technical Proposal (see the capability of proposed resources evaluation factor from Section 6.2):

3.10.1 General Staffing Requirements: Both Functional Areas

- A. Types of Staff. The Offeror shall identify the types of staff, their number, responsibilities and qualifications proposed to be utilized under the Contract. The Offeror shall describe in detail how the proposed staff's experience and qualifications

- relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
- B. Resumes. The Offeror shall include individual resumes that must demonstrate the individuals assigned to the MLGCA account have the background and experience required to perform the position to which they will be tasked. Resumes must also be submitted for any key personnel for subcontractors who are to be assigned to the project if the Offeror is awarded the Contract.
- C. Amount of Experience and Letters of Intent. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. Letters of intended commitment to work on the project, including letters from any proposed subcontractor(s), shall be included in this section.
- D. Organizational Chart. The Offeror shall provide detail by department in an organization chart format for each functional area proposed, outlining assigned personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job title other than those commonly used by industry standards must provide a cross reference document.
- E. New positions. The organizational chart should note any new positions that would be created as a result of acquiring the MLGCA account and indicate when the positions will be filled.
- F. Organizational Chart Details. The MLGCA is not predisposed to any particular staffing model. Offerors are encouraged to propose staffing plans that offer the best value to the MLGCA, both in terms of service and adequate staffing. Offerors must submit a staffing plan for each Functional Area proposed.
- 1) The organizational chart should include corporate directors and/or officers who will provide direction or oversight to the MLGCA account.
 - 2) The organization chart, or supporting documentation, should indicate the proposed individuals that will be assigned to the MLGCA's account on a full-time, part-time or as-needed basis; this number or its equivalent must remain constant over the term of the Contract.
 - 3) The Offeror should include a brief description of the key functions or responsibilities for each position as it relates to the MLGCA's account.
 - 4) Offerors must identify if a different individual will not be assigned to each position in the Offeror's staffing plan and explain how service levels will be maintained.
 - 5) The Offeror shall identify the location(s) from which it proposes to provide the services noted in the Scope of Work

3.10.2 STAFFING REQUIREMENTS: FUNCTIONAL AREA I

Offerors submitting a proposal for Functional Area I – Creative and Production Services should also identify staff assigned to the following areas in their Staffing Plan requested above in the Section 3.10.1 General Staffing Requirements.

A. Creative Development and Production Services

- 1) Account Management. Offerors shall identify the key personnel who will provide strategic direction or oversight to the MLGCA account. At a minimum these include the Account Director and Account Supervisor. The Account Director shall have a minimum of ten (10) years account management experience and the Account Supervisor shall have a minimum of seven (7) years account management experience.
- 2) Other Account Management Staff. In addition to the Account Director and Account Supervisor, the Account Management staff may include but is not limited to the following: Account Planner; Account Executive; Junior Account Executive; and Account Coordinator.

B. Creative Department

- 1) Staffing Plan. Offerors shall describe the staffing plan being proposed for its creative department.
- 2) Creative Director. The Creative Director shall have a minimum of ten (10) years of relevant creative experience.
- 3) Other Creative Personnel. In addition to the Creative Director, the Creative staff may include but is not limited to the following:
 - a. Associate Creative Director;
 - b. Art Director;
 - c. Copywriter;
 - d. Print Production Manager;
 - e. Studio Manager;
 - f. Broadcast Business Manager;
 - g. Broadcast Producer;
 - h. Traffic Manager;
 - i. Graphic Designer;

C. Platforms

- 1) Digital Marketing Channels. The selected Offeror shall be responsible for the MLGCA’s digital marketing channels including but not limited to the Lottery’s websites (front end development and implementation but not hosting), mobile websites, promotional microsites or landing pages, mobile apps, email marketing

program and social media channels. These responsibilities may include but are not limited to developing strategies, planning editorial calendars, creating (and, in some cases, implementing) content, analyzing and reporting results and performance indicators, providing 24/7 technical support, managing subcontractors and working with the Lottery's gaming system vendor.

- 2) Digital Ad Creation and Production. Offerors shall describe the staffing plan being proposed to support the MLGCA's active digital advertising initiatives. The MLGCA currently has an annual media buy that supports initiatives on various platforms, as well as campaign specific programs with executions that are tailored to the product and intended audience. Current creative includes a mix of video units, as well as various rich media and standard banner ads. The MLGCA expects to have continued emphasis in this area.
- 3) Websites, Landing Pages and Mobile Applications. Offerors shall describe the staffing plan being proposed for its website, landing page and mobile application support for the MLGCA. Included in this list should be a Senior Technical Support Manager who has the technical and project management skills required to work within the hosting environment and is able to lead web (front end) and mobile app development and implementation projects.
- 4) Social Media. Offerors shall describe the staffing plan proposed to support the MLGCA's numerous social media posts, projects and requests.
- 5) Email Marketing. Offerors shall describe the staffing plan proposed to support and the MLGCA's active email marketing program.

Note: The MLGCA has staff members that work in conjunction with its current Creative and Production Services vendor to develop and implement digital, web, mobile, social and email initiatives.

- 6) Research. Offerors shall describe the staffing plan being proposed to support MLGCA research projects and requests.

3.10.3 STAFFING REQUIREMENTS: FUNCTIONAL AREA II – MEDIA PLANNING AND BUYING SERVICES

Offerors submitting a proposal for Functional Area II – Media Planning and Buying Services should also identify staff assigned to the following areas in their Staffing Plan requested above in the Section 3.10.1 General Staffing Requirements.

- A. General. Offerors shall describe the staffing plan being proposed to meet the needs of the Media Services contract.
- B. Media Director. The Media Director shall have a minimum of ten (10) years of relevant media experience.
- C. Other Personnel. In addition to the Media Director, Media staff may include, but is not limited to the following:

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- 1) Associate Media Director;
- 2) Media Supervisor – Buying or Planning;
- 3) Media Planner;
- 4) Junior Media Planner;
- 5) Media Buyer;
- 6) Junior Media Buyer; and
- 7) Interactive and Digital Media Planner/Buyer.

3.10.4 Specific Experience Information: Both Functional Areas

- A. Similar Experience. The Offeror shall describe its background and experience providing similar projects or services to those required in Section 2 for the appropriate Functional Area. This experience must be under the Offeror’s company name.
- B. Ability to Meet Requirements. Offerors shall describe how their organization can meet the requirements of this RFP and shall include:
 - 1) Any relevant experience comparable to what is requested in Section 2 Technical Specifications for each Functional Area being proposed;
 - 2) The number of years the Offeror has provided the similar services;
 - 3) The number of clients or customers and geographic locations that the Offeror currently serves;
 - 4) The Offeror’s process for resolving billing errors;
 - 5) An overview organizational chart that identifies the complete structure of the Offeror, including any parent company, headquarters, regional offices, and subsidiaries of the Offeror;
 - 6) A list of current client accounts and billings; and
 - a. A response to whether Offeror has lost any client accounts within the last three (3) years; and
 - b. An explanation as to why those client accounts were lost;
 - 7) Provide total annual billings for the past three (3) calendar years, along with a percentage breakout of the billings by Functional Area, as applicable.

3.10.5 Relevant Information from Last 3 Years: Both Functional Areas

Offerors shall state whether or not any of the following have occurred during the last three (3) years:

- A. Contract Termination. Offeror has had a contract terminated, and if so, shall provide full details, including the account’s name, address and phone number.

- B. Penalties or Liquidated Damages. Offeror has been assessed any penalties or liquidated damages under any existing or past contracts and if so, note the reason for and the amount of the penalty or liquidated damages for each incident.
- C. Disciplinary Action or Other Orders. Offeror was the subject of any disciplinary action for substandard work or unethical practices or any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of the Offeror to engage in any business, practice or activity.
- D. Litigation. Offeror has been involved in any litigation related to contract performance.

3.10.6 Resources and Capabilities: Both Functional Areas

- A. In-House vs. Subcontracted Resources. The Offeror shall describe its resources and capabilities, and distinguish between those which it has in-house and those which it proposes to subcontract.
- B. Operational Capacity. The Offeror shall describe the current operational capacity of the organization and the Offeror's ability to absorb the additional workload resulting from this award. The Offeror must provide evidence that it has in place, or will put in place, the personnel, internal procedures and any other resources required under the terms of this contract to ensure successful performance and contract compliance.
- C. Unique Services. Offeror should describe any unique services it can offer that would be helpful in meeting the goals of the Contract.

3.10.7 Number of Personnel to Propose: Both Functional Areas

- A. Proposed Personnel. As part of the Proposal evaluation, Offerors shall propose personnel who are expected to be available as of the start date specified in the Notice to Proceed (NTP Date).
- B. Additional Resources. Offerors shall describe in a Staffing Plan how additional resources shall be acquired to meet the needs of the MLGCA.
- C. Planned Positions. Offerors may generally describe planned positions in a Staffing Plan. Such planned positions may not be used as evidence of fulfilling personnel minimum qualifications.
- D. Account Team. The Contractor shall provide a seasoned account team that shall work collaboratively with the MLGCA's Marketing department to manage the daily activities of the account.

3.10.8 Contractor Personnel Experience Equivalency: Both Functional Areas

Dedicated Account Management (For each Functional Area)

- A. Generally. The Contractor's account management team shall become knowledgeable of the MLGCA's business objectives, industry trends, sales performance, and product

- developments and shall also be responsible for ensuring that consumer centric strategies are developed that tie into the MLGCA's business objectives.
- B. Specific Account Experience. The Contractor shall have account experience in mass merchandisers, retail grocery, and/or convenience stores.
 - C. Variety in Team. The Contractor shall provide a competent team with appropriate staffing levels and a cost-effective mix of experienced and less experienced personnel led by a dedicated Account Director and Creative Director.
 - D. Level of Support. The Contractor shall provide the same level of support throughout the term of the Contract.
 - E. Communications. The Contractor's account team shall be responsible for establishing regular communications between themselves, the MLGCA's Media Agency, and other MLGCA vendors to ensure seamless integration of the advertising program.
 - F. Routine Meetings. The Contractor shall be available to attend or participate in routine meetings held at MLGCA's headquarters (in person attendance or virtual participation). During these meetings, there will be discussions regarding schedules and planning, as well as discussions regarding concept approvals, pre-production of advertisements, POS or other agency-produced materials. The frequency of such discussions and number of Contractor personnel involved will depend on the scope of the project(s) underway.
 - G. Additional Meetings. Additional meetings may be held with certain MLGCA personnel and other MLGCA Contractors on an as needed basis.

3.10.9 Certifications Maintained by Contractor Personnel: Both Functional Areas

Any Contractor Personnel provided under this RFP shall maintain in good standing any required professional certifications for the duration of the Contract.

3.10.10 Work Hours: Both Functional Areas

Unless otherwise specified, the following work hours requirements are applicable:

- A. Business Hours Support. The Contractor shall assign Contractor Personnel to support MLGCA projects as necessary during Normal State Business Hours (see definition in Appendix 1).
- B. Outside Normal Business Hours. Contractor Personnel shall also be required to provide occasional support outside of normal State Business Hours, including evenings, overnight, and weekends, to support specific efforts and emergencies, such as to resolve system repair or restoration. Hours performing activities must be billed on an actual time worked basis at the rates proposed.
- C. Billing. Contractor shall bill and be paid a monthly flat fee set by the State for all work performed on the Contract.

3.11 Substitution of Personnel

3.11.1 Continuous Performance of Key Personnel

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

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

3.11.2 Definitions

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

3.11.3 Contractor Personnel General Substitution Provisions: Both Functional Areas

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

- C. Additional Information. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. Notification Regarding Substitution. The Contract Monitor will notify the Contractor in writing of:
- 1) The acceptance or denial; or
 - 2) Contingent or temporary approval for a specified time limit, of the requested substitution.
- E. Withholding Approval. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

3.11.4 Replacement Circumstances

A. Directed Personnel Replacement

- 1) Directed Replacement Permitted. The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, MLGCA's policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.4.A.2.**
- 2) Notice and Remediation Plan. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.
- 3) Notice of Continuing Performance Issues. Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.

- 4) No Limitation of Remedies. Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) Timing. If the Contract Monitor determines to direct substitution under **3.11.4.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and, in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.
- 6) Suitable Replacement. In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.11.4.A.1** of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

B. Key Personnel Replacement

- 1) Substitution Request Required. To replace any Key Personnel in a circumstance other than as described in **3.11.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.11.3** to the Contract Monitor at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
- 2) Key Personnel Replacement Due to Sudden Vacancy
 - a. Timing. The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1**.
 - b. Suitable Replacement. Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.3** within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) Key Personnel Replacement Due to an Indeterminate Absence
 - a. Timing. If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence,

the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under **Section 3.11.3**.

- b. Replacement. However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

3.11.5 Substitution Prior to and Within 30 Days After Contract Execution

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

3.12 MLGCA Minority Business Enterprise (MBE) Reports

If this solicitation includes an MBE Goal (see Section 4.26), the Contractor shall:

Submit the following reports by the 10th of each month to the Contract Monitor and the MLGCA's MBE Liaison Officer:

3.12.1 Prime Contractor Paid/Unpaid MBE Invoice Report

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

3.12.2 MBE Prime Contractor Report (Attachment D-4B) (if applicable)

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

3.12.3 MBE Subcontractor Paid/Unpaid Invoice Report (Attachment D-5)

Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment D-5) by the 10th of each month to the Contract Monitor and the MLGCA's MBE Liaison

Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.

3.12.4 Records Necessary to Confirm Compliance

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

3.12.5 Documentation Requested and Right-of-Entry

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

3.12.6 Final Report

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

3.13 Veteran Small Business Enterprise (VSBE) Reports

If this solicitation includes a VSBE Goal (see Section 4.27), the Contractor shall:

Submit the following reports by the 10th of the month following the reporting period to the Contract Monitor and the MLGCA VSBE representative:

3.13.1 VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3)

VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3) listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made; and

3.13.2 VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report (Attachment E-4)

Attachment E-4, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.

3.12.3 VSBE Subcontractor Report Paid/Unpaid VSBE Invoice Report (Attachment E-4)

Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and MLGCA VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (Attachment E-4).

3.12.4 Records Necessary to Confirm Compliance

Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.

3.12.5 Documentation Requested and Right-of-Entry

Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three (3) years after final completion of the Contract.

3.12.6 Final Report

At the option of the MLGCA, upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

3.13 Work Orders

THIS SECTION IS INAPPLICABLE TO THIS RFP.

3.14 MLGCA Additional Clauses

The Contractor shall be subject to the requirements in this section and shall flow down the provisions of Sections 3.13.1 – 3.13.5 (or the substance thereof) in all subcontracts.

3.14.1 Custom Software

- A. As described in the sample Contract (Attachment M), the State shall solely own any custom software, including, but not limited to application modules developed to integrate with a COTS, source-codes, maintenance updates, documentation, and configuration files, when developed under the Contract.
- B. Upon a Contractor's voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, Contractor's dissolution, Contractor's discontinuance of support of any software or system, the Contractor shall convey to the State all rights,

title, and interests in all custom software, licenses, software source codes, and all associated System Documentation that comprises any solutions proposed as a part of the Contract. These rights include, but are not limited to, the rights to use, and cause others to use on behalf of the State, said software, software documentation, licenses, software source codes, and System Documentation.

3.14.2 Custom Source Code

- A. For all custom software provided to the State pursuant to any Contract, the Contractor shall either provide the source code directly to the State in a form acceptable to the State, or deliver two copies of each software source code and software source code documentation to a State-approved escrow agent at no additional cost to the State following the terms set forth in the sample contract (Attachment M) and in Section 3.13.3 below.
- B. The State shall have the right to audit custom software source code and corresponding software source code documentation for each software product that comprises the solution as represented by the Contractor. This audit shall be scheduled at any time that is convenient for the parties to be present. The State shall be provided with software or other tools required to view all software source code.
- C. The Contractor shall provide the current source code and documentation for all custom software to the State at the time of Contract termination.

3.14.3 Source Code Escrow

Source Code Escrow applies to the Contract. The Contractor shall perform source code escrow as described herein.

- A. The State will be named as a beneficiary under an escrow agreement (“Escrow Agreement”) that shall be entered into between the Contractor and an escrow agent (“Escrow Agent”) within 10 Business Days of the date hereof pursuant to which Contractor shall deliver a Source Code Escrow Package to Escrow Agent. The term “Source Code Escrow Package” means: i) a complete copy in machine-readable form of the source code and executable code of the software licensed to the State under the Contract; ii) a complete copy of any existing design documentation and user documentation; or iii) complete instructions for compiling and linking every part of the source code into executable code for purposes of enabling verification of the completeness of the source code as provided below. The Escrow Agreement shall govern the maintenance and release of the Source Code Escrow Package, and Contractor agrees to update, enhance, or otherwise modify such Source Code Escrow Package promptly upon each release of a new version of any component thereof. Contractor shall pay all fees and expenses charged by Escrow Agent, including, but not limited to, fees and expenses related to the State being a named beneficiary under the Escrow Agreement. The State shall treat the Source Code Escrow Package as Contractor’s confidential information. Under all circumstances, the Source Code

- Escrow Package shall remain the property of Contractor. The State shall only use the Source Code Escrow Package as contemplated in the Contract (including, but not limited to confidentiality provisions and usage restrictions). The Escrow Agent shall maintain the Source Code Escrow Package in a repository located in the United States.
- B. In the event that the Escrow Agent either ceases providing escrow services to Contractor or Contractor determines in its reasonable business judgment that the Escrow Agent is no longer providing acceptable services, Contractor shall replace the Escrow Agent with another escrow agent, using an agreement which provides the State with rights no less advantageous than those in the Escrow Agreement. In such case, the new escrow agent shall be substituted in all ways for the incumbent Escrow Agent with respect to Section 3.13.3.A above and all references herein to Escrow Agent shall be deemed to include such substitute escrow agent.
- C. Contractor shall inform the State of the availability of an escrow for any third-party software solutions it provides to the State.
- D. In addition to the rights and obligations contained in the Escrow Agreement referenced in Section 3.13.3.A, the State shall have the Software Escrow Package released by the Escrow Agent to the State's possession immediately upon any voluntary or involuntary filing of bankruptcy or any other insolvency proceeding, including but not limited to a general assignment for the benefit of including but not limited to a general assignment for the benefit of creditors, the appointment of a receiver for business or assets; creditors, the appointment of a receiver for business or assets; Contractor's dissolution or liquidation, voluntary or otherwise; the State has compelling reasons to believe that such events will cause Contractor to fail to meet its obligations in the foreseeable future; or Contractor's discontinuance of support or failure to support in accordance with the Contract any software system or if the Contractor is otherwise unable or unwilling to provide the Source Code Escrow Package. This condition will also be considered met if after repeated e-mail and phone requests by the State for service, the State makes a request for service in writing to the Contractor's last known address served by certified signed receipt required mail delivery by U.S. Post Office or by a nationally recognized (in the United States) overnight carrier, and the Contractor remains unresponsive, meaning that the Contractor is unable to acknowledge message receipt, unwilling or otherwise unable to satisfy the request for a period longer than forty-five (45) days from attempt to deliver the written request.

3.14.4 Purchasing and Recycling Electronic Products

This section does not apply to this solicitation.

3.14.5 Change Control and Advance Notice

- A. Unless otherwise specified in an applicable Service Level Agreement, the Contractor shall give seven (7) days advance notice to the State of any upgrades or modifications that may impact service availability and performance.

B. Contractor may not modify the functionality or features of any SaaS provided hereunder if such modification materially degrades the functionality of the SaaS.

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

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

3.14.7 No-Cost Extensions

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

4 Procurement Instructions

4.1 Pre-Proposal Conference

- A. General. A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.
- B. Attendance. Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of an offeror's good faith efforts if there is a waiver request.
- C. Subcontractor Attendance.
 - 1) General. It is highly recommended that all Prime Contractors bring their intended subcontractors to the Conference/Site Visit to ensure that all parties understand the requirements of the contract and the MBE Goal.
 - 2) MBE Subcontractors. MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.
- D. Conference Summary and Attendance Record. Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see Section 4.2 eMMA).
- E. Registration. Those wishing to attend the web conference may request a meeting invitation by emailing John Lloyd at john.lloyd@maryland.gov no later than 2:00 PM on 09/23/2024. An invitation e-mail is required for registration, and therefore attendance. Upon receipt of the email, the Procurement Officer will reply with a registration email with a link that may be used to register for the conference. Registration must be completed by 2:00 PM 09/23/2024.

4.2 eMaryland Marketplace Advantage (eMMA)

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

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

4.3 Questions

All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title

(2023-07 - ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES), and shall be submitted in writing via e-mail to the Procurement Officer at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.

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

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

4.4 Procurement Method

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

4.5 Proposal Due Date / Closing Date and Time

- A. General. Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- B. Extensions. Requests for extension of this date or time shall not be granted.
- C. Delivery Time. Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- D. Email Submissions. The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address indicated on the Key Information Summary Sheet. Proposals, however, may not be submitted by e-mail.
- E. Modification of Proposals. Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.
- F. Proposal Information. Proposals may not be submitted by e-mail. Proposals will not be opened publicly.
- G. Potential Offerors not Responding to the RFP. Potential Offerors not responding to this solicitation are requested to submit the "Notice to Vendors" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted. Submitting a Proposal for each Functional Area is not considered an alternate Proposal.

4.7 Economy of Preparation

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

4.8 Public Information Act Notice

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

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

4.9 Award Basis

A Contract shall be awarded to the responsible Offeror(s) submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP Section 6 for further award information.

4.10 Oral Presentation

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

4.11 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see Section 6.5.2), or the date any protest concerning this RFP is finally resolved. This period

may be extended at the Procurement Officer's request only with the Offeror's written agreement.

4.12 Revisions to the RFP

If the RFP is revised before the due date for Proposals, the MLGCA shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal.

Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.

Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.

Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

4.13 Cancellations

The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.

The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

In the event a government entity proposes and receives the recommendation for award, the procurement may be canceled and the award processed in accordance with COMAR 21.01.03.01.A(4).

If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be canceled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

4.14 Incurred Expenses

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

4.15 Protest/Disputes

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

4.16 Offeror Responsibilities

Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.

All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 "MBE Participation Goal" and Section 4.27 "VSBE Goal").

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

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

4.17 Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as Attachment M. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be**

taken into consideration when evaluating the Offeror's Proposal. The MLGCA reserves the right to accept or reject any exceptions.

4.18 Proposal Affidavit

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

4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment N** (<https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf>) of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

4.20 Compliance with Laws/Arrearages

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

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

4.21 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

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

4.22 False Statements

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

4.22.1 State Finance and Procurement § 11-205.1

- 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.
 - 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 Section 4.22.1.
- C. A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

4.23 Payments by Electronic Funds Transfer

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

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

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: <https://marylandtaxes.gov/forms/state-accounting/static-files/GADX10Form.pdf>

4.24 Prompt Payment Policy

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

available on GOSBA's website at:
<http://www.gomdsmbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

4.25 Electronic Procurements Authorized

Under COMAR 21.03.05, unless otherwise prohibited by law, the MLGCA may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.

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

In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

- A. The Procurement Officer may conduct the procurement using eMMA or e-mail to issue:
 - 1) The RFP;
 - 2) Any amendments and requests for best and final offers;
 - 3) Pre-Proposal conference documents;
 - 4) Questions and responses;
 - 5) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
 - 6) Notices of award selection or non-selection; and
 - 7) The Procurement Officer's decision on any Proposal protest or Contract claim.
- B. The Offeror or potential Offeror may use email or mail to:
 - 1) Ask questions regarding the solicitation;

- 2) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;
 - 3) Submit a "No Proposal Response" to the RFP.
- C. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in Section 4.25.5 of this subsection, utilizing e-mail or other electronic means if authorized by the Procurement Officer or Contract Monitor.
- D. The following transactions related to this procurement and any Contract awarded pursuant to it are not authorized to be conducted by electronic means:
- 1) Submitting Proposals;
 - 2) Filing of protests;
 - 3) Filing of Contract claims;
 - 4) Submission of documents determined by MLGCA to require original signatures (e.g., Contract execution, Contract modifications); or
 - 5) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.
- E. Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

4.26 MBE Participation Goal

4.26.1 Establishment of Goal and Sub goals

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

Notwithstanding any sub goals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and sub goals, and commits to achieving the overall goal and sub goals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and sub goals.

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 implies that it is requesting a full or partial waiver for the remainder of the MBE goal or sub goals as applicable and, if recommended for award, shall submit documentation supporting its good faith efforts to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP may result in the State's rejection of the Offeror's Proposal.

Attachments:

- A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
 2. Attachment D-1B Waiver Guidance
 3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
 4. Attachment D-2 Outreach Efforts Compliance Statement
 5. Attachment D-3A MBE Subcontractor Project Participation Certification
 6. Attachment D-3B MBE Prime Project Participation Certification
 7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
 8. Attachment D-4B MBE Prime Contractor Report
 9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
- B. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) whereby:
1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
 2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime

participating as a joint venture) to be counted towards meeting the MBE participation goals.

3. The Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

An Offeror must properly complete and submit a separate Attachment D-1A, MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule, for EACH Functional Area (I and II) for which it is submitting a proposal. If an Offeror is submitting a proposal for each of Functional Areas I and II, the Offeror must submit two separate Attachment D-1As, one for each of the two Functional Areas.

FA I – For this RFP, the MBE participation, specifically commercial production of advertising and related services, shall be evaluated by the MLGCA as it is a critical component of the work plan.

FA II - For this RFP, the MBE spending goal is calculated as a percentage of the overall spending level through the contract. Spending levels include both media placements and the contractor's fee.

(For example only, if the Lottery's media budget is \$10,000,000, and the contract's fee is \$100,000, the contractor's MBE spending goal would be \$505,000 (5% of \$10,100,000).)

If the Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award, unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.

Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

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

- A. Outreach Efforts Compliance Statement (**Attachment D-2**);
- B. MBE Subcontractor/Prime Project Participation Certification (Attachment D-3A/3B);
and
- C. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable sub goals.

D. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable sub goal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

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

A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

The Offeror that requested or implied to request a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M, Section 2.1**).

The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M, Liquidated Damages for MBE, Section 39**).

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

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

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

4.27 VSBE Goal

4.27.1 Purpose

- A. The Contractor shall structure its procedures for the performance of the work required in the Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment E**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment E**.
- B. A certified Veteran-Owned Small Business Enterprises (VSBE) must be verified by the State Department of Veterans Affairs or US Department of Veteran's Affairs <https://veterans.certify.sba.gov/> and registered as a VSBE on the State's eProcurement platform, eMaryland Marketplace Advantage (eMMA). The listing of VSBEs is available through the "Vendor Search" on [eMMA](#).

4.27.2 VSBE Goal

A VSBE participation goal of the total Contract dollar amount has been established for this procurement as identified in the Key Information Summary Sheet.

By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

4.27.3 Solicitation and Contract Formation

- A. In accordance with COMAR 21.11.13.05C(1), this solicitation requires Offerors to:
 - 1) Identify specific work categories within the scope of the procurement appropriate for subcontracting;
 - 2) Solicit VSBEs before Proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;

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- 3) Attempt to make personal contact with the VSBEs solicited and to document these attempts;
 - 4) Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and
 - 5) Attempt to attend pre-Proposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.
- B. The Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (Attachment E-1) whereby the Offeror:
- 1) Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
 - 2) Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.

An Offeror must properly complete and submit a separate Attachment E-1, VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule, for each Functional Area (I and II) for which it is submitting a proposal. If an Offeror is submitting a proposal for each of the Functional Areas I and II, the Offeror must submit two (2) separate Attachment E-1s, one for each of the two (2) Functional Areas.

As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal. In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.

Within 10 Business Days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer:

- 1) VSBE Project Participation Statement (Attachment E-2);
- 2) If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
- 3) Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not reasonably susceptible of being selected for award.

4.28 Living Wage Requirements

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Maryland Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in Attachment F. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (Attachment F-1) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
- E. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier (enter "1" or "2," depending on where the majority of the service recipients are located) Contract.

- F. The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
- G. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- H. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- I. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- J. The Offeror shall identify in the Proposal the location from which services will be provided.
- K. The Contract price will not be adjusted as a result of any change to Living Wage or the State minimum wage.

4.29 Federal Funding Acknowledgement

This Contract does not contain federal funds.

4.30 Conflict of Interest Affidavit and Disclosure

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

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

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

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

for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

4.31 Non-Disclosure Agreement

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

4.32 Nonvisual Access

The bidder or offeror warrants that the information technology offered under this bid or proposal (1) provides equivalent access for effective use by both visual and nonvisual means consistent with the standards of § 508 of the federal Rehabilitation Act of 1973 and Code of Maryland Regulations 14.33.02; (2) provides an individual with disabilities with nonvisual access in a way that is fully and equally accessible to and independently usable by the individual with disabilities so that the individual is able to acquire the same information, engage in the same interactions, and enjoy the same services as users without disabilities, with substantially equivalent ease of use; (3) will present information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; (4) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (5) is available, whenever possible, without modification for compatibility with software and hardware for nonvisual access. The bidder or offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for nonvisual access will not increase the cost of the information technology by more than 15 percent.

If the information technology procured under this solicitation does not meet the nonvisual access standards set forth in the Code of Maryland Regulations 14.33.02, the State will notify the bidder or offeror in writing that the bidder or offeror, at its own expense, has 12 months after the date of the notification to modify the information technology in order to meet the nonvisual access standards. If the bidder or offeror fails to modify the information technology to meet the nonvisual access standards within 12 months after the date of the notification, the bidder or offeror may be subject to a civil penalty of a fine not exceeding \$5,000 for a first offense, and a fine not exceeding \$10,000 for a subsequent offense.

The bidder or offeror shall indemnify the State for liability resulting from the use of information technology that does not meet the applicable nonvisual access standards.

For purposes of this regulation, the phrase ‘equivalent access’ means the ability to receive, use, and manipulate information and operate controls necessary to access and use information technology by nonvisual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

4.33 Mercury and Products That Contain Mercury

This solicitation does not include the procurement of products known to likely include mercury as a component.

4.34 HIPAA - Business Associate Agreement

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

4.35 Location of the Performance of Services Disclosure

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

4.36 Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

4.37 Small Business Reserve (SBR) Procurement

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

4.38 Bonds

4.38.1 Proposal Bond

Each Offeror must submit with its Proposal a Proposal Bond or other suitable security, as summarized in **4.38.4**, in the amount of five percent (5%) of the Total Evaluated Price, guaranteeing the availability of the goods and services at the offered price for 180 days after the due date for receipt of Proposals.

The bond shall be in the form provided in Section 7, Table 1 RFP Attachments and Appendices, Label **P**.

The Offeror may request a release of the bond after the date of the award in return for a release signed by the Contractor and accepted by MLGCA

The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

4.38.2 Performance Bond

- A. The successful Offeror shall deliver a Performance Bond, or other suitable security, to the State after notification of recommended award.
- B. The successful Offeror must submit a Performance Bond, or other suitable security up to the agreed upon amount of \$1,000,000.00, guaranteeing that the Contractor shall well and truly perform the Contract.

- C. The Performance Bond shall be in the form provided in Section 7, Table 1 RFP Attachments and Appendices, Label Q and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the State, or other acceptable security for bond as described in COMAR 21.06.07
- D. The Performance Bond shall be maintained throughout the term of the Contract, and renewal option period(s), if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the State.
- E. The Performance Bond may be renewable annually. The Contractor shall provide to the State, thirty (30) days before the annual expiration of the bond, confirmation from the surety that the bond will be renewed for the following year. Failure to timely provide this notice shall constitute an event of default under the Contract. Such a default may be remedied if the Contractor obtains a replacement bond that conforms to the requirements of the Contract and provides that replacement bond to the State prior to the expiration of the existing Performance Bond.
- F. The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.
- G. After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the MLGCA's sole discretion. If any reduction is granted, the MLGCA's shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the MLGCA's sole discretion.

4.38.3 Surety Bond Assistance Program

Assistance in obtaining bid, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDF). MSBDF can directly issue bid, performance or payment bonds up to \$750,000. MSBDF may also guarantee up to 90% of a surety's losses as a result of a Contractor's breach of Contract; MSBDF exposure on any bond guaranteed may not, however, exceed \$900,000. Bonds issued directly by the program will remain in effect for the duration of the Contract, and those surety bonds that are guaranteed by the program will remain in effect for the duration of the surety's exposure under the Contract. To be eligible for bonding assistance, a business must first be denied bonding by at least one surety on both the standard and specialty markets within ninety (90) days of submitting a bonding application to MSBDF. The applicant must employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75 percent of the work, and the business or its principals must have a reputation of good moral character and financial responsibility. Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of

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the state's tax base. Applicants are required to work through their respective bonding agents in applying for assistance under the program. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Commerce
Maryland Small Business Development Financing Authority
MMG Ventures
826 E. Baltimore Street
Baltimore, Maryland 21202
Phone: (410) 333-4270
Fax: (410) 333-2552

4.39 Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

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5 Proposal Format

5.1 Two Part Submission

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

- 1) Volume I – Technical Proposal
- 2) Volume II – Financial Proposal

5.2 Proposal Delivery and Packaging

5.2.1 General

- A. Proposals delivered by facsimile and email shall not be considered.
- B. Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.
- C. The Procurement Officer must receive all Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, proposals received by the Procurement Officer after the due date will not be considered.
- D. Offerors shall provide their Proposals in two separate envelopes through eMMA following the [Quick Reference Guides](#) (QRG) labeled “5 - eMMA QRG Responding to Solicitations (RFP)” for double envelope submissions.

5.2.2 Two Part (Double Envelope) Submission:

- A. Technical Proposal consisting of:
 - 1) Technical Proposal and all supporting material in Microsoft Word format, version 2007 or greater;
 - 2) Technical Proposal in searchable Adobe PDF format;
 - 3) A second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see Section 4.8); and
- B. Financial Proposal consisting of:
 - 1) Financial Proposal entered into the price form spreadsheet within eMMA and all supporting material in Excel format;
 - 2) Financial Proposal in searchable Adobe PDF format; and
 - 3) A second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see Section 4.8).

5.2.3 Submission of Proposals

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- A. General. Offerors may submit Proposals by hand or by mail as described below to the address provided in the Key Information Summary Sheet.
- B. Mail. Any Proposal received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. The State recommends a delivery method for which both the date and time of receipt can be verified.
- C. Hand Delivery. For hand-delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror.
- D. Late Proposals. The Procurement Officer must receive all Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.

5.2.4 Number and Manner of Packaging of Proposals

Offerors shall provide their Proposals in two (2) separately sealed and labeled packages as follows:

- A. 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;
 - 3) An electronic version of the Technical Proposal in Microsoft Word format, version 2007 or greater;
 - 4) The Technical Proposal in searchable Adobe PDF format; and
 - 5) A second searchable Adobe PDF copy of the Technical Proposal with confidential and proprietary information redacted (see Section 4.8).
- B. Volume II - Financial Proposal consisting of:
 - 1) One (1) original executed Financial Proposal and all supporting material marked and sealed;
 - 2) Four (4) duplicate copies of the above separately marked and sealed;
 - 3) An electronic version of the Financial Proposal in searchable Adobe PDF format; and
 - 4) A second searchable Adobe PDF copy of the Financial Proposal, with confidential and proprietary information redacted (see Section 4.8).

5.2.5 Information on Physical Proposal Packages

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- A. Outside Package Labeling. Affix the following to the outside of each sealed Proposal. Include on the outside packaging of each volume: the name, email address, and telephone number of a contact person for the Offeror.
- B. Physical Packaging. Unless the resulting package will be too unwieldy, the State's preference is for the separately sealed Technical and Financial Proposals to be submitted together in a single package to the Procurement Officer and including a label bearing:
 - 1) RFP title and number;
 - 2) Name and address of the Offeror; and
 - 3) Closing date and time for receipt of Proposals.

5.2.6 Information on Electronic Proposal Packages

- A. General. Label each electronic media (CD, DVD, or flash drive) on the outside with the RFP title and number, name of the Offeror, and volume number. Electronic media must be packaged with the original copy of the appropriate Proposal (Technical or Financial).
- B. Two Part Submission.
 - 1) Technical Proposal consisting of:
 - a. Technical Proposal and all supporting material in Microsoft Word format version 2007 or greater;
 - b. Technical Proposal in searchable Adobe PDF format; and
 - c. A second searchable Adobe copy of the Technical Proposal, with confidential and proprietary information redacted (see Section 4.8); and
 - 2) Financial Proposal consisting of:
 - a. Financial Proposal and all supporting material in Excel format;
 - b. Financial Proposal in searchable Adobe PDF format; and
 - c. A second searchable Adobe copy of the Financial Proposal, with confidential and proprietary information removed (see Section 4.8).

5.3 Volume I - Technical Proposal

NOTE: Omit all pricing information from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

In addition to the instructions below, responses in the Offeror's Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., "Section 2.2.1 Response . . ."; "Section 2.2.2 Response . . ."). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

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

- A. Title Page and Table of Contents (Submit under TAB A)
 - 1) Title Page. The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP.
 - 2) Table of Contents. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.
- B. Claim of Confidentiality (If applicable, submit under TAB A-1)
 - 1) General. Any information which is claimed to be confidential or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal. The same will be requested separately in the Financial Proposal.
 - 2) Explanation – No Blanket Designation. An explanation for each claim of confidentiality shall be included (see **Section 4.8 “Public Information Act Notice”**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.
- C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)
 - 1) Offeror Information Sheet. The Offeror Information Sheet (see **Appendix 2**) shall accompany the Technical Proposal. Appendix 2 is the form of the Offeror Information Sheet.
 - 2) Transmittal Letter. A Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and time. The Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.
- D. Executive Summary (Submit under TAB C)
 - 1) General. The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”
 - 2) Subsidiary Information. The Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).
 - 3) Exceptions Taken. The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or

any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. **Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**

E. Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in **Section 1** and below in paragraph F.5).

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

- 1) General. The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement.
- 2) Explanation. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order, and shall contain a cross reference to the requirement.
- 3) Exceptions. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
- 4) Description. The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP Section 2, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan.
- 5) Implementation Schedule. The Offeror shall provide the proposed implementation schedule with its Proposal. The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in Section 3.8.
- 6) Non-Compete Clause Prohibition:

The MLGCA seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, each Offeror shall agree that if awarded the Contract, the Offeror's employees and agents filling the positions set forth in the staffing requirements of Sections 2 and 3.10 working on the State contract shall be free to work for the contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.

- 7) References. At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP Section 1) may be used to meet this request. The MLGCA reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:
- a. Name of client organization;
 - b. Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
 - c. Value, type, duration, and description of goods and services provided.

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

- 1) General. Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:
- a. The State contracting entity;
 - b. A brief description of the goods and services provided;
 - c. The dollar value of the contract;
 - d. The term of the contract;
 - e. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and

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- f. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.
 - 2) Responsibility. Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.
- H. Financial Capability (Submit under TAB J)
- 1) General. The Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).
 - 2) Supplement. In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:
 - a. Dun & Bradstreet Rating;
 - b. Standard and Poor's Rating;
 - c. Lines of credit;
 - d. Evidence of a successful financial track record; and
 - e. Evidence of adequate working capital.
- I. Certificate of Insurance (Submit under TAB K)
- The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in Section 3.6. See Section 3.6 for the required insurance certificate submission for the apparent awardee.
- J. Subcontractors (Submit under TAB L)
- The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.
- K. Legal Action Summary (Submit under TAB M)
- This summary shall include:

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

L. Technical Proposal - Required Forms and Certifications (Submit under TAB O)

All forms required for the Technical Proposal are identified in Table 1 of Section 7 – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.

5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in Attachment B. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Any information which is claimed to be confidential or proprietary information should be identified with specificity. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the MLGCA.

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6 Evaluation and Selection Process

6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Qualified Offeror oral presentations and discussions, and provide input to the Procurement Officer. The MLGCA reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate. Due to the nature of the services provided, the Technical proposal shall be weighted with a higher importance than the financial proposal. This weighted value is Technical/Financial (60/40%)

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

6.2 Technical Proposal Evaluation Criteria

- A. The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.
 - 1) Offeror's Technical Response to Requirements and Work Plan (See RFP § 2, for applicable Functional Area)
 - 2) Experience and Qualifications of Proposed Staff (See RFP § 3.10)
 - 3) Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 2, for applicable Functional Areas)
 - 4) In-Person demonstrations of products and services
- B. The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors will be ranked from the lowest price to the highest price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B** - Financial Proposal Form.

Lowest price proposals are considered most advantageous to the State wherein the highest price proposals are considered least advantageous to the State. The Financial Proposal, however, is weighted only 40% of the Offeror's whole submission.

6.4 Reciprocal Preference

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

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

6.5 Selection Procedures

6.5.1 General

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

6.5.2 Selection Process Sequence

- A. A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal.
- B. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such

discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.

- C. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- D. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- E. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. Offerors may only perform limited substitutions of proposed personnel as allowed in Section 3.10.11 (Substitution of Personnel).

6.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors. Due to the nature of the services provided, the Technical proposal shall be weighted with a higher importance than the financial proposal. This weighted value is Technical/Financial (60/40%)

6.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – RFP Attachments and Appendices**.

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7 RFP ATTACHMENTS AND APPENDICES

Instructions Page

A Proposal submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as “with Proposal” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Proposal:

- 1) For e-mail submissions, submit one (1) copy of each with signatures.
- 2) For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

Table 1: RFP ATTACHMENTS AND APPENDICES

A pp lie s?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf)
Y	With Proposal	D	MBE Forms D-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf) IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each

ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES

RFP Document

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A pp lie s?	When to Submit	Label	Attachment Name
			Functional Area or Service Category where there is a MBE goal.
Y	10 Business Days after recommended award	D	<p>MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf)</p> <p>Important: Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.</p>
Y	As directed in forms	D	<p>MBE Forms D-4A, D-4B, D-5 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf)</p>
Y	With Proposal	E	<p>Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf)</p> <p>IMPORTANT: If this RFP contains different Functional Areas or Service Categories. A separate Attachment E-1A is to be submitted for each Functional Area or Service Category where there is a VSBE goal.</p>
Y	5 Business Days after recommended award	E	<p>VSBE Forms E-1B, E-2, E-3 (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf)</p> <p>Important: Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award.</p>
Y	With Proposal	F	<p>Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf)</p>

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A pp lie s?	When to Submit	Label	Attachment Name
N	With Proposal	G	Federal Funds Attachments (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf)
Y	With Proposal	H	Conflict of Interest Affidavit and Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf)
Y	5 Business Days after recommended award – However, suggested with Proposal	I	Non-Disclosure Agreement (Contractor) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf)
N	5 Business Days after recommended award – However, suggested with Proposal	J	HIPAA Business Associate Agreement (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf)
N	With Proposal	K	Mercury Affidavit (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf)
N	With Proposal	L	Location of the Performance of Services Disclosure (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf)
Y	5 Business Days after recommended award	M	Sample Contract (included in this RFP)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf)
N	5 Business Days after recommended award	O	DHS Hiring Agreement (see link at https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf)

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Y	5 Business Days after recommended award	P	Performance Bond (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-z-Performance-Bond.dotx)
Y	With Proposal	Q	Proposal Bond (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-y-Bid_Proposal-Bond.dotx)
Appendices			
A pp lie s?	When to Submit	Label	Attachment Name
N	n/a	1	Abbreviations and Definitions (included in this RFP)
Y	With Proposal	2	Offeror Information Sheet (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf)
Y	Before Proposal, as directed in the RFP.	3	Non-Disclosure Agreement (Offeror) (see link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/Appendix-3-Non-Disclosure-Agreement-Offeror-1.dotx)
Additional Submissions			
A pp lie s?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see Section 3.6); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy

**ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB &
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Y	10 Business Days after recommended award		Fully executed Escrow Agreement; 1 copy
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Attachment A. Pre-Proposal Conference Response Form

Solicitation Number 2023-07

ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES

A Pre-Proposal conference will be held on 09/26/2024 at 1 p.m. 1800 Washington Blvd, Baltimore MD 21230. Attendance is either virtual or in person. (Online Link below)

Please return this form by 09/23/2024 - 5 p.m. advising whether or not your firm plans to attend. The completed form should be returned via e-mail to the Procurement Officer at the contact information below:

John Lloyd
MLGCA
E-mail: John.Lloyd@maryland.gov

Please indicate:

	Yes, the following representatives will be in attendance.
	Attendees (Check the RFP for limits to the number of attendees allowed):
	1.
	2.
	3.
	No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 “Pre-Proposal conference”):

Offeror: _____
Offeror Name (please print or type)

By: _____
Signature/Seal

Printed Name: _____
Printed Name

Title: _____
Title

Date: _____
Date

Online Information for the Pre-Proposal Conference

Pre-Proposal Conference Meeting Link / information:

Thursday, September 26 · 1:00 – 2:00pm Time zone: America / New York

Google Meet joining info Video call link: <https://meet.google.com/ccd-axky-tvi>

Or dial: (US) +1 786-886-2318 PIN: 855 028 442#

Attachment B. Financial Proposal Instructions & Form

B-1 Financial Proposal Instructions

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

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

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03.F, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
 - 1.) Annual Spend/Budget: is a value used to calculate one cost (dollar value) proposed by each offeror, vs trying to compare the proposed costs by budget level.

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- 2.) The weights or percentages assigned to each budget/spend level equate to the probability of the corresponding spend level of the project to the selected offeror. MLGCA advertising budget is subject to change, via legislation. MLGCA has fees for a range of budgets, the percentages correspond to how likely it is we will actually spend at that level.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the MLGCA does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.
- K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

B-1 Financial Proposal Form

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

See separate Excel Financial Proposal Form labeled Advertising RFP financial proposal form.

Submitted by:

Offeror:

Offeror Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

Attachment C. Proposal Affidavit

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf.

Attachment D. Minority Business Enterprise (MBE) Forms

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>.

This solicitation includes a Minority Business Enterprise (MBE) participation goal of Functional Area I 30% percent and no sub goals, and Functional Area II 5% percent and no sub goals

Attachment E. Veteran-Owned Small Business Enterprise (VSBE) Forms

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf>.

This solicitation includes a VSBE participation goal of Functional Area I 1% percent and no sub goals, and Functional Area II 1% percent and no sub goals.

**Attachment F. Maryland Living Wage Affidavit of Agreement for
Service Contracts**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

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

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

Attachment G. Federal Funds Attachments

This solicitation does not include a Federal Funds Attachment.

Attachment H.

Conflict of Interest Affidavit and Disclosure

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>

Attachment I. Non-Disclosure Agreement (Contractor)

This solicitation does not require a Non-Disclosure Agreement.

Attachment J. HIPAA Business Associate Agreement

This solicitation does not require a HIPAA Business Associate Agreement.

Attachment K. Mercury Affidavit

This solicitation does not include the procurement of products known to likely include mercury as a component.

Attachment L. Location of the Performance of Services Disclosure

This solicitation does not require a Location of the Performance of Services Disclosure.

Attachment M. Contract

Maryland Lottery and Gaming Control Agency (MLGCA)

“ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES”

Contract #2023-07

THIS CONTRACT (the “Contract”) is made this ___ day of _____, 20___ by and between _____ (the “Contractor”) and the STATE OF MARYLAND, acting through the Maryland State Lottery and Gaming Control Agency (“MLGCA” or the “MLGCA”).

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

1. Definitions

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

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).
- 1.3 “Financial Proposal” means the Contractor’s [pick one: Financial Proposal or Best and Final Offer (BAFO)] dated _____ (Financial Proposal date or BAFO date).
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES, Solicitation # 2023-07, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. _____ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

2. Scope of Contract

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the

Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

- 3.1 The term of this Contract begins on the date the Contract is signed by the MLGCA following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue for three (3) years until _____ ("Initial Term").
- 3.2 In its sole discretion, the MLGCA shall have the unilateral right to renew the Contract for two (2) renewal option periods of two (2) years (each a "Renewal Term") at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

4. Consideration and Payment

Solicitation #: 2023-07

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the MLGCA shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

- 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 MLGCA's receipt of a proper invoice from the Contractor as required by RFP section 3.3.

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

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

The State is not liable for interest:

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

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

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

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

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

5. Rights to Records

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in Section 7.2), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the MLGCA or developed by Contractor relating to the Contract, except as provided for in Section 8. Confidential or Proprietary Information and Documentation.

7. Patents, Copyrights, and Intellectual Property

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

- 7.2 Except for (A) information created or otherwise owned by the MLGCA or licensed by the MLGCA from third parties, including all information provided by the MLGCA to Contractor; (B) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (C) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the MLGCA will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of Section 10, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.
- 7.4 Without limiting Contractor’s obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which

the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

- 7.7 The Contractor shall report to the MLGCA, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the MLGCA’s consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the MLGCA shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor’s computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State’s confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State’s confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract.
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

9. Loss of Data

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

damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.

- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in RFP Section 3.7.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in RFP Section 3.7.

10. Indemnification and Notification of Legal Requests

- 10.1. At its sole cost and expense, Contractor shall (a) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (b) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (a) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (b) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request.

11. 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.

12. Disputes

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

13. Maryland Law Prevails

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

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, 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.

15. Contingent Fee Prohibition

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

16. Non-Availability of Funding

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

termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Default

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

18. Termination for Convenience

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

19. Delays and Extensions of Time

- 19.1 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 or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 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.

20. Suspension of Work

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

21. Pre-Existing Regulations

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

22. Financial Disclosure

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

23. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the Contract Term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: http://www.elections.state.md.us/campaign_finance/index.html.

24. Retention of Records

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

25. Right to Audit

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data,

statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.

- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The MLGCA 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 MLGCA's election. The MLGCA may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the MLGCA has the right to audit such subcontractor(s).

26. Compliance with Laws

The Contractor hereby represents and warrants that:

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

27. Cost and Price Certification

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 27.2 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.

28. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include

such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

29. Limitations of Liability

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

- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in Section 7 "Patents, Copyrights, Intellectual Property" of this Contract;
- (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
- (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
- (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.

29.2 Contractor's indemnification obligations for Third party claims arising under Section 10 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

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

30. Commercial Nondiscrimination

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

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

- 30.2 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.3 The Contractor shall include the language from 30.1, or similar clause approved in writing by the MLGCA, in all subcontracts.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MLGCA, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
 - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
 - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MLGCA concerning a withheld payment between the Contractor and a subcontractor under this Section 31, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the MLGCA and the Contractor in any other proceeding; or

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(c) Result in liability against or prejudice the rights of the MLGCA.

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the MLGCA 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.

(b) Verification shall include a review of:

- i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
- ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.

(c) If the MLGCA determines that the Contractor is not in compliance with certified MBE participation goals, then the MLGCA will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

(d) If the MLGCA determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the MLGCA requires, then the MLGCA may:

- i. Terminate the Contract;
- ii. Refer the matter to the Office of the Attorney General for appropriate action; or
- iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

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

32. 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 MLGCA may withhold payment of any invoice or retainage. The MLGCA may

require certification from the Commissioner on a quarterly basis that such records were properly submitted.

33. Use of Estimated Quantities

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

34. Risk of Loss; Transfer of Title

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

35. Effect of Contractor Bankruptcy

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

36. Miscellaneous

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g., and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

37. Contract Monitor and Procurement Officer

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

38. 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:

Jill Baer
1800 Washington Blvd, suite 330, Baltimore MD 21230
Phone Number: 410-230-8792
E-Mail: jill.baer@maryland.gov

With a copy to:

John Lloyd
Maryland Lottery and Gaming Control Agency (MLGCA)
1800 Washington Blvd, suite 330, Baltimore MD 21230
Phone Number: 410-230-8886
E-Mail: john.lloyd@maryland.gov

If to the Contractor:

(Contractor's Name)
(Contractor's primary address)
Attn: _____

39. Liquidated Damages for MBE

- 39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.
- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against

liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$100.00 per day until the monthly report is submitted as required.
- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$1000.00 per MBE subcontractor.
- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e)

39.3 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

40. Parent Company Guarantee (If applicable)

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor's Parent Company to guarantee performance of the Contractor. The guarantor/Contractor's Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.

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

41. Limited English Proficiency

The Contractor shall provide equal access to public services to individuals with limited English proficiency in compliance with Md. Code Ann., State Government Article, §§ 10-1101 et seq., and

Policy Guidance issued by the Office of Civil Rights, Department of Health and Human Services, and MDH Policy 02.06.07.

SIGNATURES ON NEXT PAGE

ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB & SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES

RFP Document

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

Contractor	State of Maryland Maryland Lottery and Gaming Control Agency(MLGCA)
By:	By: <<agencyContractSigner>>, <<agencyContractSignerTitle>>
Date	
PARENT COMPANY (GUARANTOR) (if applicable)	By:
_____	_____
By:	Date

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

**ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB &
SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES**

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RFP Document

Attachment N.

Contract Affidavit

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2020/03/Attachment-N-Affidavit.pdf>.

Attachment O. DHS Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

**ADVERTISING, MARKETING, MEDIA, DIGITAL, WEB &
SOCIAL MEDIA, RESEARCH, AND RELATED SERVICES**

Solicitation #: 2023-07

RFP Document

Attachment P: Corporate Diversity Addendum

See link at

https://dat.maryland.gov/SDAT%20Forms/PPR_Forms/2023_Corporate_Diversity_Addendum.pdf

Appendix 1. Abbreviations and Definitions

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

1. Acceptable Use Policy (AUP) - A written policy documenting constraints and practices that a user must agree to in order to access a private network or the Internet.
2. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
3. Application Program Interface (API) – Code that allows two software programs to communicate with each other.
4. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
5. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
6. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
7. 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. The MLGCA may change the Contract Monitor at any time by written notice to the Contractor.
8. Contractor – The selected Offeror that is awarded a Contract by the State.
9. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
10. Creative Work – Includes all elements that make up certain work to be provided under Functional Area I such as advertising campaigns, promotions, point of sale collateral, signage, concepts for retail merchandising,
11. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
12. eMMA – eMaryland Marketplace Advantage (see RFP Section 4.2).

13. Enterprise License Agreement (ELA) – An agreement to license the entire population of an entity (employees, on-site contractors, off-site contractors) accessing a software or service for a specified period of time for a specified value.
14. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
15. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; (c) Solutions and (d) associated consulting services.
16. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP Sections 3.10.
17. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
18. Maryland Lottery and Gaming Control Agency or (MLGCA or the “MLGCA”).
19. Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
20. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: www.dbm.maryland.gov – keyword: State Holidays.
21. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
22. NTP Date – The date specified in an NTP for work on Contract, project, Task Order or Work Order to begin.
23. Offeror – An entity that submits a Proposal in response to this RFP.
24. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

25. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The MLGCA may change the Procurement Officer at any time by written notice to the Contractor.
26. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
27. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
28. Request for Proposals (RFP) – This Request for Proposals issued by the Maryland Lottery and Gaming Control Agency (MLGCA), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
29. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
30. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
31. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
32. Service Level Agreement - Commitment by the Contractor to the MLGCA that defines the performance standards the Contractor is obligated to meet.
33. Software - The object code version of computer programs licensed pursuant to this Contract. Embedded code, firmware, internal code, microcode, and any other term referring to software that is necessary for proper operation is included in this definition of Software. Software includes all prior, current, and future versions of the Software and all maintenance updates and error corrections. Software also includes any upgrades,

updates, bug fixes or modified versions or backup copies of the Software licensed to the State by Contractor or an authorized distributor.

34. Software as a Service (SaaS) - A software licensing and delivery model in which software is licensed on a subscription basis and is centrally hosted. For the purposes of this RFP, the terms SaaS and PaaS are considered synonymous and the term SaaS will be used throughout this document.
35. Solution – The IT systems and processes used to address a particular issue as described in the RFP.
36. Source Code – Executable instructions for Software in its high level, human readable form which are in turn interpreted, parsed and/or compiled to be executed as part of a computing system.
37. State – The State of Maryland.
38. System Availability – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.
39. System Documentation – Those materials necessary to wholly reproduce and fully operate the most current deployed version of the Solution in a manner equivalent to the original Solution including, but not limited to:
 - a. Source Code: This includes source code created by the Contractor or subcontractor(s) and source code that is leveraged or extended by the Contractor for use in the Contract;
 - b. All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;
 - c. All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;
 - d. All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer’s notes and other documentation;
 - e. A complete list of Third Party, open source, or commercial software components and detailed configuration notes for each component necessary to reproduce the system (e.g., operating system, relational database, and rules engine software);
 - f. All associated user instructions and/or training materials for business users and technical staff, including maintenance manuals, administrative guides and user how-to guides; and
 - g. Operating procedures.
40. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.

41. Third Party Software – Software and supporting documentation that:
 - a. are owned by a third party, not by the State, the Contractor, or a subcontractor;
 - b. are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and
 - c. are specifically identified and listed as Third Party Software in the Proposal.
42. Total Proposal Price - The Offeror's total price for goods and services in response to this solicitation, included in Financial Proposal Attachment B – Financial Proposal Form.
43. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
44. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

2) Appendix 2. Offeror Information Sheet

See link at http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf.

3) Appendix 3. Advertising and Marketing Guidelines

ADVERTISING AND MARKETING GUIDELINES

Maryland Lottery and Gaming Control Agency (“MLGCA”) advertising and marketing initiatives must always be in good taste and must not make unsubstantiated promises. The Contractor(s) shall adhere to the following advertising guidelines when developing any marketing program for the MLGCA.

Maryland Lottery advertising shall not:

- A. Contain any off-color humor. Humorous advertising is paramount, but must reflect clean fun;
- B. Unduly influence the viewer;
- C. Over promise;
- D. Show a change of lifestyle. Advertising shall not present, directly or indirectly, any Maryland Lottery game as a potential means of relieving any person’s financial or personal difficulty;
- E. Portray product abuse, excessive play or preoccupation with gambling. It should also not imply or portray any illegal activity;
- F. Make fun of other’s pain, misfortune or impairment, physique, nor should advertising degrade the image or status of persons of any ethnic, minority or religious group;
- G. Show any form of cruelty and/or abuse of animals;
- H. Specifically target with the intent to exploit a person or specific group or economic class;
- I. Create the perception that the Maryland Lottery has control over where winning tickets are sold and/or purchased;
- J. Stereotype Marylanders; and
- K. Solicit minors or children.

4) Appendix 4. MLGCA Responsible Gaming Guidelines

MARYLAND LOTTERY AND GAMING CONTROL AGENCY RESPONSIBLE GAMING MARKETING AND ADVERTISING POLICIES AND STANDARDS

PURPOSE

To establish the best practices to ensure all marketing and advertising for the Maryland Lottery and Gaming Control Agency meet the Responsible Gaming guidelines adopted by the Agency.

BACKGROUND

The Maryland Lottery and Gaming Control Agency recognizes the importance of marketing its games in a responsible manner. MLGCA has adopted several of the best practices for responsible gaming marketing and advertising from the World Lottery Association. MLGCA encourages responsible decision-making regarding lottery play by adults, and discourages the abusive use of lottery products and recognizes the importance our marketing/advertising plays in those decisions. The WLA guidelines we have accepted pertain to General Principles, Tone, Minors, and Game Information. MLGCA is committed to applying the Best Practices in these three areas to all of its Marketing and Advertising materials.

POLICY

1. All marketing, advertising, and communications initiatives will adhere to the guidelines and requirements outlined in the Standards section and pertain to the following:
 - a. General Principles
 - b. Tone
 - c. Minors
 - d. Game Information

STANDARDS

General Principles

1. Marketing communications should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
 - a. Marketing communications should neither contain nor imply lewd or indecent language, images nor actions.
 - b. Marketing communications should not portray product abuse, repetitive or uncontrolled purchases, excessive play nor a preoccupation with gambling.
 - c. Marketing communications should not imply nor refer to, or portray any illegal activity.
 - d. Marketing communications should not give rise to the hope in players' minds that all the participating players will win high prizes.
2. Marketing communications should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
3. Marketing communications by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
4. Marketing communications should not encourage people to play excessively nor beyond their means.
 - a. Advertising and marketing materials should include a responsible play message when appropriate.
 - b. Responsible play public service or purchased media messages are appropriate.
 - c. Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising. This may include messages at point of purchase relating to risks of excessive gaming.
 - d. Marketing communications should not present, directly nor indirectly, that playing games of chance is required in order to fulfil family obligations, achieve financial success or solve personal problems.
 - e. Marketing communications should not exhort play as a means of recovering past gambling nor other financial losses.
 - f. Marketing communications should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product

Tone

1. The Lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment nor a way to achieve financial security.
2. Lottery advertisements should not be designed so as to imply urgency, should not make false promises and should not present winning as the probable outcome.
3. Marketing communications should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
4. Marketing communications should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
5. Marketing communications should not exhort the public to wager by directly or indirectly

misrepresenting a person's chance of winning a prize.

6. As lottery games are purely games of chance, marketing communications should not imply that lottery games are games of skill

Minors

1. Persons depicted as lottery purchasers or players in lottery advertising should not be, nor appear to be, under the legal purchase age.
2. Age restrictions should, at a minimum, be posted at the point of sale.
3. Marketing communications should not appear in media directed primarily at, or considered to be primarily viewed by, those under the legal age.
4. Lotteries should not be advertised nor marketed at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
5. Marketing communications should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.
 - a. The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
 - b. Celebrity or other testimonials should not be used which would primarily appeal to persons under the legal purchase age

Game Information

1. Game information including rules, terms and conditions, and odds of winning must be readily available to the public and be clearly stated.
2. Marketing communications should state alternative cash and annuity values where reasonable (such as space limitations) and appropriate.

The Maryland Lottery Programming ‘To Avoid’ Guidelines

The purpose of this document is to establish broadcast purchasing and placement parameters for the Maryland Lottery. The goal is to ensure that Maryland Lottery advertising runs in programs that are considered appropriate for the Maryland Lottery brand.

These guidelines have been developed by 9Rooftops, the Maryland Lottery’s (MLG) media AOR, in conjunction with MLG and will be effective immediately. MLG ‘s Programming Guidelines will be reviewed regularly and updated as current events dictate.

Television/Cable/Radio Programming to Avoid:

General Guidelines

- Controversial Adult Content

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- For example, programs with extreme/excessive profanity, obscene, sexually suggestive, or nude content that goes beyond what is normally aired on major broadcast networks.
- Political Programming (Debates, Conventions, Special Interviews, etc.)
 - MLG should not run in the last two commercial pod breaks leading up to a political program (i.e., 8pm prime or prime access) or the first two pod breaks afterward (i.e., late news)
- Kids/Family/Anime/Animation/Cartoons/Video Gaming (includes prime programming that features/revolves around kids)
- Holiday programming targeted primarily towards children (Rudolph, Frosty, etc.)
- Religious programming
- National cable news networks
- Highly sensitive topic/catastrophic event programming
- Radio news/talk commentary or hosted talk shows. However, buying/running in 100% news, weather, traffic or sports programming within any news/talk radio station is acceptable. NOTE: If this programming cannot be purchased alone, the station may not be purchased.

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5) Appendix 5 FY'25 Contracts and Commitments to be Honored by the Contractors

ANTICIPATED FY'26 CONTRACTS and COMMITMENTS to be HONORED			
Vendor	Project	Term	Status
PROFESSIONAL TEAM SPONSORSHIPS			
Baltimore Ravens	Team Sponsorship	August 2025 - January 2026	The 2025 season sponsorship will be negotiated and finalized in the spring of 2024.
Washington Commanders	Team Sponsorship	August 2025 - January 2026	The Lottery anticipates sponsorship negotiations will begin in the Spring of 2025, but the sponsorship may not be finalized until early FY26.
Baltimore Orioles	Team Sponsorship	April - September 2025	The Orioles 2025 season sponsorship will be finalized in early 2025. The term of the sponsorship will be split between fiscal years. FY25 = April - June; FY26 = July - September. The current agency will be responsible for the FY25 portion and the appointed agency will be responsible for the FY26 portion.
MASN-TV (Orioles)	Team Sponsorship	April - September 2025	The MASN-TV 2024 season sponsorship will be finalized in early 2025. The term of the sponsorship will be split between fiscal years. FY25 = April - June; FY26 = July - September. The current agency will be responsible for the FY25 portion and the appointed agency will be responsible for the FY26 portion.
UNIVERSITY SPONSORSHIPS			
University of Maryland	Team Sponsorship	2025 - 2026 School Year	The Lottery has existing sports sponsorships with UMD, TU, and MSU

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Towson University	Team Sponsorship	2025 - 2026 School Year	and expects these relationships will continue in the 2025-2026 school year. The sponsorship negotiations will begin in the spring of 2025 but agreements may not be finalized until the summer of 2025 when the new agency term begins.
Morgan State University	Team Sponsorship	2025 - 2026 School Year	
OUT-OF-HOME			
Clear Channel Outdoor	Digital Bulletins: 3 networks that run consistently throughout the year	July 2025 - June 2026	The FY26 agreements will be finalized in spring 2025.
Maryland Outdoor	4 Jackpot Bulletins: Carroll County, Bel Air, 895/95 in Baltimore City, Hagerstown.	July 2025 - June 2026	
Clear Channel Outdoor	2 Jackpot Bulletins: 95 in Baltimore, Route 50 in Prince George's County.	July 2025 - June 2026	
OUTFRONT	Metro Dioramas - Jackpot Displays and Liveboards	July 2025 - June 2026	
Sunshine Electronics	Jackpot Display Units for the Jackpot Bulletins and Metro Dioramas	July 2025 - June 2026	
PRODUCT CAMPAIGNS			

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Product campaigns in July - September 2025	Media Elements TBD - TV, Radio, Digital, Social, Out-of-Home	July 2025 - September 2025	While the Lottery expects to keep any requests to a minimum, the current agency may be asked to plan and place media buys for products launching in July - September 2025. If media is placed during this window, the Lottery's agency of record will be expected to take over any placed media beginning on 7/1/2025.
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*The vendor contract list is representative of what the MLGCA anticipates at this time; however, new contracts may be added at any point. Any contract that is finalized for the FY'26 term will include agency transfer language.