

State of Maryland

MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA)

Request for Proposals (RFP)

RANDOM NUMBER GENERATOR (“RNG”) SYSTEM FOR MLGCA

RFP Number: 2022-15

(E75R2600003)

Issue date: MAY 18, 2022

NOTICE

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

Minority Business Enterprises Are Encouraged to Respond to this Solicitation.

**VENDOR FEEDBACK FORM**

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

**Title: RANDOM NUMBER GENERATOR SYSTEM FOR MLGCA**

**Solicitation No: #2022-15**

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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State of Maryland

MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA)

Key Information Summary Sheet

|  |  |
| --- | --- |
| **Request for Proposals** | SERVICES: RANDOM NUMBER GENERATOR SYSTEM (RNG) FOR MLGCA (#2022-15) |
| **Solicitation Number:** | #2022-15 |
| **RFP Issue Date:** | May 18, 2022 |
| **RFP Issuing Office:** | MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA) |
| **Procurement Officer:** | Robert HowellsMaryland State Lottery and Gaming Control AgencyMontgomery Park Business Center1800 Washington Blvd., Suite 330Baltimore, MD 21230 |
| **E-mail:****Office Phone:** | Robert.Howells@Maryland.gov 410-230-8789 |
| **Proposals are to be sent to:** | Maryland State Lottery & Gaming Control AgencyMontgomery Park Business Center1800 Washington Blvd., Suite 330Baltimore, MD 21230Attention: Robert Howells, Procurement Officer  |
| **Pre-Proposal Conference:** | May 26, 2022; 1:00 PM (Local Time) NOTE: **Conference will be held by Video Teleconference**See **Attachment A** for instructions.  |
| **Questions Due Date and Time** | June 14, 2022 by 5:00 p.m. Local Time (See Section 4.3) |
| **Proposal Due (Closing) Date** **and Time:**  | **June 22, 2022 at 2:00 p.m. Local Time**Offerors are reminded that a completed Vendor Feedback Form is requested if a no-bid decision is made (see **page iv**). |
| **MBE Subcontracting Goal:****VSBE Subcontracting Goal:** | N/A N/ANote: MLGCA’s MBE Liaison/VSBE Coordinator is:Roslyn FullerMBE/SBR/VSBE CoordinatorMaryland Lottery and Gaming1800 Washington Blvd., Suite 330Baltimore, MD 21230Roslyn.Fuller@maryland.gov(410) 230-8887 |
| **Contract Type:** | Combination Firm Fixed Price with an Indefinite Quantity-Firm Fixed Unit Price component in accordance with COMAR 21.06.03.02 & 21.06.03.06. |
| **Contract Duration:** | The Contract awarded as a result of this RFP will be for a Four (4) year operational Initial Term. The MLGCA, at its sole option, shall have the unilateral right to extend the Contract for one (1) additional four (4) year renewal period, for a total contract term of approximately eight (8) years.The Implementation Period shall be the period of time from the Effective Date of the Contract that results from this RFP until the Go Live Date, during which time the Contractor shall install the System including all required components, and prepare to commence live operations. The Contractor shall not be paid or accrue the right to any payments from the State during the Implementation Period.The Effective Date for the Contract is estimated to be approximately October 15, 2022; the Go Live Date for the RNG System to be fully operational shall be not later than December 15, 2022. |
| **Primary Place of Performance:** | Maryland State Lottery & Gaming Control AgencyMontgomery Park Business Center1800 Washington Blvd., Suite 330Baltimore, MD 21230Or as proposed by Offeror/Contractor |
| **SBR Designation:** | No |
| **Federal Funding:** | No |

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# Minimum Qualifications

## Offeror Minimum Qualifications

As part of the determination to be considered reasonably susceptible of being selected for award, the Offeror shall document in its Proposal that the following Minimum Qualifications have been met:

### EXPERIENCE

The Offeror shall have a minimum of five (5) years of experience with the operation of Random Number Generator (RNG) Systems similar to what is being proposed.

### SYSTEMS IN OPERATION

The Offeror shall have a minimum of three (3) RNG Systems currently in operation, at least two (2) of which shall be in the United States or Canada.

### CERTIFICATION

The Offeror’s proposed RNG System shall be certified by Gaming Laboratories International (GLI) or other comparable nationally recognized testing laboratory, subject to MLGCA approval.

**1.1.4 EXISTING SYSTEM**

The software and hardware proposed shall currently be in operation in a regulated jurisdiction, with the exception that equivalent or improved newer releases or models of the proposed products and their architectures are acceptable at time of installation as accepted by and agreed to in writing by the MLGCA. The MLGCA shall not accept configuration items that are at the specifications or concept stage only, early in development, or that are products announced but not yet engineered and ready for manufacture and delivery. The MLGCA acknowledges that the RNG System may require adaptation to Maryland's requirements and that component parts may need to be ordered and assembled for delivery**.**

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# Contractor Requirements: Scope of Work

## Summary Statement

### The Maryland State Lottery and Gaming Control Agency (MLGCA) would like to purchase four (4) identical independent Random Number Generator Systems (2 live production Systems, a test System, and a disaster recovery back-up System) to be used to conduct MLGCA Lottery Drawings.

### The MLGCA is issuing this Request for Proposals (RFP) to invite qualified Offerors to submit proposals to provide all hardware, software, and related services necessary to develop, install, implement, certify, train employees, operate and maintain complete state-of-the-art turnkey Random Number Generator (RNG) Systems as described in this RFP.

The MLGCA currently conducts Drawings for five of its Draw Games: Pick 3, Pick 4, Pick 5, MultiMatch, and Bonus Match 5 using ball-style machines. The new RNG System shall initially accommodate these existing MLGCA Draw Games, and shall be capable of modifications to accommodate any new games which may be added in the future as well as any changes to existing games.

It is of paramount importance to the MLGCA to ensure that every RNG Drawing is truly random, secure, auditable, and conducted in such a manner to maintain a high level of player confidence in the integrity of the Drawing process and the MLGCA.

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

### The MLGCA intends to make a single contract award as a result of this RFP. See RFP Section 4.9 Award Basis for more Contract award information.

### An Offeror, either directly or through its subcontractor(s), shall be able to provide all goods and services and meet all of the requirements requested in this RFP and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

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

The State will not accept a software application or hardware that is still under development. The software and hardware utilized in the RNG System shall be operational (i.e., not under development) at the time of Proposal submission (see Section 1.1.4).

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

## Background

### MLGCA History

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

The MLGCA’s current portfolio includes Draw Games, Fast Play games, and Instant or scratch-off games. Draw Games are further categorized as Daily Draw (Pick 3, Pick 4, Pick 5, and Bonus Match 5), Jackpot (Multi-Match, Mega Millions, Powerball) and Monitor (Keno and Racetrax®). Details about each of these games are included in Sections 2.2.5 and 2.2.6.

### General Information

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

### Lottery and Gaming Control Commission

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

### MLGCA Organization

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

### Draw Games

Draw Games generally allow players to select their numbers or utilize automatic computer plays. Players receive a ticket from a Lottery retailer then wait for the MLGCA or a multi-state lottery organization to conduct a Drawing to determine if they have won. The MLGCA currently offers nine (9) Draw Games, which can be divided into four broad categories:

1. Daily Drawings;
2. Jackpot Games;
3. Fast Play Games; and
4. Monitor Games.

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

**Daily Drawings**

1. **Pick 3** is a daily game. Players choose three numbers between zero and nine for the chance to win prizes ranging from $25 to $500. The Lottery offers “straight”, “box”, “straight and box”, “front pair”, “back pair”, and “combination” bets. The Lottery offers both mid-day and evening Pick 3 drawings. Mid-day drawings are currently selected live on WBAL-TV 11, Monday through Friday at 12:27 p.m. Saturday and Sunday mid-day drawings are selected live from WBAL-TV 11 at 12:27 pm; however, the Saturday mid-day drawing is not televised. Evening drawings are currently selected live on WBAL-TV 11, Monday through Saturday at 7:57 p.m. Sunday evening drawings are currently selected live on WBAL –TV 11 at 8:22.
2. **Pick 4** is a daily game and is basically the same game as Pick 3 with an extra digit. The field of playable numbers ranges from 0000 to 9999 and the top prize in Pick 4 is $5,000 for a $1.00 straight wager. The drawing of winning numbers is identical to Pick 3 and the wager options “straight”, “box”. “straight and box”, and “combination” are offered. The odds of winning a “straight” wager in Pick 4 are 1:10,000. Mid-day drawings are currently selected live on WBAL-TV 11, Monday through Sunday at 12:27 p.m. Evening drawings are currently selected live on WBAL-TV 11, Monday through Saturday at 7:57 p.m. Sunday evening drawings are currently selected live on WBAL –TV 11 at 8:22.
3. **Pick 5** is a daily game and is basically the same game as Pick 4 with an extra digit. The field of playable numbers ranges from 00000 to 99999 and the top prize in Pick 5 is $50,000 for a $1.00 straight wager. The drawing of winning numbers is identical to Pick 4 and the wager options “straight” and “box” are also the same. Pick 5 also offers Front and Back wagers on 2, 3 or 4 numbers. The odds of winning a “straight” wager in Pick 5 are 1:100,000. Mid-day drawings are currently selected live on WBAL-TV 11, Monday through Sunday at 12:27 p.m. Evening drawings are currently selected live on WBAL-TV 11, Monday through Saturday at 7:57 p.m. Sunday evening drawings are currently selected live on WBAL –TV 11 at 8:22.
4. **Bonus Match 5** is a daily game with a top prize of $50,000 for a $1.00 wager. Players select 5 numbers from a field of 39 numbers. The Lottery selects six winning numbers from that same field of numbers. The first five winning numbers selected determine a $50,000 win. The sixth number, called the “Bonus Ball”, provides additional ways of winning for players. Using the “Bonus Ball” number, players can make a match of 4, 3, or 2 of the original selected winning numbers to make a 5, 4, or 3 winning number match. Evening drawings are currently selected live on WBAL-TV 11, Monday through Saturday at 7:57 p.m. Sunday evening drawings are currently selected live on WBAL –TV 11 at 8:22. Bonus Match 5 drawings are not televised.

**Jackpot Games**

1. **Multi-Match** is a Maryland-only jackpot game. Players receive three lines of six numbers. Players choose or request the computer to generate the first line of numbers from a field of 43. The computer then generates the remaining two lines of numbers. Players matching all six numbers in a single line in any order win the jackpot, which typically starts at $500,000 and increases after each drawing if not won. If there are multiple winners, the jackpot is divided by the number of winners. Players can also win fixed prizes ranging from $2 to $3,000 by matching three or more numbers in a single line or five or more numbers in the combined lines. Multi-Match drawings are held on Monday and Thursday evenings at 11:22 p.m.
2. **Mega Millions** is a multi-state jackpot game. Drawings are held every Tuesday and Friday evening at 11:00 pm. These drawings are conducted by non-MLGCA personnel. These drawings are recorded and then aired at 11:22 pm. All game sales data is uploaded to MUSL via two independent reporting systems. The MLGCA reconciles to MUSL and winners are then reported. The Virginia Lottery handles the transferring of funds between lotteries.
3. **Powerball** is a multi-state jackpot game. Drawings are held every Monday, Wednesday and Saturday evening at 10:59 pm. These drawings are conducted by non-MLGCA personnel. These drawings are recorded and then aired at 11:22 pm. All game sales data is uploaded to MUSL via two independent reporting systems. The MLGCA reconciles to MUSL and winners are then reported. MUSL handles the transferring of funds between lotteries. MUSL also conducts separate drawings each draw night for a separate add-on game called “Double Play” which offers different prizes.

**Fast Play Games**

**FAST PLAY Games** were introduced on February 10, 2020. The games are printed by Lottery retailer terminals and self-service vending machines at the time of purchase, and players find out immediately if they’ve won by looking to see if their numbers or symbols match the winning numbers or symbols. Like scratch-offs, Fast Play tickets feature a variety of themes and play styles and multiple prize tiers, with price points ranging from $1 to $20. Some of the games have a set top prize, while others have progressive jackpot top prizes, which grow with the purchase of each ticket until a jackpot-winning ticket is sold. During Fiscal Year 2021, the Maryland Lottery launched 15 new Fast Play games.

**Monitor Games**

1. **Keno:** (**Note: Keno runs on a separate RNG system and the selection of winning numbers is not part of this RFP)** Keno is a fast-paced game that uses a field of numbers from one (1) to 80, where players may choose up to ten numbers in that field. The Lottery’s computer continuously generates random sets of 20 numbers. Every three and a half minutes, for each game, the central computer “locks in” on a set of those numbers, which are then displayed on the Keno monitor. Keno is predominantly sold in social settings such as bars and restaurants.
2. **Racetrax®:** (**Note: Racetrax runs on a separate RNG system and the selection of winning numbers is not part of this RFP)** Racetrax is a computer-animated monitor game that offers players the excitement of horse racing with 3-D graphic animation that makes the races look real. Starting with $1 minimum bets, players can choose from a variety of bet types that mirror the bet types used in real horse racing, including Win, Place, Show, Quinella, Exacta, Trifecta and Superfecta. A Bonus Wheel spins before each race, giving players a chance to multiply their winnings. Each horse has a fixed probability of winning, and like Keno, winning numbers are randomly generated and displayed on TV monitors in social settings like bars and restaurants. A detailed ten-year sales history for these games can be found in the MLGCA’s Annual Comprehensive Financial Report (ACFR) beginning on page 87. You can find the ACFR on MLGCA’s website by clicking on the heading, [Where the Money Goes](https://www.mdgaming.com/marylands-casinos/revenue-reports/where-the-money-goes/) and going to the ACFR link, which can also be found [HERE](https://www.mdgaming.com/wp-content/uploads/2022/01/ACFR_FY21.pdf).

### Information Technology

The MLGCA operates a Cisco supported network with approximately 250 workstations, 15 production servers running Windows and VMware, as well as three (3) demilitarized network zones (DMZs) that support several publicly accessible servers hosting various functions. The network includes 3 firewalls for connectivity to the Internet, networkMaryland™ (SwGI), and to MLGCA Contractors’ (Scientific Games, Spectra, Diamond Games and IGT) networks used for system access by the MLGCA. The main firewall also incorporates an intrusion prevention and detection system.

### General Ledger Accounting

The MLGCA utilizes the Microsoft Dynamics General Ledger Accounting Package to produce its monthly financial statements. The majority of the sales and expense information from Lottery operations is automatically uploaded on a daily basis, into the General Ledger. However, other financial data, such as administrative expenses, certain prize payments and cash receipts are manually entered by the MLGCA. Lottery games currently offered are described in Section 2.2.5.

### Independent Contractors - Lottery and Gaming Central Systems

The MLGCA has contracted with an independent contractor to operate and maintain its Lottery Central Monitoring and Control System. Financial data is received from the contractor on a daily basis. The MLGCA’s Information Technology Division (“IT”) utilizes a real time Internal Control System (“ICS”) to verify and confirm the financial data prior to it being uploaded to the General Ledger. The contractor has an annual System and Organization Controls (SOC) 2 audit performed on its operations, which includes a heavy emphasis on information technology related controls.

### Future Games and Service Provider

The MLGCA reserves the right to add new lottery games and/or new lottery game features during the term of the contract resulting from this RFP. The Contractor will be reimbursed based on an hourly rate for this work. In addition, the MLGCA reserves the right to change its contractual service providers, during the term of the contract resulting from this RFP.

### Trademark Notice

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

 Name Mark Owner:

1. Lottery in Motion **TM** Scientific Games International, Inc.
2. Mega Millions ® Illinois Department of the Lottery

3. Megaplier ® Texas Lottery Commission

4. Powerball ® Multi-State Lottery Association

5. Power Play ® Multi-State Lottery Association

6. Double Play ® Multi-State Lottery Association

7. Properties Plus ® Scientific Games International, Inc.

8. Racetrax ® Tabcorp International Pty Ltd

9. Racetrax® Bonus **TM** Not filed for registration

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

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

### State Responsibilities

1. The State will provide normal office working facilities and equipment reasonably necessary for Contractor performance under the Contract. Any special requirements shall be identified.
2. 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.

## Responsibilities and Tasks - Contractor

### General Solution Requirements

(1) For the purpose of this RFP, “System” means hardware (computer and peripherals, printer and Uninterrupted Power Supply (“UPS”)), software and related services necessary to develop, install, implement, certify, train, operate and maintain a complete state-of–the-art turnkey RNG System.

(2) The Contractor shall provide, at minimum, four (4) identical independent RNG Systems: - Two live production Systems, a test System, and a disaster recovery and back-up System. (Three (3) of the RNG Systems will be located at the MLGCA’s headquarters and one (1) will be located at a back-up site to be designated by MLGCA).

(3) The RNG System shall initially accommodate all current MLGCA Draw Games (Pick 3, Pick 4, Pick 5, Multi-Match, Bonus Match 5), and shall be capable of modifications to accommodate any new games which may be added by MLGCA in the future as well as any changes to existing games.

(4) All RNG computers shall be stand-alone machines that operate independently from each other and any other system. Once installed for production usage, the RNG Systems shall never be connected to any network, including, but not limited to, the MLGCA’s or State’s computer network or the Internet.

(5) The Contractor shall provide training, operational support and maintenance at delivery of the RNG Systems and throughout the Contract duration, including training and support for game or matrix changes.

(6) The RNG System shall provide an animation capability so that Drawing results can be graphically displayed, which shall include but not be limited to:

* + - * 1. Convert winning numbers selected for each Drawing into an animation that graphically displays them in an entertaining and easy to comprehend manner.
				2. Convert the Drawing results animations also into file formats required to publish the animated versions on a number of different platforms; including but not limited to YouTube, MLGCA’s website and mobile app, broadcast or OTT television and various social media platforms. At minimum, .mp4 files will be required.
				3. Populate the pre-determined animation, render and distribute for publication within 10 minutes following winning number selection.
				4. A process to provide time for a designated MLGCA official to certify that the animation matches the winning numbers generated and make any needed adjustment to the file prior to publication.
				5. A backup plan to publish winning numbers in the event of a render, power or other problem that could cause a delay in publishing the numbers.
				6. Generation of files that are accessible to visually and hearing-impaired audiences.
				7. Store animations that have been published for a minimum of 18 months.
				8. Graphic quality shall be sufficient to stream Drawings or broadcast Drawings on television; Resolution requirements shall be appropriate for the medium. Contractor shall be able to export .mp4 or .mov files in various formats as files will be pushed to the MLGCA's website and Youtube channel. At a later date, the MLGCA may also decide to air one or all of these drawings on a broadcast affiliate, with a subcontractor potentially providing additional editing (i.e. adding open and close segments, numbers recaps, etc.) before air.
				9. The Contractor shall collaborate with MLGCA staff and its Advertising Agency Contractor to develop Drawing animations.

### Hardware Requirements

* + - * 1. Each System shall have:
1. An archival feature for internal drawing log files with not less than 1 TB capacity so that files can be retained locally for not less than 5 years.
2. The ability to print winning numbers reports that are clearly identified as official or test, as well as auditing information reports.
3. A direct method of saving data to a thumb drive as often as desired without deleting the data from the system.
4. Its own independent UPS with the capability to provide at least 60 minutes of power to ensure operation even in the event of input power loss.

(2) The hardware supplied shall contain the necessary elements to connect each RNG System to other lottery systems for winning numbers reporting purposes (such as Ethernet ports), but which the MLGCA can opt to suppress. Wireless connectivity shall NOT be available or possible.

(3) All equipment shall be supplied by major manufacturers, as approved by the MLGCA.

(4) The RNG Systems shall be in secure, locked cabinets.

### Software Requirements

1. Controls shall ensure the segregation of administrative responsibilities for all draw games based on the predefined rules and regulations of each game.
2. The proposed application shall support, at a minimum, user administration, password resets, user account disablement, and account creation.
3. The proposed application shall comply with Department of Information Technology (DoIT) security measures, including password complexity, as they may be and two-factor authentication modified throughout the life of the contract.
4. The authentication capabilities of the proposed application shall limit each RNG System access to authorized users only.
5. The proposed application shall include a display of the last login display (time, date and users) upon successful login and the ability to print the login history.
6. Proposed application must be able to display winning numbers in drawn order and ascending order per draw game rules for each drawing for each game.
7. The proposed application shall prevent unauthorized administrative roles from changing any variable (example: date and time) used by each RNG System for generating a drawing.
8. The RNG System shall have the ability to retrieve previous draw results and print or download to them to a thumb drive as often as is needed.
9. Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform all requirements of this contract. Any costs associated with any licenses, permits and authorizations shall be included in the cost of each RNG System and will not be separately paid in addition to amounts stated on the Financial Proposal Form – Attachment B. Contractor shall promptly provide MLGCA with evidence of all such licenses, permits and authorizations upon request.
10. The RNG System shall include all software required to create customized Drawing animations for each game. The Contractor and MLGCA creative staff will collaborate on entertaining and clear animations. Graphic quality shall be sufficient to stream drawings or broadcast drawings on television.

### Operational Performance Requirements

1. Winning numbers shall be generated correctly based on the parameters defined for each Draw Game, including the selection matrices, draw dates and times. Official drawings may only be conducted outside specified timeframes upon approval from the MLGCA executive.
2. Each RNG System must ensure that each value selected for any given draw game has an equal opportunity of occurring.
3. Each RNG System must use methods that prevent the prediction of the selected values before their selection. Please provide a detailed description of this process.
4. The Contractor shall modify the RNG System as necessary in order to support all future Draw Games and all future changes to existing Draw Games, but only upon an official written request from the MLGCA Executive staff. At the time of a request for a functional modification by MLGCA, the Contractor shall submit for approval an estimate, including the estimated number of hours necessary for such a request.
5. Systems shall not allow a “screen saver” or a “power saver” mode.
6. The RNG System shall support “test drawings.”

### Security Requirements

1. Each RNG System shall require at least two independent individuals (e.g. drawings manager and drawing official) to be present with unique access devices (such as locks/keys or biometric identifiers) in order to gain physical access to the machines within the equipment cabinet.
2. Each RNG System shall require at least one logical factor of authentication (i.e. log-in and password or biometric value) for two individual users (i.e. drawing manager and external auditor). A second factor is preferred.
3. Each RNG System shall prevent unauthorized changes in development, test, implementation, and use of the product.
4. Each RNG System shall include an audit function for an authorized user to review specific Drawing data retrospectively. Therefore, the System shall have a logging function that captures all activity on the System thereby allowing for a review of the activity.
5. The Contractor shall ensure that all security requirements are consistently met or exceeded in order to ensure the integrity of each RNG System and the integrity of each MLGCA Drawing. Security and integrity of the System is of the highest order of importance.
6. Each of the RNG Systems shall be physically secured by Lottery staff when not in use.

### Testing Requirements

1. The Contractor shall successfully complete its own internal quality assurance testing on each RNG System before delivery to MLGCA. MLGCA shall be provided with a detailed description of the Contractor’s quality assurance testing procedures before System delivery.
2. The Contractor shall supply MLGCA with the results from all RNG System tests.

### System Certification Requirements

1. The RNG System shall be tested and certified as random and secure by GLI, or other comparable testing laboratory approved by MLGCA, upon initial delivery and after any System modifications, at the sole discretion of the MLGCA. The initial certification shall be at the expense of the Contractor and included in its RNG System price. Any subsequent certifications for modifications will be at the expense of the MLGCA.
2. The Contractor shall, upon completion of any acceptance testing, submit the deliverable including any algorithm, application, and operating system, to an independent third-party testing and certifying body to certify the following:
	1. Any results produced are statistically random, and related outcomes cannot be predicted based on selection criteria or historical results.
	2. Drawings can only occur at or around their scheduled draw dates and times except as provided in Section 2.3.4.
	3. Unauthorized changes cannot be made during the development, test, and implementation cycles and that the RNG System provides methods for detecting and reporting any unauthorized modifications to the System.
	4. Each RNG System correctly includes the appropriate parameters for each game, and that any possible outcomes under those parameters have an equal chance to be selected using the System.
	5. There is no extraneous code that would negatively impact the Drawing outcomes or allow the outcomes to be manipulated or predicted.

### Training Requirements

#### Contractor shall provide an on-site system-training program, which at a minimum, shall ensure that MLGCA personnel and their auditors are fully qualified to operate the RNG System correctly and efficiently.

#### Operational training shall include, at a minimum, complete and comprehensive tutorial instruction of all the System interface screens.

### Warranty Requirements

The Contractor shall:

(1) Provide at minimum, a five (5) year warranty on each RNG System and all equipment.

(2) Warrant that the products and services provided to the MLGCA shall be suitable for the particular purpose of use in a state lottery and are of merchantable quality.

1. Warrant that any product including any original parts and, if repairs or replacements are necessary, any replacement parts will be new and unused and free of defects in material, design and workmanship.

(4) Warrant that all services provided shall be performed in a prompt, competent and workmanlike manner by properly trained and skilled individuals in accordance with the highest standards within the Contractor’s profession; that goods and services will be free and clear of any lien or claim by any party at the time of delivery; and that no misrepresentations have been made, including material omissions.

### Maintenance Requirements

#### The Contractor shall provide maintenance and support for all equipment provided under the Contract for the duration of the Contract term. The Contractor shall obtain, provide and install all replacement parts for the life of each RNG System as necessary, with no mark-ups or add-on costs permitted. Maintenance requirements shall include but are not limited to:

##### (a) Provide software/application upgrades and support (excludes custom games

##### modification).

##### Provide fixes to all software and hardware errors and design defects; improved versions of the hardware and software to sustain performance or correct performance problems, to otherwise meet or continue to meet contract obligations.

##### (c) Maintain hardware and software elements with “supported releases” from the Contractor and suppliers. If the Contractor is notified by a supplier that a release is scheduled to have support dropped, the Contractor shall, with prior MLGCA approval, acquire and install an appropriate upgrade on all four (4) Systems.

##### (d) Hardware problem support and replacement.

##### (e) Hotline troubleshooting, evaluation and support during Draw times.

### 2.3.11 Required Project Policies, Guidelines and Methodologies

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines, which may be amended, created or changed from time to time, affecting Information Technology projects. Offeror is required to review all applicable links provided below and state compliance with the standards in its response.

It is the responsibility of the Contractor to ensure adherence and to remain abreast of new or revised laws, regulations, policies, standards and guidelines affecting project execution. These include, but are not limited to:

1. The State of Maryland System Development Life Cycle (SDLC) methodology at: http://doit.maryland.gov/SDLC/Pages/agile-sdlc.aspx ;;
2. The State of Maryland Information Technology Security Policy and Standards at: <http://www.DoIT.maryland.gov>- keyword: Security Policy;
3. The State of Maryland Information Technology Non-Visual Standards at: http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx;

## Deliverables

### Deliverable Schedule

The Contractor shall have provided in its Proposal a proposed Deliverable Schedule/Implementation Plan. The Contractor shall submit within ten (10) Days after the date of the initial NTP a detailed and finalized version of this Deliverable Schedule/Implementation Plan which, when approved by the MLGCA, shall become the basis for Implementation.

### Deliverable Submission

1. For every 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.
2. Unless specified otherwise, written deliverables shall be compatible with Microsoft Office, Microsoft Project or Microsoft Visio within two (2) versions of the current version. At the Contract Monitor’s discretion, the Contract Monitor may request one hard copy of a written deliverable.
3. A standard deliverable review cycle will be elaborated and agreed-upon between the State and the Contractor. This review process is entered into when the Contractor completes a deliverable.
4. For any written deliverable, the Contract Monitor may request a draft version of the deliverable, to comply with the minimum deliverable quality criteria listed in **Section 2.4.4 Minimum Deliverable Quality**. Drafts of each final deliverable, except status reports, are required at least two weeks in advance of when the final deliverables are due (with the exception of deliverables due at the beginning of the project where this lead time is not possible, or where draft delivery date is explicitly specified). Draft versions of a deliverable shall comply with the minimum deliverable quality criteria listed in **Section 2.4.4 Minimum Deliverable Quality**.

### Deliverable Acceptance

1. A final deliverable shall satisfy the scope and requirements of this RFP for that deliverable, including the quality and acceptance criteria for a final deliverable as defined in **Section 2.4.1 Deliverable Schedule.**
2. The Contract Monitor shall review a final deliverable to determine compliance with the acceptance criteria as defined for that deliverable. The Contract Monitor is responsible for coordinating comments and input from various team members and stakeholders. The Contract Monitor is responsible for providing clear guidance and direction to the Contractor in the event of divergent feedback from various team members.
3. The Contract Monitor will issue to the Contractor a notice of acceptance or rejection of the deliverable. Following the receipt of a notice indicating “Accepted” and signed by the Contract Monitor, the Contractor shall submit a proper invoice in accordance with the procedures in **Section 3.3 Invoicing**.
4. In the event of rejection, the Contract Monitor will formally communicate in writing any deliverable deficiencies or non-conformities to the Contractor, describing in those deficiencies what shall be corrected prior to acceptance of the deliverable in sufficient detail for the Contractor to address the deficiencies. The Contractor shall correct deficiencies and resubmit the corrected deliverable for acceptance within the agreed-upon time period for correction.

### Minimum Deliverable Quality

The Contractor shall subject each deliverable to its internal quality-control process prior to submitting the deliverable to the State.

Each deliverable shall meet the following minimum acceptance criteria:

1. Be presented in a format appropriate for the subject matter and depth of discussion.
2. Be organized in a manner that presents a logical flow of the deliverable’s content.
3. Represent factual information reasonably expected to have been known at the time of submittal.
4. In each section of the deliverable, include only information relevant to that section of the deliverable.
5. Contain content and presentation consistent with industry best practices in terms of deliverable completeness, clarity, and quality.
6. Meet the acceptance criteria applicable to that deliverable, including any State policies, functional or non-functional requirements, or industry standards.
7. Contain no structural errors such as poor grammar, misspellings or incorrect punctuation.
8. Must contain the date, author, and page numbers. When applicable for a deliverable, a revision table must be included.
9. A draft written deliverable may contain limited structural errors such as incorrect punctuation, and shall represent a significant level of completeness toward the associated final written deliverable. The draft written deliverable shall otherwise comply with minimum deliverable quality criteria above.

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# Contractor Requirements: General

## Contract Initiation Requirements

1. Contractor shall schedule and hold a kick-off meeting within 10 Business Days of NTP Date.
2. At the kickoff, the Contractor shall furnish an updated project schedule describing the activities for the Contractor, the MLGCA, and any third parties for fully transitioning to the Contractor’s Solution.

## End-of-Contract Transition

### The Contractor shall provide transition assistance as requested by the MLGCA to facilitate the orderly transfer of services to the MLGCA or a follow-on contractor, for a period up to 90 days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:

1. Provide additional services and support as requested to successfully complete the transition;
2. Maintain the services called for by the Contract at the required level of proficiency; and,
3. Provide documentation and final reports as appropriate.

### The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.

### The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor.

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

* + - * 1. The Contractor shall provide a draft Transition-Out Plan 90 days in advance of Contract end date.
				2. The Transition-Out Plan shall address, at a minimum, the following areas:
	1. Any staffing concerns/issues related to the closeout of the Contract;
	2. Communications and reporting process between the Contractor, the MLGCA and the Contract Monitor;
	3. Security and system access review and closeout;
	4. Connectivity services provided, activities and approximate timelines required for Transition-Out;
	5. Plans to complete tasks and any unfinished work items (including open change requests, and known bug/issues); and
	6. Any risk factors with the timing and the Transition-Out schedule and transition process. The Contractor shall document any risk factors and suggested solutions.
		+ - 1. The Contractor shall ensure all documentation and data including, but not limited to, RNG System Documentation and current operating procedures, is current and complete with a hard and soft copy in a format prescribed by the Contract Monitor.

### Return and Maintenance of State Data

1. Upon termination or the expiration of the Contract Term, the Contractor shall: (a) 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) 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 term; (c) after the retention period, the Contractor shall securely dispose of and permanently delete all State data in all of its forms, such as disk, CD/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; and (d) prepare an accurate accounting 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.
2. During any period of service suspension, the Contractor shall maintain all State data in its then existing form, unless otherwise directed in writing by the Contract Monitor. Contractor shall provide all archival records pursuant to Section 2.3.2.
3. In addition to the foregoing, the State shall be entitled to any post-termination/expiration assistance generally made available by Contractor with respect to the services.

## Invoicing

### General

1. The Contractor shall e-mail the original of each invoice to ap.mlgcap@maryland.gov and a copy to the Contract Monitor.
2. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
3. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) may not be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:

(1) Contractor name and address;

* 1. Remittance address;
	2. Federal taxpayer identification (FEIN) number, social security number, as appropriate;
	3. Invoice period (i.e. time period during which services covered by invoice were performed);
	4. Invoice date;
	5. Invoice number;
	6. State assigned Contract number;
	7. State assigned (Blanket) Purchase Order number(s);
	8. Goods or services provided;
	9. Amount due; and
	10. Any additional documentation required by regulation or the Contract.
1. Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.
2. 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.
3. 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.
4. 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.
5. 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.

### Invoice Submission Schedule

The Contractor shall submit invoices monthly by the 15th of the month for the prior month.

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

1. The amount invoiced is inconsistent with the Contract;
2. The proper invoice has not been received by the party or office specified in the Contract;
3. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
4. The item or services have not been accepted;
5. The quantity of items delivered is less than the quantity ordered;
6. The items or services do not meet the quality requirements of the Contract;
7. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
8. 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
9. 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.

### Travel Reimbursement

Travel will not be reimbursed under this RFP.

## Liquidated Damages

### MBE Liquidated Damages

Not Applicable

### Liquidated Damages other than MBE

**3.4.2.1 General** - It is agreed by the MLGCA and Contractor that:

1. If the Contractor does not provide or perform the requirements referred to or listed in this provision, damage(s) to the MLGCA will result.
2. Proving such damage(s) will be costly, difficult, and time consuming.
3. The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract and is not considered a penalty.
4. Liquidated damages shall become due within thirty (30) calendar days after written notification by the MLGCA. The MLGCA may, at its sole discretion, deduct liquidated damages from payments due to the Contractor. The Contractor’s surety shall be liable under the Performance Bond for all liquidated damages assessed against the Contractor.
5. Nothing in this provision shall be construed as relieving the Contractor from performing all Contract requirements whether listed herein or not, nor is the MLGCA’s right to enforce or to seek other remedies from failure to perform any other Contract duty hereby diminished.
6. 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.
7. The Contract will be used by the MLGCA to monitor Contractor performance and will provide the basis for determining liquidated damages.

**3.4.2.2** **Liquidated Damages Assessment: Collections, Withholds**

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

**3.4.2.3** **Conditions for Termination of Liquidated Damages**

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

* + - * 1. Except as waived by the Director, no liquidated damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Director verifying the correction of condition(s) for which liquidated damages were imposed, and all the Contractor corrections have been subjected to System testing or other verification at the discretion of the Director.
				2. The Contractor shall conduct the acceptance testing of any correction the Director deems necessary.
				3. The necessary level of documentation to verify corrections will be determined by the Director, who is the sole judge of the accuracy of any documentation provided.
				4. A Contractor Notice of Correction will not be accepted until the correction is verified by a System test and the MLGCA’s written approval of the test results is received.
				5. Unless specified otherwise by the Director, System corrections shall be sustained for a reasonable period of at least ninety (90) calendar days from MLGCA acceptance, otherwise liquidated damages may be re-imposed without a succeeding grace period (in those cases where one is allowed) within which to correct.
				6. The Contractor’s use of resources to correct defects shall not cause other System problems.
				7. The Contractor shall certify that each defect is corrected.

**3.4.2.4** **Severability of Individual Liquidated Damages Clauses**

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

* + - 1. **Damages Imposed**
			2. Damages Imposed / RNG System Implementation
1. Condition

The Contractor shall complete all installation preparations as required by the MLGCA, complete System testing to the MLGCA's satisfaction, provide independent lab certification, pass MLGCA Acceptance Testing, and comply with all other Contractual requirements and the schedule as specified in the final Implementation Plan as approved by the MLGCA.

1. Damage

The MLGCA may impose liquidated damages of up to $1,000 per day, after notice by the MLGCA, prior to the scheduled date for commencement of operation, and $15,000 per day following the scheduled date for commencement of operation for each day of delay in completion of RNG System testing or Acceptance Testing beyond the periods defined in the Contract and may assess such damages until RNG System testing or Acceptance Testing is completed in accordance with definitions and requirements set forth herein.

In addition, the MLGCA may impose liquidated damages of up to $500 per day for each and every failure to provide a deliverable or resolve an acceptance test problem pursuant to the agreed upon schedule or to comply with any other contractual requirements in effect, until such requirement is provided or performed.

* + - 1. System Unavailability
1. Condition

The System must be available for every scheduled drawing.

1. Damages

For each delayed drawing, the MLGCA may impose liquidated damages in the amount of $1,000.

* + - 1. Timely and Accurate Reports
1. Condition

The Contractor shall produce and deliver timely, sufficient and accurate reports within the specified time frames and descriptions in the Contract whether printed or transferred electronically. Reports shall be produced and delivered on both a scheduled and on-request basis according to the schedule approved by the MLGCA at the time of Contract award.

1. Damages

For each late, insufficient or inaccurate report, the MLGCA may impose liquidated damages in the amount of $1,000 per day, per report until the report is provided, made sufficient or corrected.

* + - 1. Failure to Modify the System for new games or to Install Additional Software/Reports or Implement Requests for System Service
1. Condition

The Contractor shall modify existing software/reports or install additional software/reports or implement requests for RNG System service within a negotiated time frame with the MLGCA having the final determination. In addition, the Contractor shall complete an acceptance test of the required modification or addition to the System, and receive the MLGCA's written approval of such test, within the time frame previously negotiated.

1. Damages

The MLGCC may impose liquidated damages of up to $1,000 per day that the modified or additional software or change order is not installed.

* + - 1. Unauthorized Software/Hardware Modifications
1. Condition

The Contractor shall not modify any software or hardware without the prior written consent of the MLGCA.

1. Damages

If the Contractor modifies any software or hardware without the prior written approval of the MLGCA the MLGCA may issue a written order that the change or modification shall be removed and the System restored to its previous operating state at the Contractor's expense. (“Modification” does not include replacement of a System component with an essentially similar component in the event of necessary maintenance.)

Further, if the MLGCA issues a written order that the change or modification shall be removed and the System restored to its previous operating state at the Contractor's expense, the MLGCA may impose liquidated damages in the amount of up to $50,000 per violation in addition to any other damages that may occur as a result of such unauthorized modification.

* + - 1. Unauthorized Access
1. Condition

The Contractor shall preclude unauthorized persons from accessing the RNG System.

1. Damages

If the Contractor fails to preclude access by unauthorized persons, the MLGCA may impose liquidated damages in the amount of up to $50,000 for each person, for each occurrence in violation. An occurrence shall be defined as each and every act that permits access by an unauthorized person.

## Disaster Recovery and Data

The following requirements apply to the Contract:

### Redundancy, Data Backup and Disaster Recovery

1. Unless specified otherwise in the RFP, 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.
2. The Contractor shall have robust Contingency and Disaster Recovery (CDR) 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 system to be installed in a site designated by the MLGCA.
3. The CDR plans must be designed to ensure that services under the Contract are restored after a disruption within six (6) 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.
4. The Contractor shall test the contingency/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. The Contractor shall send the Contract Monitor a notice of completion following completion of DR testing.
5. Such CDR plans shall be available for the MLGCA to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

### Data Export/Import

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

### Data Ownership and Access

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.

### Provisions in Sections 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.

## 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:

1. Commercial General Liability - of $1,500,000 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/excess liability policies.
2. Errors and Omissions/Professional Liability - $1,000,000 per combined single limit per claim and $3,000,000 annual aggregate.
3. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of $100,000 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.”
4. Cyber Security / Data Breach Insurance – $1,000,000 per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the State’s claimants or employers is processed or stored.
5. Worker’s Compensation - The Contractor shall maintain such 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.
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.

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

### 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.

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

### 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. 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.

### 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.

## Security Requirements

The following requirements are applicable to the Contract:

### Employee Identification

1. Contractor Personnel shall display a company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
2. Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
3. Contractor shall remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion, that Contractor Personnel has not adhered to the Security requirements specified herein.
4. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

### Security Clearance / Criminal Background Check

1. A criminal background check for each Contractor Personnel providing any services shall be completed prior to each Contractor Personnel providing any services under the Contract.
2. The Contractor shall obtain, at its own expense, a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
3. Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.
4. The CJIS criminal record check of each Contractor Personnel who will work on the project shall be reviewed by the Contractor for convictions of any of the following crimes described in the Annotated Code of Maryland, Criminal Law Article:
	1. §§ 6-101 through 6-104, 6-201 through 6-205, 6-409 (various crimes against property);
	2. any crime within Title 7, Subtitle 1 (various crimes involving theft);
	3. §§ 7-301 through 7-303, 7-313 through 7-317 (various crimes involving telecommunications and electronics);
	4. §§ 8-201 through 8-302, 8-501 through 8-523 (various crimes involving fraud);
	5. §§9-101 through 9-417, 9-601 through 9-604, 9-701 through 9-706.1 (various crimes against public administration); or
	6. a crime of violence as defined in CL § 14-101(a).
5. Contractor Personnel with access to systems supporting the State or to State data who have been convicted of a felony or of a crime involving telecommunications and electronics from the above list of crimes shall not be permitted to work on the Contract; Contractor Personnel who have been convicted within the past five (5) years of a misdemeanor from the above list of crimes shall not be permitted to work on State premises.

### On-Site Security Requirement(s)

1. For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State’s conditions and queries are satisfied.
	1. Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.
2. Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the MLGCA may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the MLGCA.
3. Further, Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that controls the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default.

### Data Protection and Controls

1. Contractor shall ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and shall apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices shall comply with an accepted industry standard, such as the NIST cybersecurity framework.
2. To ensure appropriate data protection safeguards are in place, the Contractor shall implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor may augment this list with additional controls):
	1. Establish separate production, and test environments for systems supporting the services provided under the Contract and ensure that production data is not replicated in test or training environment(s) unless it has been previously anonymized or otherwise modified to protect the confidentiality of Sensitive Data elements. The Contractor shall ensure the appropriate separation of production and non-production environments by applying the data protection and control requirements listed in **Section** **3.7.5 Security Plan**.
	2. Apply hardware and software hardening procedures as recommended by Center for Internet Security (CIS) guides https://www.cisecurity.org/, Security Technical Implementation Guides (STIG) <https://public.cyber.mil/stigs/>, or similar industry best practices to reduce the systems’ surface of vulnerability, eliminating as many security risks as possible and documenting what is not feasible or not performed according to best practices. Any hardening practices not implemented shall be documented with a plan of action and milestones including any compensating control. These procedures may include but are not limited to removal of unnecessary software, disabling or removing unnecessary services, removal of unnecessary usernames or logins, and the deactivation of unneeded features in the Contractor’s system configuration files.
	3. Ensure that State data is not comingled with non-State data through the proper application of compartmentalization Security Measures.
	4. Apply data encryption to protect Sensitive Data at all times, including in transit, at rest, and also when archived for backup purposes. Unless otherwise directed, the Contractor is responsible for the encryption of all Sensitive Data.
	5. For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
	6. Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), “Security Requirements for Cryptographic Modules”, FIPS PUB 140-2:

<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>

<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>

* 1. Enable appropriate logging parameters to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers and information security standards, including Maryland Department of Information Technology’s Information Security Policy.
	2. Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and remediation, if required. The MLGCA shall have the right to inspect these policies and procedures and the Contractor or subcontractor’s performance to confirm the effectiveness of these measures for the services being provided under the Contract.
	3. Ensure system and network environments are separated by properly configured and updated firewalls.
	4. Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
	5. By default, “deny all” and only allow access by exception.
	6. Review, at least annually, the aforementioned network connections, documenting and confirming the business justification for the use of all service, protocols, and ports allowed, including the rationale or compensating controls implemented for those protocols considered insecure but necessary.
	7. Perform regular vulnerability testing of the operating system, application, and network devices. Such testing is expected to identify outdated software versions; missing software patches; device or software misconfigurations; and to validate compliance with or deviations from the security policies applicable to the Contract. Contractor shall evaluate all identified vulnerabilities for potential adverse effect on security and integrity and remediate the vulnerability no later than 30 days following the earlier of vulnerability’s identification or public disclosure, or document why remediation action is unnecessary or unsuitable. The MLGCA shall have the right to inspect the Contractor’s policies and procedures and the results of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.
	8. Enforce strong user authentication and password control measures to minimize the opportunity for unauthorized access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current Maryland Department of Information Technology’s Information Security Policy (<https://doit.maryland.gov/policies/Pages/default.aspx>), including specific requirements for password length, complexity, history, and account lockout.
	9. Ensure State data is not processed, transferred, or stored outside of the United States (“U.S.”). The Contractor shall provide its services to the State and the State’s end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
	10. Ensure Contractor’s Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. 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.
	11. Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under the Contract; that the anti-virus and anti-malware software is automatically updated; and that the software is configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.
	12. Conduct regular external vulnerability testing designed to examine the service provider’s security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service’s security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The MLGCA shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

### Security Plan

1. The Contractor shall protect State data according to a written security policy (“Security Plan”) no less rigorous than that of the State, and shall supply a copy of such policy to the State for validation, with any appropriate updates, on an annual basis.
2. The Security Plan shall detail the steps and processes employed by the Contractor as well as the features and characteristics which will ensure compliance with the security requirements of the Contract.

### Security Incident Response

1. The Contractor shall notify the MLGCA in accordance with this **Section 3.7.6A-D** when any Contractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:
	1. Notify the MLGCA within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, MLGCA chief information officer and MLGCA chief information security officer;
	2. Notify the MLGCA within two (2) hours if there is a threat to Contractor’s System as it pertains to the use, disclosure, and security of State data; and
	3. Provide written notice to the MLGCA within one (1) Business Day after Contractor’s discovery of unauthorized use or disclosure of State data and thereafter all information the State (MLGCA) requests concerning such unauthorized use or disclosure.
2. Contractor’s notice shall identify:
	1. The nature of the unauthorized use or disclosure;
	2. The State data used or disclosed;
	3. Who made the unauthorized use or received the unauthorized disclosure;
	4. What the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
	5. What corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.
	6. And provide any such other information, including a written report, as reasonably requested by the State.
3. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
4. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the MLGCA and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### Data Breach Responsibilities

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

### The State shall, at its discretion, have the right to review and assess the Contractor’s compliance to the security requirements and standards defined in the Contract.

### Provisions in Sections 3.7.1 – 3.7.8 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.7.1 – 3.7.8 (or the substance thereof) in all subcontracts.

## Problem Escalation Procedure

### 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.

### 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.

### 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. 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:

1. The process for establishing the existence of a problem;
2. Names, titles, and contact information for progressively higher levels of personnel in the Contractor’s organization who would become involved in resolving a problem;
3. 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;
4. Expedited escalation procedures and any circumstances that would trigger expediting them;
5. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
6. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
7. A process for updating and notifying the Contract Monitor of any changes to the PEP.

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

## SOC 2 Type 2 Audit Report

A SOC 2 Type 2 Report is not a Contractor requirement for this Contract.

##  Experience and Personnel

### Preferred Offeror and Personnel Experience

Minimum requirements for Offeror and personnel are stated in Section 1.

### Contractor Personnel Maintain Certifications

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

## Substitution of Personnel

### Continuous Performance of Key Personnel

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

1. 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.
2. 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.

### Definitions

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

1. **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.
2. **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.

### Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in **Section 3.11.4 Replacement Circumstances**.

1. 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.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
	1. A detailed explanation of the reason(s) for the substitution request;
	2. The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
	3. The official resume of the current personnel for comparison purposes; and
	4. Evidence of any required credentials.
3. 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.
4. 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. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

### Replacement Circumstances

1. Directed Personnel Replacement
	1. The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, MLGCA 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. 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 Contractor 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. Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
	4. Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State’s remedies under the Contract or which otherwise may be available at law or in equity.
	5. If the Contract Monitor determines to direct personnel replacement 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. 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.
2. Key Personnel Replacement
	1. 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
		1. The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1)**.
		2. Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 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
		1. 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**.
		2. However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel’s ability to return.

### 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.

## Minority Business Enterprise (MBE) Reports

Not Applicable

## Veteran Small Business Enterprise (VSBE) Reports

Not Applicable

## Additional Clauses

### Lottery, VLT, Table Games and Sports Wagering Play and Prize Payment Restrictions

In accordance with Section 9-123 of the Maryland State Government Article, Annotated Code of Maryland, no officer or employee of the MLGCA, their spouse, child, brother, sister, or parent residing in the household of such officer or employee shall purchase a Maryland Lottery ticket or be paid a prize in any Maryland Lottery game. During the term of this Contract, this restriction as well as a similar restriction on the playing of VLTs, table game at any casino or sports wagering within the State and receiving payment of a prize by any Maryland casino shall also apply to officers and employees of the Contractor or of any subcontractor whose use is subject to Commission approval who are directly involved with the Commission’s account, and their spouse, child, brother, sister, or parent residing in the household of such officer or employee. This restriction also applies to the purchase of the multi-state game known as Mega Millions, which shall not be purchased in any participating state. Powerball may be purchased in a state other than Maryland. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor whose use is subject to Commission approval. The Director shall have the sole discretion to determine the applicability of this restriction to any specific individual.

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

[Maryland’s State Finance & Procurement Article §14-410](https://trackbill.com/bill/maryland-house-bill-629-environmentally-preferable-procurement-maryland-green-purchasing-committee/647077/) 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.

### 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.

**3.14.4 News/Press Releases/Media**

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

**3.14.4 Relationship of the Parties (Independent Contractor)**

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

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

 **3.14.4.1 No Liability by MLGCA to Third-Party Vendors or Subcontractors**

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

 **3.14.4.2 Contractor Acknowledgement, Indemnification and Duty to Notify**

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

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# Procurement Instructions

## Pre-Proposal Conference

### A pre-Proposal conference (Conference) will be held at the date and time indicated on the Key Information Summary Sheet. The Conference may be held by Video Teleconference.

### 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 RFP 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.

### 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.

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

### 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 4.2.1 eMMA).

### Interested parties wishing to attend the Conference must email the Pre-Proposal Conference Response Form (Attachment A) no later than the time and date indicated on the form in order to obtain the information needed to sign-in for the Conference. 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. If there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The MLGCA will make a reasonable effort to provide such special accommodation.

## 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](https://emma.maryland.gov/page.aspx/en/usr/login?ReturnUrl=%2fpage.aspx%2fen%2fbuy%2fhomepage), click on “New Vendor? Register Now” to begin the process, and then follow the prompts.

## Questions

### All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the RFP Number and Title (#2022-15 – Random Number Generator (“RNG”) System for MLGCA), and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified in the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.

### 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.

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

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

## Procurement Method

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

## Proposal Due (Closing) Date and Time

### 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.

### Requests for extension of this date or time shall not be granted.

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

### 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 Proposal Due Date and Time listed in the Key Information Summary Sheet will not be considered.

### Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the Proposal Due Date and Time set forth in the Key Information Summary Sheet.

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

### Potential Offerors not responding to this RFP are requested to submit the “Vendor Feedback Form”, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

## Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

## 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.

## 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. A blanket statement by the Offeror that its entire proposal is confidential proprietary commercial information or a trade secret is unacceptable. Proposals shall be open to public inspection only after Contract award, to the extent permitted by the PIA.

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

## Award Basis

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

## Oral Presentation and Demonstration

During the evaluation process, Offerors may be required to make individual oral presentations to the Evaluation Committee and other State representatives in order to clarify their Proposals.

The MLGCA may also require a demonstration of the proposed System that indicates the Offeror’s ability to meet the System requirements as defined in the RFP, to include all software processes and security procedures proposed. While some functions and features demonstrated may not be identical in all respects to specifications of this RFP, common security and operations are expected.

Submission of a proposal does not guarantee an Offeror the opportunity to be invited to participate in oral presentations, demonstrations, or discussions. 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. An Offeror’s presentation must include the key staff that would be assigned to this project if awarded the Contract and should include 1) Introduction of the Account team; 2) Presentation of the strengths, assets and benefits that the Offeror can offer to the MLGCA; and, 3) A discussion of the Offeror’s approach for meeting System requirements (RFP Section 2.3). An Offeror’s failure to promptly comply and cooperate with these requirements could result in its proposal being rejected and eliminated from further consideration.

## Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 180 days following the Proposal Due Date and Time, Best and Final Offers if requested (see **Section 6.7.2 Selection Process Sequence**), 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.

## Revisions to the RFP

### If the RFP is revised before the Proposal Due Date and Time, the MLGCA shall post any amendments to the RFP on eMMA and shall endeavor to provide such amendments 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 amendments issued prior to the submission of Proposals.

### Acknowledgment of the receipt of all amendments to this RFP issued before the Proposal Due Date and Time shall be included in the Transmittal Letter accompanying the Offeror’s Technical Proposal.

### Amendments made after the Proposal Due Date and Time will be sent only to those Offerors that remain under award consideration as of the issuance date of the amendment.

### Acknowledgement of the receipt of amendments to the RFP issued after the Proposal Due Date and Time shall be in the manner specified in the amendment notice.

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

## Cancellations

### The MLGCA 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 MLGCA 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 cancelled 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 cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

## Incurred Expenses

The MLGCA 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 RFP.

## Protest/Disputes

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

## Offeror Responsibilities

### Offerors must be able to provide all goods and services and meet all of the requirements requested in this RFP 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 RFP shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 “Minority 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 MLGCA 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 MLGCA.

## 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.**

## 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.

## Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this RFP, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment** **N** 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.

## Compliance with Laws/Arrearages

By submitting a Proposal in response to this RFP, the Offeror 1) 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; and 2) 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.

## 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.

## False Statements

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

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

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.

### A person may not aid or conspire with another person to commit an act under Section 4.22.1.

### 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.

## 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/statepayroll/Static\_Files/Payroll\_Officers\_Vendor\_Deductions/2018%20GADX10Form20150615%20(2).pdf](https://marylandtaxes.gov/statepayroll/Static_Files/Payroll_Officers_Vendor_Deductions/2018%20GADX10Form20150615%20%282%29.pdf).

## Prompt Payment Policy

This procurement and the Contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor’s Office of 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.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

## 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 RFP (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:

1. 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 RFP 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.
2. The Offeror or potential Offeror may use e-mail to:
	1. Ask questions regarding the RFP;
	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, but only on the terms specifically approved and directed by the Procurement Officer; and
	3. Submit a "No Proposal Response" to the RFP.
3. 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.

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

1. Submission of initial Proposals;
2. Filing of protests;
3. Filing of Contract claims;
4. Submission of documents determined by the 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.

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

## MBE Participation Goal

Not Applicable

## VSBE Goal

Not Applicable

## Living Wage Requirements

1. 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.
2. 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>.
3. 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.
4. 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.
	1. 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.
	2. 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.
	3. 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.
	4. 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.
5. 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.
6. The Offeror shall identify in the Proposal the location from which services will be provided.
7. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage.

## Federal Funding Acknowledgement

This Contract does not contain Federal Funds.

## 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.

## Non-Disclosure Agreement

### Non-Disclosure Agreement (Offeror)

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

### Non-Disclosure Agreement (Contractor)

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

## HIPAA - Business Associate Agreement

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

## Nonvisual Access

This RFP does not contain Information Technology (IT) provisions requiring Nonvisual Access.

## Mercury and Products That Contain Mercury

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

## 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. Services under this Contract must be performed in the United States

## Department of Human Services (DHS) Hiring Agreement

This RFP does not require a DHS Hiring Agreement.

## Small Business Reserve (SBR) Procurement

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

## Bonds

### Proposal Bond

Each Offeror must submit with its Proposal a Proposal Bond or other suitable security, as summarized in **4.38.5**, in the amount of **Fifty Thousand Dollars ($50,000.00),** guaranteeing the availability of the goods and services at the offered price for 180 days after the Proposal Due Date and Time.

The bond shall be in the form provided in **Attachment 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/Offeror and accepted by the 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.

###  Litigation/Protest Bond

Each Offeror must submit with its proposal a Litigation/Protest Bond or other suitable security, as summarized in **4.38.5 Acceptable Security**, in the amount of **Fifty Thousand Dollars ($50,000.00).** The purpose of the Litigation/Protest Bond is to discourage frivolous lawsuits and protests by permitting the MLGCA to recover, in addition to its attorney's fees, damages that result from delay in implementing a Contract. A claim upon the bond may be made by the MLGCA if:

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

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

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

### Performance Bond

1. The successful Offeror shall deliver a Performance Bond, or other suitable security, to the MLGCA after notification of recommended award in the amount of **One Hundred Thousand Dollars ($100,000.00),** guaranteeing that the Contractor shall well and truly perform the Contract.
2. The Performance Bond shall be in the form provided in **Attachment R** and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07, as summarized in **4.38.5**.
3. 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 MLGCA.
4. The Performance Bond may be renewable annually. The Contractor shall provide to the MLGCA, 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 MLGCA prior to the expiration of the existing Performance Bond.
5. 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.
6. After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the MLGCA’s sole discretion. If any reduction is granted, the MLGCA shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the MLGCA’s sole discretion.

###  Fidelity Bond

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

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

###  Acceptable security

Acceptable security shall be as described below, identified within and excerpted from COMAR 21.06.07. Acceptable security for Proposal, performance, and payment bonds is limited to:

* 1. A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;
	2. A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
	3. Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State; or
	4. An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer.

###  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 (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to $750,000. MSBDFA may also guarantee up to 90% of a surety's losses as a result of a Contractor’s breach of Contract; MSBDFA 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 90 days of submitting a bonding application to MSBDFA. 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 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

## 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/>.

**4.40. Ownership of Material**

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

**4.41. Proposal Disclosure Prohibition**

Upon issuance of this RFP, neither the MLGCA, the Commission, nor their representatives shall discuss the contents of this RFP with potential Offerors or their representatives, other than in conjunction with the Pre-Proposal Conference, oral presentations, discussions or site visits. (See RFP Sections 4.1 and 4.10)

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

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

**4.42. Non-Exclusive Rights**

Any Contract resulting from this RFP shall be non-exclusive, and nothing in this RFP or any Contract resulting from this RFP shall preclude the MLGCA from purchasing services from another vendor(s).

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# Proposal Format

## Two Part Submission

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

* + Volume I –Technical Proposal
	+ Volume II – Financial Proposal

## Proposal Delivery and Packaging

### Proposals delivered by facsimile and e-mail shall not be considered.

### Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.

### Offerors may submit Proposals by hand or by mail as described below to the Procurement Officer at the address provided in the Key Information Summary Sheet.

1. Any Proposal received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the Proposal Due Date and Time listed in the RFP will be deemed to be timely. The MLGCA recommends a delivery method for which both the date and time of receipt can be verified.
2. 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.

### The Procurement Officer must receive all Proposal material by the Proposal 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 Proposal Due Date and Time will not be considered.

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

1. Volume I - Technical Proposal consisting of:
	1. One (1) unbound original executed Technical Proposal and all supporting material marked and sealed,
	2. Five (5) duplicate hard 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**).
2. Volume II - Financial Proposal consisting of:
	1. One (1) original executed Financial Proposal and all supporting material marked and sealed,
	2. Five (5) duplicate copies of the above separately marked and sealed,
	3. An electronic version of the Financial Proposal in Excel or 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**).

### Affix the following to the outside of each Volume of sealed Proposal: the name, email address, and telephone number of a contact person for the Offeror. 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.

### 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).

## 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:

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

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

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

Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and after the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 “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.

1. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)

The Offeror Information Sheet (see **Appendix 2**) and 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 amendments to this RFP issued before the Proposal Due Date and Time, if any. Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to all services and requirements as stated in its Proposal, including the prices, and the requirements as stated in this RFP.

1. Executive Summary (Submit under TAB C)

(1) The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”

(2) In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).

(3) 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.**

1. 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 both **Section 1** and **Section 5.3.6.**

**5.3.3** Technical Response to RFP Requirements & Proposed Work Plan (Submit under TAB E)

The Offeror shall provide a statement of intent to comply with the terms, conditions and requirements of all specifications contained in Section 2.3.

The Offeror shall address in order each and every 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. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. 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.

Specifically, the Offeror shall address the following:

**5.3.3.1 General Solution Requirements (Section 2.3.1)**

(1) Offeror should provide an overall description of the proposed System - hardware (computer and peripherals, printer and Uninterrupted Power Supply (‘UPS”)), software and related services necessary to implement, operate and maintain a state-of–the-art turnkey RNG system, to include a minimum of four (4) identical independent RNG systems (Two production systems, test system, one disaster recovery and backup).

(2) Offeror should explain its capability using either an RNG system, adjunct software (proprietary or off-the-shelf) or other means to provide all animation requirements. Offeror should provide examples of animation files it has previously produced for a similar project and/or samples of animation files or styles that it is capable of producing for this project.  Speculative creative work for the animation will be accepted but is not required. No compensation will be provided for any speculative creative designed submitted. Submission of speculative work by an Offeror does not indicate that speculative work will be used by the MLGCA in fulfilling the contract requirements.

**5.3.3.2 Hardware Requirements (Section 2.3.2)**

Offerors should describe and provide diagrams/drawings/photos of the physical appearance of the proposed Systems, to include the dimensions of the proposed systems and the cabinets provided.

**5.3.3.3 Software Requirements (Section 2.3.3)**

Offeror should describe:

1. Controls that ensure the segregation of administrative responsibilities for all draw games based on the predefined rules and regulations of each game;
2. Software functions including but not limited to the following: random number generator algorithms, customized game matrices, program validity checking (e.g. checksums);
3. How the proposed application will support, at a minimum, user administration, password resets, user account disablement, account creation;
4. The authentication capabilities of the proposed application and how each System access will be limited to authorized users;
5. How the proposed application will include a display of the last login display (time, date and users) upon successful login and the ability to print the login history;
6. How the proposed application will prevent unauthorized administrative roles from changing any variable (example: date and time) used by each System for generating a drawing;
7. The proposed method that will be used to activate each Drawing; and
8. How draw results will be produced (i.e. hardcopy, electronic).

**5.3.3.4 Operational Performance Requirements (Section 2.3.4)**

Offeror should describe:

1. The process for how Winning numbers must be generated correctly based on the parameters defined for each Draw Game, including the selection matrices, draw dates and times;
2. The process for each System to ensure that each value selected for any given Draw Game has an equal opportunity of occurring;
3. The methods for each System that prevent the prediction of the selected values before their selection;
4. How each proposed system will be modified by the Contractor in order to support all future draw games. (At the time of a request for functional modification by MLGCA, the Contractor will be required to submit an estimate that includes the approximate number of hours necessary for such requests);
5. Each proposed System’s authentication capability that will limit access to each System’s resources to authorized personnel only;
6. Each system’s ability to maintain an audit trail to permit the reconstruction of the processing associated with all games and all draws since inception;
7. The archival methodology for a purge process after a minimum of 5 years and its ability to be moved to offline storage;
8. How each system will seed the random numbers, or an alternative method of arriving at random numbers;
9. How the algorithm will be managed, controlled and verified to ensure that no change has occurred since the last draw;
10. How the reports produced by each System can be validated and authenticated to have been produced by the particular system that produced them;
11. How the System must support “test drawings” and how each proposed System audit log captures this data; and
12. How system clocks will be synchronized.

**5.3.3.5 Security Requirements (Section 2.3.5)**

Offeror should describe:

1. How each system must require at least two independent individuals (i.e. drawing manager and assistant draw staff) to be present with unique access devices (such as locks/keys or biometric identifiers) in order to gain physical access to the machines within the drawing area.
2. How each system must require at least one logical factor of authentication (i.e. log-in and password or biometric value) for two individual users (i.e. drawing manager and external auditor). A second factor is encouraged.
3. Each system must prevent unauthorized changes in development, test, implementation, and use of the product. Bidders should describe any and all methods for preventing and for detecting and reporting of any unauthorized access or modifications to the system.
4. How each system must include an audit function for an authorized user to review specific drawing data retrospectively, including a logging function that captures all activity on the system thereby allowing for a review of the activity.
5. The method of ensuring that all security requirements are consistently met or exceeded in order to ensure the integrity of each system and the integrity of Maryland Lottery drawings. Security and integrity of the system is of the highest order of importance in the system.
6. How each of the proposed Systems can be physically secured when not in use.

**5.3.3.6 Testing Requirements (Section 2.3.6)**

Offeror should describe how it will successfully complete its own internal quality assurance testing on each System before delivery to MLGC and provide a detailed description of the Offeror’s quality assurance testing procedures before System delivery.

**5.3.3.7 System Certification Requirements (Section 2.3.7)**

N/A

**5.3.3.8 Training Requirements (Section 2.3.8)**

Offeror should:

1. Describe its proposed on-site system-training program, which at a minimum, ensures that MLGCA personnel and their auditors are fully qualified to operate the System correctly and efficiently;
2. Describe the operational training which must include at minimum a complete and comprehensive tutorial instruction of all the System interface screens;
3. Provide, as part of its proposal, all operational, procedural, administrative and maintenance manuals and training materials (hard copies and flash/thumb drives); and
4. Describe recommended training for future games/enhancements.

**5.3.3.9 Warranty Requirements (Section 2.3.9)**

Offeror should provide a complete description of any and all warranties which may apply, including for upgrades, theft and damages to the hardware and software.

**5.3.3.10 Maintenance Requirements (Section 2.3.10)**

Offeror should describe its proposed maintenance program (i.e. on-site, remote), to include maintenance on all equipment provided under this Contract as well as to provide replacement parts for the life of each System as necessary.

**5.3.3.11 Deliverable Schedule (Section 2.4)**

Offeror should provide a detailed Delivery Schedule/Implementation Plan, including, but not limited to a time line indicating significant milestones based upon a contract start date to be agreed upon by the parties, which will ensure compliance with the required Go Live Date. This Deliverable Schedule/Implementation Plan, when approved by the MLGCA, shall become the basis for Implementation.

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

* 1. The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract and describe in detail how the proposed staff’s experience and qualifications relate to their specific responsibilities for this contract.
	2. Describe the Account Team that will be assigned to service the MLGCA under this Contract. For each key management executive and key staff, the Offeror must state the full name, title and function of each of the key Personnel who will be directly involved with providing the services rendered under this Contract; state the percent of participation of each Key Person in this Contract; and provide their resume/biography specifically to include experience relevant to the Lottery’s account.
	3. At minimum, the Offeror shall provide resumes for the following key personnel who will be assigned to the Lottery account.

a. Primary contact person on Offeror’s Account Team;

b. The Account Team principals that will be assigned to the monthly and year-end audits; and

c. The Account Team principals that will be assigned to the Information Technology Audit.

* 1. Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.
	2. The Offeror must state, for each person identified as Key Personnel, and other personnel involved in Lottery matters, all relevant information including their full name, business address, business telephone number, five (5) year employment history, and for each person state whether or not, during the last five (5) years, any of the following events occurred:

a. Such person was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation (excluding traffic violations and other minor offenses).

b. Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining such person from engaging in any type of professional or business practice or activity.

c. Such person was the subject of any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of such person to engage in any professional or business practice or activity.

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

**5.3.5 Offeror Qualifications and Capabilities (Submit under TAB G)**

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in **Section 3.10.1**. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

* 1. The number of years the Offeror has provided the similar goods and services;
	2. The number of clients/customers and geographic locations that the Offeror currently serves;
	3. The names and titles of headquarters or regional management personnel who may be involved with supervising the services to be performed under the Contract;
	4. The Offeror’s process for resolving billing errors; and
	5. An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, regional offices, and subsidiaries of the Offeror.

**5.3.6 References (Submit under TAB H)**

Provide a minimum of three (3) client references that are capable of documenting the Offeror’s ability to perform projects of comparable size and complexity as specified in this RFP. References used to meet any Minimum Qualifications (RFP **Section 1**) may be used to meet this request. 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:

* 1. Name of client organization;
	2. Name, title, telephone number, and e-mail address of point-of-contact for client organization, who must be accessible and knowledgeable regarding the Offeror’s performance);
	3. Value, type, duration, and description of contract(s) supporting the client organization;
	4. The services provided, scope of contract, geographic area supported, and performance objectives satisfied; and,
	5. An explanation of why the Offeror is no longer providing the services to the client organization, if that is the case.

The MLGCA shall have the right to request additional references from Offeror or to contact any reference of its own choosing, or any other source, not provided by the Offeror.

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

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing 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:

* 1. The State contracting entity;
	2. A brief description of the goods and services provided;
	3. The dollar value of the contract;
	4. The term of the contract;
	5. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
	6. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

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

**5.3.8 Financial Capability (Submit under TAB J)**

1) The Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity and capacity to provide the services required by this RFP.

2) If available, the Offeror shall include Financial Statements, prepared in accordance with Generally Accepted Accounting Principles (GAAP). This should include, at minimum, a Profit and Loss (P&L) statement and a Balance Sheet, and include any accompanying notes, for the last three (3) years (independently audited preferred by a CPA firm).

3) 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.

4) The Offeror shall provide at least five (5) financial references from banks or other financial institutions attesting to the Offeror’s credit worthiness.

5) If an Offeror experiences a substantial change in its financial condition during the period prior to the award of any contract pursuant to this RFP, the Offeror shall notify the Procurement Officer in writing of the change at the time the change occurs or is identified. Failure to notify the Procurement Officer of such a substantial change in financial condition may be sufficient grounds for rejecting an Offeror's proposal.

**5.3.9 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.

**5.3.10 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.

**5.3.11 Legal Action Summary (Submit under TAB M)**

The Offeror shall include the following information regarding legal actions:

* 1. A statement as to whether there are any pending legal actions or potential claims against the Offeror and a brief description of any such 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;
	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, location of the court, and case name and number;
	5. A statement whether the Offeror, a subsidiary or intermediary company, parent company or holding company was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past five (5) years; and
	6. A statement whether the Offeror, a subsidiary or intermediary company, parent company or holding company was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past five (5) years.

**5.3.12 Technical Proposal – Required Forms and Certifications (Submit under TAB N)**

* 1. 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 N.
	2. Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror’s services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including, but not limited to, any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror’s Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.
	3. For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.
	4. A Letter of Authorization shall be on letterhead or through the provider’s e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
		+ 1. Third-party POC name and alternate for verification;
			2. Third-party POC mailing address;
			3. Third-party POC telephone number;
			4. Third-party POC email address; and
			5. If available, a Re-Seller Identifier.

## 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. 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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# Evaluation and Selection Process

## 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 be appointed by the Director and may include members of the Commission. The Evaluation Committee will review all Qualifying Proposals, participate in 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.

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

## Qualifying Proposal

All Offerors’ Proposals received by the Proposal Due Date and Time will be first reviewed by the Procurement Officer to determine if the Offeror’s Minimum Requirements specified in Section 1 have been met and to determine compliance with the submission requirements of the RFP and, in particular, with the requirement for submission of the MBE Forms contained in Attachment D-1/D-2. An Offeror not meeting the Minimum Requirements will be determined to be “not responsible.” A Proposal that does not include the completed D-1/D-2 MBE Form will be determined to be “not reasonably susceptible of being selected for award.” If either determination is made, the Proposal shall not be further considered and the Offeror’s Financial Proposal shall be returned unopened.

## Technical Evaluation

The Evaluation Committee shall conduct its evaluation of the technical merits of the Proposals in accordance with the Evaluation Criteria set forth in Section 6.4 below. If at any time in the evaluation process an Offeror is determined to be not responsible or a Proposal is determined to be not reasonably susceptible of being selected for award, the Proposal will be dropped from further consideration in the awarding of the Contract and the Financial Proposal will be returned unopened to the Offeror.

## Technical Proposal Evaluation Criteria

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

The MLGCA 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. The proposed solution should address all of the MLGCA’s requirements as provided in Section 2.3 and throughout this RFP.

### Background Experience and Qualifications (Section 5.3.5 TAB G and 5.3.6 TAB H)

### Overall Response to Requirements and Work Plan (Section 5.3.3 TAB E)

### Staff (Section 5.3.4 TAB F and 5.3.10 TAB L)

### Capability/Capacity (Section 5.3.7 TAB I, 5.3.8 TAB J, and Section 5.3.11 TAB M)

## Financial Proposal Evaluation Criteria

The separate Financial Volume of each qualified proposal will be distributed to the Evaluation Committee following the completion of the technical evaluation.

The Financial Proposals of all Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the “Total Proposal Price” within the stated guidelines set forth in this RFP and as submitted on **Attachment B-2** - Financial Proposal Form.

## 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:

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

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

## Selection Procedures

### General

1. 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.
2. 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.

### Selection Process Sequence

1. 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 an 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.
2. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State’s requirements and the Offeror’s ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
3. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror’s Technical Proposal. Technical Proposals are given a final review and ranked.
4. 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.
5. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, 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 3.11 (Substitution of Personnel).

## 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.

## Debriefing of Unsuccessful Offerors

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

## 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**.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

# 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, submit two (2) paper 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 RFP, 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

| Applies ? | 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>) |
| N | 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>) |
| N | 10 Business Days after recommended award | D | 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>)  |
| N | As directed in forms | D | 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>) |
| N | With Proposal | E | 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>)  |
| N | 5 Business Days after recommended award | E | 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>)  |
| Y | With Proposal | F | 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>)  |
| 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>)  |
| Y | 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 <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-O-DHSHiringAgreement.pdf>)  |
| Y | With Proposal | P | Proposal Bond |
| Y | With Proposal | Q | Litigation/Protest Bond |
| Y | 5 Business Days after recommended award | R | Performance Bond  |

|  |
| --- |
| Appendices |
| Applies ? | When to Submit | Label | Attachment Name |
| Y | 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>)  |

1. Pre-Proposal Conference Response Form

**Solicitation Number #2022-15**

**RANDOM NUMBER GENERATOR (RNG) SYSTEM FOR MLGCA**

A Pre-Proposal conference will be held on **May 26, 2022 at 1:00 pm**.

The Conference will be held by Video Teleconference.

Please return this form not later than **5:00 pm (Local Time) on May 24, 2022** 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:

Robert W. Howells

MLGCA

E-mail: Robert.howells@maryland.gov

Firms indicating that they plan to attend the Conference will be provided the necessary Google Meets link by the Procurement Officer.

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”): N/A |
| Offeror:  |  |
| *Offeror Name (please print or type)* |  |
| By: |  |
| *Signature/Seal* |  |
| Printed Name:  |  |
| *Printed Name* |  |
| Title:  |  |
| *Title* |  |
| Date: |  |
| *Date* |  |

1. 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.

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.

The Contract that results from this RFP will be a combination Firm Fixed Price Contract with an Indefinite Quantity Firm Fixed Unit Price component in accordance with COMAR 21.06.03.02 and 21.06.03.06.

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

The Offeror’s Proposed “Total Proposal Price” specified on the Financial Proposal Form-Attachment B-1 is based on model quantities for the Modifications and Enhancements component and will be used solely for price evaluation, comparison and selection for recommendation for award. The quantities indicated are not a guarantee of any minimum or maximum amounts under this Contract and may change at any time during the term of the Contract, or Renewal Option Period, if exercised.

The actual amount to be paid to the Contractor shall be calculated using the Firm Fixed Prices specified on the Financial Proposal Form and, for the Modifications and Enhancements component, the actual number of hours authorized and accepted by the MLGCA.

See separate Excel Financial Proposal Form entitled, “*Attachment B - MLGCA Lottery Random Number Generator Financial Proposal RFP #2022-1*.”

1. Proposal Affidavit

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

1. Minority Business Enterprise (MBE) Forms

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

1. Veteran-Owned Small Business Enterprise (VSBE) Forms

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

1. 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.

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.shmtl> and clicking on Living Wage for State Service Contracts.

1. Federal Funds Attachments

This RFP does not include a Federal Funds Attachment.

1. 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>

1. Non-Disclosure Agreement (Contractor)

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

1. HIPAA Business Associate Agreement

This RFP does not require a HIPAA Business Associate Agreement.

1. Mercury Affidavit

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

1. 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>.

1. Contract

**MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA)**

**“RANDOM NUMBER GENERATOR (RNG) SYSTEM FOR MLGCA”**

**#2022-15**

**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”).**

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 **RANDOM NUMBER GENERATOR (RNG) SYSTEM FOR MLGCA, RFP # #2022-15**, 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, as amended

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 an Initial operational term period of four (4) years (“Initial Term”).

3.2 The Implementation Period shall be the period of time from the Effective Date of this Contract (#2022-15) until the Go Live Date (December 15, 2022), during which time the Contractor shall install the System including all required components, and prepare to commence live operations. The Contractor shall not be paid or accrue the right to any payments from the State during the Implementation Period.

3.3 In its sole discretion, the MLGCA shall have the unilateral right to extend the Contract for one (1) additional four (4) year renewal option (“Renewal Term”) at the prices established in the Contract. “Term” means the Initial Term and any Renewal Term(s).

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

3.5 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

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.

4.2 The Contract is a combination Firm Fixed Price with an Indefinite Quantity-Firm Fixed Unit Price component in accordance with COMAR 21.06.03.02 & 21.06.03.06.

The total price/amount of this Contract for the Initial Term (operational) of approximately four (4) years excluding any future modifications shall not exceed **($ amount to be inserted upon contract award)** Dollars. In the event that the MLGCA exercises its unilateral option to extend the Contract in its sole discretion, the price/amount of this Contract for the Renewal Option four (4) year term excluding any future modifications shall not exceed **($ amount to be inserted upon contract award).** The “not to exceed” amounts are not guaranteed amounts, but only the maximum amount authorized to be expended under this Contract without further written and properly authorized modification. If the charges are likely to become greater than the not to exceed amounts, the MLGCA will request approval from the Maryland Department of General Services, the Maryland Board of Public Works, and other necessary State officials.

4.3 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.

4.4 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.

4.5 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 (1) 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; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the 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** **Indemnification and Notification of Legal Requests**, 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 (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys’ fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor’s, or any of its subcontractors’, performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.

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

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:

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

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** **and Notification of Legal Requests** 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.

30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under 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.

30.4 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

(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.

Verification shall include a review of:

i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and

ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.

(b) If the 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.

(c) 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.

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

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

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:**

Carole B. Gentry, Managing Director, Communications

Maryland State Lottery and Gaming Control Agency

Montgomery Park Business Center

1800 Washington Blvd., Suite 330

Baltimore, MD 21230

Email: carole.gentry@Maryland.gov

Phone: 410-230-8725

**With a copy to:**

Robert W. Howells, Procurement Officer

Maryland State Lottery and Gaming Control Agency

Montgomery Park Business Center

1800 Washington Blvd., Suite 330

Baltimore, MD 21230

Email: robert.howells@Maryland.gov

Phone: 410-230-8789

If to the Contractor:

(Contractor’s Name)

(Contractor’s primary address)

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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): $50.00 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): $100.00 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) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: $100.00 per day until the undisputed amount due to the MBE subcontractor is paid.

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. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

HIPAA clauses do not apply to this Contract

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

|  |  |
| --- | --- |
| Contractor | State of MarylandMARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA) |
|  |  |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  John A. Martin, Director |
|  |  |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
|  |  |
| PARENT COMPANY (GUARANTOR) (if applicable) | By: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By: | Date |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| Date |
| Approved for form and legal sufficiencythis \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Assistant Attorney General |  |
|   |
| APPROVED BY BPW: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ (Date) (BPW Item #)  |
|  |
|  |

1. Contract Affidavit

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

1. DHS Hiring Agreement

This RFP does not require a DHS Hiring Agreement.

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. 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).
4. Casino – A facility at which Players play VLTs and Table Games.
5. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>. Regulations governing the MLGCA are found in COMAR Title 36. Regulations governing the State procurement process are found in COMAR Title 21.
6. Commission - The Maryland State Lottery and Gaming Control Commission (MLGCC)
7. Contract – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
8. 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.
9. Contractor – The selected Offeror that is awarded a Contract by the State.
10. 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
11. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
12. Days – Means calendar days unless otherwise specified.
13. Director - The Director of the Maryland State Lottery and Gaming Control Agency (MLGCA).
14. Draw Game – A Lottery game whereby players can pick their numbers or utilize automatic computer-generated plays purchased through a Lottery terminal. Customers receive a ticket and then wait for the Drawing to determine if they have won.
15. Drawing - A random selection event used for determining winners of certain MLGCA games
16. EFT - Electronic Funds Transfer through a bank employing the Automated Clearing House (ACH) network.
17. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
18. 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.
19. Fiscal Year (“FY”) – Maryland State Fiscal Year, July 1 – June 30. For example, FY22 (or FY 2022) represents the period beginning July 1, 2021 through June 30, 2022.
20. Gaming Central Monitor and Control System (“Central System”) – The hardware, software and network components which link and support all required Video Lottery Terminals and the central site, provided to and controlled by the Commission to which VLTs communicate for the purposes of 1) Information retrieval; 2) Retrieval of the win and loss determination from VLTs; and 3) Programs to activate and disable VLTs.
21. Gaming Operations – Operations which include VLT and Table Game activity
22. ICS – Internal Control System.
23. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
24. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
25. Instant Ticket Game (also, Instant Game) – A game in which tickets have a concealed prize structure and playing area. The player removes the material concealing the playing area on the game ticket (e.g. including but not limited to latex coating or flap) in accordance with the game instructions. Includes any game wherein the player receives an immediate result without waiting for a Drawing.
26. Key Personnel – All Contractor Personnel identified in the RFP as such that are essential to the work being performed under the Contract. See RFP **Section 3.10**.
27. 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.
28. Lottery Central Monitor and Control System - The computer system, both hardware and software, office, terminals, equipment, parts, supplies, commodities, personnel and services necessary to implement, conduct and provide the Contractor-provided lottery central monitor and control system for lottery games. This includes all game operations which enable the MLGCA to sell and redeem all tickets, validate all instant tickets and perform accounting and pack management functions for lottery retailers.
29. 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.
30. MLGCA - The Maryland State Lottery and Gaming Control Agency (also sometimes referred to as “Lottery”).
31. Monitor Games – A Draw Game with Drawing results graphically displayed on television-type screens at Retailer locations.
32. Multi-State Lottery Association (“MUSL”) – A non-profit government-benefit association owned and operated by its member lotteries.
33. 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.
34. 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.
35. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
36. Offeror – An entity that submits a Proposal in response to this RFP.
37. 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.
38. 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.
39. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
40. Qualified Offerors – Those responsible Offerors that submitted proposals initially classified by the Procurement Officer as reasonably susceptible of being selected for award. (COMAR 21.05.03.03C.(1)).
41. Request for Proposals (RFP) – This Request for Proposals issued by the Maryland State Lottery and Gaming Control Agency (MLGCA), with the RFP Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
42. Responsible Offeror – An Offeror who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability that shall assure good faith performance. (COMAR 21.01.02.01(77))
43. Retailer – A business entity or retailer that is authorized by the MLGCA to sell Lottery products. (The term “Agent” may occasionally be used interchangeably to mean “Retailer”).
44. Risk Assessment – The process of identifying the risks to system security and determining the probability of occurrence, the resulting impact, and additional safeguards that would mitigate this impact. Part of Risk Management and synonymous with Risk Analysis.
45. RNG – Random Number Generator
46. 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.
47. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
48. 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.
49. 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.
50. State – The State of Maryland.
51. 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.
52. Subcontractor – Any person having an agreement with a contractor to perform all or some of the contractor’s work under a contract with the MLGCA. Does not include an employee with an employment contract, or an employee organization with a collective bargaining agreement.
53. System (or RNG System) – Computer system which randomly selects numbers in compliance with the game matrices of draw-style lottery games.
54. System Availability – The period of time the Solution works as required excluding non-operational periods associated with planned maintenance.
55. 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:
	1. 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;
	2. All associated rules, reports, forms, templates, scripts, data dictionaries and database functionality;
	3. All associated configuration file details needed to duplicate the run time environment as deployed in the current deployed version of the system;
	4. All associated design details, flow charts, algorithms, processes, formulas, pseudo-code, procedures, instructions, help files, programmer’s notes and other documentation;
	5. 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);
	6. 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
	7. Operating procedures.
56. Table Game – Casino games (e.g., blackjack, craps) played on a table that are operated by one or more live dealers.
57. Technical Safeguards – The technology and the policy and procedures for its use that protect State Data and control access to it.
58. Third Party Software – Software and supporting documentation that:
	1. are owned by a third party, not by the State, the Contractor, or a subcontractor;
	2. are included in, or necessary or helpful to the operation, maintenance, support or modification of the Solution; and
	3. are specifically identified and listed as Third Party Software in the Proposal.
59. 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.
60. UPS – Uninterruptible Power Supply system
61. Upgrade - A new release of any component of the Solution containing major new features, functionality and/or performance improvements.
62. 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.
63. Video Lottery Terminal (“VLT”) (a) Any machine or other device that, on insertion of a bill, coin, token, voucher, ticket, coupon, or similar item, or on payment of any consideration:

(i) is available to play or simulate the play of any game of chance in which the results, including the options available to the Player, are randomly determined by the machine or other device; and

(ii) by the element of chance, may deliver or entitle the Player who operates the machine or device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payout is made automatically from the device or in any other manner.

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

(i) that does not directly dispense money, tokens, or anything of value to winning players; and

(ii) described under paragraph (1) above that uses an electronic credit system making the deposit of bills, coins, or tokens unnecessary.

(c) “Video Lottery Terminal” does not include an authorized slot machine operated by an eligible organization under Title 12, Subtitle 3 of the Criminal Law Article.

Appendix 2. – Offeror Information Sheet

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