

Request for Proposals

**INTERNET SERVICE PROVIDER  
FOR networkMaryland™**

PROJECT NO. 050B8800021



DEPARTMENT OF  
BUDGET & MANAGEMENT

**Issue Date: March 28, 2008**

**NOTICE**

Prospective Offerors who have received this document from the Department of Budget and Management's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

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

**STATE OF MARYLAND  
NOTICE TO OFFERORS/CONTRACTORS**

In order to help us improve the quality of State proposals solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this Contract, please fax this completed form to: 410-974-3274 to the attention of Mike Yeager.

**Title:** INTERNET SERVICE PROVIDER FOR networkMaryland™

**Project No:** 050B8800021

1. If you have responded with a "no bid", 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 Maryland Government is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the bid/proposals is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposals requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE 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 bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

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

Offeror Name: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

**KEY INFORMATION SUMMARY SHEET**

**STATE OF MARYLAND**

**Request For Proposals**

**Internet Service Provider for networkMaryland™**

**PROJECT NUMBER 050B8800021**

**RFP Issue Date:** March, 28, 2008

**RFP Issuing Office:** Maryland Department of Budget and Management  
Office of Information Technology

**Procurement Officer:** Mike Yeager  
Office Phone: (410) 260-6014  
Fax: (410) 974-3274  
e-mail: [myeager@dbm.state.md.us](mailto:myeager@dbm.state.md.us)

**Proposals are to be sent to:** Maryland Department of Budget and Management  
45 Calvert Street, Room 144  
Annapolis, MD 21401  
Attention: Mike Yeager

**Pre-Proposal Conference:** April 14, 2008 10:00 AM Local Time  
45 Calvert Street, Room 164 A & B  
Annapolis, Maryland 21401

**Closing Date and Time:** April 28, 2008 – 2:00 PM Local Time

**NOTE**

Prospective Offerors who have received this document from the Department of Budget and Management's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the RFP or other communications can be sent to them.

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## SECTION 1 - GENERAL INFORMATION

### 1.1 Summary Statement

- 1.1.1 The Maryland Department of Budget and Management, Office of Information Technology (OIT) is responsible for providing technical leadership and guidance to all agencies in the Executive Branch of the State of Maryland (the State). The OIT assures that State agencies implement successful information technology (IT) development projects in accordance with the mission of the agency and establishes direction for the productive and efficient use of information technology at the Statewide level.
- 1.1.2 The purpose of this Request for Proposals is to afford the State owned and operated network known as networkMaryland™ an economical and efficient means of acquiring Internet service through multiple Internet Service Providers (ISPs). networkMaryland™ requires redundant ISP connections from separate providers delivered in geographically diverse regions of the State. Access to the Internet is essential in order to achieve the missions of the State.
- 1.1.3 The selected Contractors shall provide ISP services to networkMaryland™ in one of two regions; Washington DC or Baltimore. This RFP is solely for providing service to networkMaryland™.
- 1.1.4 It is the State's intention to obtain services, as specified in this Request for Proposals, from a Contract between the successful Offerors and the State.
- 1.1.5 DBM intends to award one Contract to two different Offerors whose proposals, in combination, are deemed most advantageous to the State. Offerors can propose service in one or both regions. The same Offeror will not be selected for both regions.
- 1.1.6 Offerors must be able to provide all services and meet all of the requirements requested in this solicitation.

### 1.2 Abbreviations and Definitions

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

- a. **Authorized Representative** – A person or entity authorized in writing by the Project Manager to make technical changes, open trouble tickets, etc. for the Contracted ISP Service.
- b. **BGP** – Border Gateway Protocol is a transmission routing protocol for inter-domain routing in large networks, utilizing the most current, commercially available version.
- c. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us)
- d. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of Attachment A.
- e. **Contract Manager (CM)** – The State representative for this project that is primarily responsible for Contract administration functions, including issuing written direction, compliance with terms and conditions, monitoring this project to ensure compliance with the terms and conditions of the Contract and to assist the Project Manager in achieving on budget/on time/on target (e.g., within scope) completion of the project.

- f. **Contractor** – The selected Offeror that is awarded a Contract by the State.
- g. **DBM** – Maryland Department of Budget and Management
- h. **ISP** – Internet Service Provider
- i. **IPv6** – Internet Protocol version 6
- j. **LAN** – Local Area Network.
- k. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.
- l. **MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.
- m. **networkMaryland™** – The State of Maryland owned and operated high-speed communications network that serves as the backbone for transacting State business over the Internet.
- n. **NOC** – Network Operations Center
- p. **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 6:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) - keyword State Holidays.
- q. **Offeror** – An entity that submits a proposal in response to this RFP.
- r. **POP** – Point of Presence.
- s. **Private peering** – Framework that enables two private Internet Service Providers to directly exchange Internet traffic.
- t. **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract, issuing notices to proceed, determining scope issues, and is the only State representative that can authorize changes to the Contract. DBM may change the Procurement Officer at any time by written notice to the Contractor.
- u. **Project Manager (PM)** – The State representative that is primarily responsible for monitoring the daily activities of the Project and providing technical guidance to the Contractor. DBM may change the PM at any time by written notice to the Contractor.
- v. **Request for Proposals (RFP)** – This Request for Proposals for the Maryland Department of Budget and Management, Project Number 050B8800021 dated March 28, 2008, including any amendments.
- w. **RFQ** - Request for Quote
- x. **State** – “State” means the State of Maryland.

### 1.3 Contract Type

The Contract that results from this RFP shall be an Indefinite Quantity Contract, Fixed Unit Prices in accordance with COMAR 21.06.03.06.

### 1.4 Contract Duration

The Contract resulting from this RFP shall be for a period of two years beginning on the Contract execution date and ending two years later.

## **1.5 Procurement Officer**

The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Mike Yeager  
Maryland Department of Budget and Management  
45 Calvert Street, Room 144  
Annapolis, Maryland 21401  
Phone Number: 410-260-6014  
Fax Number: 410-974-3274  
E-mail: [myeager@dbm.state.md.us](mailto:myeager@dbm.state.md.us)

DBM may change the Procurement Officer at any time by written notice.

## **1.6 Contract and Project Manager**

The Contract Manager is:

Joe Scher  
Maryland Department of Budget and Management  
Office of Information Technology  
45 Calvert Street, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401  
Phone Number: 410-260-7284  
Fax Number: 410-974-5615  
Email: [jscher@dbm.state.md.us](mailto:jscher@dbm.state.md.us)

The Project Manager is:

Tim Kwong  
Maryland Department of Budget and Management  
Office of Information Technology  
45 Calvert Street, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401  
Phone Number: 410-260-7423  
Fax Number: 410-974-5045  
E-mail: [tkwong@dbm.state.md.us](mailto:tkwong@dbm.state.md.us)

## **1.7 Pre-Proposal Conference**

A pre-proposal conference (Conference) will be held on April 14, 2008, beginning at 10:00 AM, at 45 Calvert Street, Room 164 A & B, Annapolis, MD 21401. Attendance at the pre-proposal conference is not mandatory, but all interested Offerors are encouraged to attend in order to facilitate better preparation of their proposals.

The Pre-Proposal Conference will be summarized. As promptly as is feasible subsequent to the Pre-Proposal Conference, a summary of the Pre-Proposal Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP.



In order to assure adequate seating and other accommodations at the Pre-Proposal Conference, please fax the Pre-Proposal Conference Response Form to the attention of Mike Yeager at (410) 974-3274 with such notice no later than 4:00 PM on April 10, 2008. The Pre-Proposal Conference Response Form is included as Attachment D to this RFP. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call no later than April 7, 2008. DBM will make a reasonable effort to provide such special accommodation.

## **1.8 eMarylandMarketplace**

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DBM web site ([www.dbm.maryland.gov](http://www.dbm.maryland.gov)) and other means for transmitting the RFP and associated materials, the solicitation and summary of the pre-proposal conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via e-Maryland Marketplace.

In order to receive a contract award, a vendor must be registered on eMaryland Marketplace(eMM). Registration is free. Go here to register: <https://edidmarketplace.com/>. Click on "Registration" to begin the process and follow the prompts.

## **1.9 Questions**

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the pre-proposal conference. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Officer. Questions, both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference.

Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted in a timely manner prior to the proposal due date to the Procurement Officer. Time permitting answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the RFP.

## **1.10 Proposals Due (Closing) Date**

An unbound original and three bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.5, no later than 2:00 PM (local time) on April 28, 2008 in order to be considered. An electronic version (diskette or CD) of the Technical Proposal in MS Word format must be enclosed with the original technical proposal. An electronic version (diskette or CD) of the Financial Proposal in MS Word format must be enclosed with the original financial proposal. Ensure that the diskettes are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the appropriate proposal (technical or financial).

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02, proposals received by the Procurement Officer after the due date, April 28, 2008 at 2:00 PM (local time) will not be considered.

**Proposals may not be submitted by e-mail or facsimile.**

### **1.11 Duration of Offer**

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

### **1.12 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the DBM Procurements web page and through eMarylandMarketplace. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments to this RFP issued before the proposal due date must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

### **1.13 Cancellations; Discussions**

The State reserves the right to cancel this RFP, accept or reject any and all proposals, in whole or in part, received in response to this RFP, to waive or permit cure of minor irregularities, and to conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State. The State also reserves the right, in its sole discretion, to award a Contract based upon the written proposals received without prior discussions or negotiations.

### **1.14 Oral Presentation**

Offerors will be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation shall be submitted in writing. All such representations will become part of the Offeror's proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations. Typically oral presentations occur approximately two weeks after the proposal due date.

### **1.15 Incurred Expenses**

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

### **1.16 Economy of Preparation**

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

### **1.17 Protests/Disputes**

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

### **1.18 Multiple or Alternate Proposals**

Neither multiple nor alternate proposals will be accepted.

### **1.19 Access to Public Information Act Notice**

An Offeror shall give specific attention to the clear identification of those portions of its proposal that it considers confidential, 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, Title 10, Subtitle 6, Part III of the State Government Article of the Annotated Code of Maryland.

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 can be disclosed. Information which is claimed to be confidential is to be placed after the Title Page and before the Table of Contents in the Technical proposal and if applicable in the Financial proposal.

### **1.20 Offeror Responsibilities**

The selected Offeror shall be responsible for all products and services required by this RFP. All subcontractors must be identified and a complete description of their role relative to the proposals must be included in the Offeror's proposals. Additional information regarding MBE subcontractors is provided under paragraph 1.24 below. If an Offeror that seeks to perform or provide the services required by this RFP is subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

### **1.21 Mandatory Contractual Terms**

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the Contract, attached as Attachment A. Any exceptions to this RFP or the Contract must be clearly identified in the Executive Summary of the technical proposal. A proposal that takes exception to these terms may be rejected.

### **1.22 Proposal Affidavit**

A proposal submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this RFP.

### **1.23 Contract Affidavit**

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this RFP. This Affidavit must be provided within five business days of notification of proposed Contract award.

### **1.24 Minority Business Enterprises**

An MBE subcontractor participation goal of 0% has been established for this solicitation.

### **1.25 Arrearages**

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

### **1.26 Procurement Method**

This Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

### **1.27 Verification of Registration and Tax Payment**

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

### **1.28 False Statements**

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

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

### **1.29 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. 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 and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAC X-10 form can be downloaded at:

<http://compnet.comp.state.md.us/gad/pdf/GADX-10.pdf>>

### **1.30 Non-Visual Access**

By submitting a proposal, the Offeror warrants that the information technology offered under the proposal (1) provides equivalent access for effective use by both visual and non-visual means; (2) will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use; (3) if intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and (4) is available, whenever possible, without modification for compatibility with software and hardware for non-visual access. The Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access will not increase the cost of the information technology by more than five percent. For purposes of this Contract, the phrase “equivalent access” means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

The Non-visual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) - keyword nva.

### **1.31 Accessing a networkMaryland™ PoP**

Offerors interested in accessing any of the networkMaryland™ PoPs identified in this RFP shall contact the Procurement Officer and sign a non-disclosure agreement in the form of Attachment H.

### **1.32 Mercury and Products That Contain Mercury**

This solicitation and the resulting Contract require that all materials used in the performance of the Contract shall be mercury-free products. The Offeror shall submit with its proposal a Mercury Affidavit in the form of Attachment I.

### **1.33 Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland. Additional information regarding the State’s Living Wage requirement is contained in the following section entitled *Living Wage Requirements for Service Contracts* (Attachment J). If the Offeror fails to complete and submit the required Living Wage documentation, the State may determine an Offeror to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$11.30 per hour, if State contract services valued at 50% or more of the total value of the contract is performed in the Tier 1 Area. If State contract services valued at 50% or more of the total value is performed in the Tier 2 Area, a bidder shall pay each covered employee at least \$8.50 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George’s Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the 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) shall assign the tier based upon where the recipients of the services are located.

**The contract resulting from this solicitation has been deemed to be a Tier 1 Contract.**

## **SECTION 2 – OFFEROR MINIMUM QUALIFICATIONS**

Offerors must complete the Minimum Qualification Certification (Attachment K) to certify the following qualifications are met.

Offerors must demonstrate their ability to meet the following requirements for network interconnectivity and infrastructure as an Internet Service Provider:

- A. Offeror has at least four private peering relationships with other Internet Service Providers that operate with a network infrastructure that is equal to or better than Contractor's.
- B. Offeror has a national optical backbone with at least OC-12 (622 Mbps) between major metropolitan area exchange (MAE) and national access points (NAP) and public Internet switching points with a daily average round-trip latency no greater than 65ms on the backbone.

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## SECTION 3 – SCOPE OF WORK

### 3.1 Purpose and Background

- 3.1.1. The State is issuing this solicitation for the purposes outlined in Section 1.1 of this RFP.
- 3.1.2. The State operates a high-speed wide area network, networkMaryland™, that provides equitable access to “anytime, anywhere” network services, including Internet access, regardless of location for all State Agencies.
- 3.1.3. networkMaryland™ will be the customer of the Contract resulting from this RFP.
- 3.1.4. networkMaryland™ requires redundant ISP connections from separate providers delivered in geographically diverse regions of the State. The two regions are Washington DC and Baltimore.
- 3.1.5. networkMaryland™ will only accept ISP delivery in the Baltimore region at any one of the following locations:
  - 6 St. Paul Street, Baltimore MD 21201
  - 301 W. Preston Street, Baltimore, MD
  - 10 East Baltimore Street, Baltimore, MD
  - 111 Market Street, Baltimore MD
- 3.1.6. networkMaryland™ will only accept ISP delivery in the Washington region at any one of the following locations:
  - University of Maryland College Park, 224 Farm Road, College Park, MD
  - Level3 Communications, 1757 Old Meadow Road, McLean, Virginia
- 3.1.7. The Contractor will be provided access at 224 Farm Road, 6 St. Paul Street or 301 West Preston Street for the installation of fiber if required to deliver the requested services.
- 3.1.8. The State’s CPE will be either a Cisco Layer 3 switch or Juniper router with an appropriate optical interface.

### 3.2 General Requirements

- 3.2.1 The Contractor shall provide Internet service from 100 Mbps upgradeable to 1000 Mbps delivered to one of the locations identified in 3.1. The Contractor shall provide the pricing for this service based on the initial amount of 100 Mbps with a per 25 Mbps pricing above this quantity. The Contractor shall provide Internet service upgradeable to a 1000 Mbps (1 Gigabit/second) connectivity as specified below:
  - Timeframe for initial installation shall be a maximum of 60 calendar days for the initial 100 Mbps.
  - Timeframe for upgrade from one ISP service level range to any other service level range shall be a maximum of 14 calendar days.
- 3.2.2. The Contractor shall provide a full BGP feed and perform all requests for policy changes within 24 hours of an email request from the Project Manager or Authorized Representative. An Authorized

Representative is an individual authorized by the PM to make technical changes. The PM will provide the Contractor written notification identifying the Authorized Representatives.

- 3.2.3 The Contractor's Network Operation Center shall provide a full time (24x7) operations and continuously monitor the State's network connectivity.
- 3.2.4 The Contractor shall provide routing for the State's Classless Internet Domain Routing (CIDR) block of IPv4 addresses owned by the State and any IPv4 addresses owned by networkMaryland™ customers.
- 3.2.5 The Contractor shall be capable of routing for the future IPv6 addresses owned by the State and any IPv6 addresses owned by networkMaryland™ customers.
- 3.2.6 The Contractor shall be capable of providing Primary and Secondary Domain Name Service.
- 3.2.7 The Contractor shall provide partial or full News Feeds.
- 3.2.8 No later than fifteen calendar days after the start of the Contract (via E-mail), the Contractor shall provide to the Project Manager contacts, locations and contact telephone numbers of the Contractor's Network Operation Center(s)/Internet Data Center(s).
- 3.2.9 The Contractor shall provide ISP service availability of 99.7% or greater, excluding pre-defined maintenance windows.
- 3.2.10 The Contractor shall notify the Project Manager or the State's NOC 14 calendar days in advance of scheduled maintenance activities that might impact the Internet service. The notice shall include at a minimum the reasons for the planned service outages, the scope of the outage and its duration. Maintenance shall be scheduled to begin no earlier than 11:00 p.m. and complete no later than 6:00 a.m.
- 3.2.11 The Contractor shall identify the business office(s) from which installation and billing will be performed and maintenance dispatched for the services offered in its proposal in a list to the Contract Manager within 15 calendar days after Contract award and submit updates to the Contractor Information list as needed to keep it current. The Contractor shall identify a Point of Contact (POC).
- 3.2.12 The Contractor shall be responsible for any and all installation coordination necessary to provide facilities premise to premise. At all times, the Contractor shall retain responsibility that includes any subcontracted service where applicable, including but not limited to local loops.
- 3.2.13 The Contractor shall cooperate with the transition of any successor to the Contract by providing, without charge, information and records a successor would require to continue the same or similar ISP services.

### **3.3 Additional Services Ordering/Termination Process and Purchase Orders**

- 3.3.1 The Contractor shall receive purchase orders (POs) from the DBM Contract Manager. A PO from the Contract Manager is the authorized means for the Contractor to upgrade or terminate ISP services under the Contract. DBM reserves the right to change the Service Ordering/Termination process when it deems it appropriate and necessary.
- 3.3.2 Ordering and Termination Process for ISP Services:
  - 3.3.2.1 DBM shall submit a Request for Quote (RFQ) via e-mail to the Contractor to order upgraded or changed ISP services. The e-mail shall contain the amount of bandwidth requested and the date service is required for ISP services.



- 3.3.2.2. The Contractor shall respond to an ISP RFQ by e-mail to the PM with a price quote as defined in the RFQ for the requested services within 3 business days. The response shall confirm the elements in the RFQ, the recurring monthly fee, and the date the Contractor shall install the requested service. In responding to a RFQ, the prices shall not exceed those listed in Attachment E – Price Proposal Form and Instructions. The State will not pay for services in excess of those amounts.
- 3.3.2.3. Upon a decision to proceed with the order, DBM will begin the ordering process by submitting a requisition to the Contract Manager for the purchase of the specified services.
- 3.3.2.4. To initiate ISP service, the Contract Manager shall create and transmit a PO by email/fax to the Contractor. Receipt of the PO by the Contractor shall serve as Notice to Proceed (NTP) for the specified services.
- 3.3.2.5. To increase or reduce the amount of ISP service, the PM will submit a change request to include the service number, the address of the service and the description of requested change to the Contract Manager. The Contract Manager will then email/fax a PO to the Contractor identifying the requested change.
- 3.3.2.6. To terminate ISP service, the PM will submit a request to include the service number and address of service along with the requested date that ISP service is to be discontinued. The Contract Manager will then create and fax a PO to the Contractor which shall constitute the ISP service termination.
- 3.3.2.7. By 5:00 P.M. no later than ten calendar days after the receipt of a PO from the Contract Manager for installation/termination/upgrade of ISP services, the Contractor shall respond by e-mail to the Contract Manager and the PM with installation/termination/upgrade due dates, circuit ID, and customer account number for the requested services. Exceptions may only be granted by the Contract Manager. The Contractor shall complete installation/termination by the due date stated in the Contractor's e-mail.
- 3.3.2.8. If unable to complete the installation/termination by the due date, the Contractor shall provide in writing to the Contract Manager and the PM, no later than the next business day following the original due date, a detailed description of the cause for the delay and the revised due date.
- 3.3.2.9. Should the Contractor not provide the ISP service within the stated due date, the State reserves the right to cancel the PO without further obligation or procure like services through alternative methods. The Contract Manager may delay the installation date for State requested service by notifying the Contractor at least 15 calendar days before the stated installation due date.
- 3.3.2.10. The Contractor shall work through the PM shown on the PO for scheduling all on-site activity. The Contractor's installation due date stated shall take under consideration that access to some government facilities may be limited to normal business hours.

### **3.4 Problem Reporting and Coordination Procedures**

- 3.4.1 The Contractor shall provide access to its technical support /Help Desk 24x7x365 via a toll free telephone number to enable the State to obtain technical support, troubleshooting, problem isolation, problem determination and resolution of problems.
- 3.4.2 If a service outage cannot be resolved within the first hour, the Contractor shall provide the State's NOC with an hourly status report by telephone. If the outage cannot be resolved within two hours, the Contractor will escalate the problem within its own organization and notify the State's NOC as to the expected time for ISP service restoration. If the outage can not be resolved within eight

hours, the Contractor will provide a senior management representative to address the problem and if requested by the State, meet with representatives from DBM at a date, time and location of DBM's choosing to provide an explanation of the problem and an estimated time for service restoration.

- 3.4.3 The Contractor shall have a written procedure for reporting problems or suspected problems for the installed ISP service. The Contractor shall submit written procedure updates to the Project Manager for review and approval when procedures change. (See Section 4.4.8)
- 3.4.4 The Contractor shall be responsible for the coordination of all repair activities between its network and any interconnects with other service providers, and DBM.
- 3.4.5 The Contractor shall provide a password-protected problem-reporting system accessible via the Internet that authorized State personnel may access via Secure Socket Layer to open trouble tickets 24x7x365 and use that system to track the ticket status and escalations. It shall be in a format acceptable to the State and contain the following information:
- Contact Name
  - Ticket Number
  - Circuit ID/Customer ID
  - Location
  - Date Opened
  - Time Opened
  - Date Closed
  - Time Closed
  - Duration
  - Trouble Type
  - Trouble Summary
- 3.4.6 The Contractor, when notifying PM that State equipment is at fault for an ISP service outage, shall provide the State with evidence that the loss of service is related to State owned equipment.
- 3.4.7 The Contractor shall provide a password-protected web site accessible via the Internet that authorized State personnel may access via Secure Socket Layer to view near real time statistics on bandwidth utilization of the State's ISP service.

### **3.5 Acceptance**

To ensure compliance with the requirements and specifications of this Contract, the State of Maryland may perform acceptance tests within 14 calendar days of notification by the Contractor of completion of ISP services installation. The State does not assume acceptance of services until the Project Manager accepts the Contractor's services as fully operational.

### **3.6 Security Requirements**

- 3.6.1 Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available on-line at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: Security Policy.

- 3.6.2 The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The contractor shall fill-out any necessary paperwork as directed and coordinated with the PM to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.
- 3.6.3 Physical Security:
- 3.6.3.1 Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of State personnel, each such employee or agent shall provide additional photo identification.
- 3.6.3.2 At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badging, and wearing the badge in a visual location at all times.

### **3.7 Reports**

- 3.7.1 The Contractor shall provide to the Project Manager the following reports by the fifteenth day of the month via E-Mail or web access reporting tools for ISP services in the previous month:
- Network Statistics - Report must include the Bandwidth Utilization (percentage over time and in/out), Errors in/out, and Bytes in/out.
  - Trending – Ability to view availability, bandwidth utilization.
  - Trouble tickets, outage summary, duration of outages, and outage resolution
  - Availability statistics of the service
- 3.7.2 The Contractor shall prepare and submit to the Project Manager, by e-mail, a closeout report due on the last day of the Contract which includes any open issues and an inventory of services. The report shall include agency name, service location, circuit IDs and service level(s).

### **3.8 Invoicing**

- 3.8.1 All invoices for ISP services shall be submitted to the Project Manager no later than 30 calendar days following the month the service was provided and include the following information: Department of Budget and Management, 45 Calvert Street, Annapolis, Maryland 21401, Contractor name, remittance address, federal taxpayer identification or (if owned by an individual) his/her social security number, invoice period, invoice date, invoice number, amount due and the purchase order number(s) being billed. Invoices submitted without the required information will not be processed for payment until the Contractor provides the required information.
- 3.8.2 Contractor shall have a process for resolving billing errors.

### **3.9 Insurance**

- 3.9.1 The Contractor shall maintain property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees or subcontractors.
- 3.9.2 The Contractor shall maintain a policy of general liability insurance that is of the proper type and limits specified below.

- 3.9.3 The Contractor shall provide a copy of the Contractor's current certificate of insurance, that, at a minimum, shall contain the following:
- A) Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
  - B) General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.
    - \$2,000,000 - General Aggregate Limit (other than products/completed operations)
    - \$2,000,000 - Products/completed operations aggregate limit
    - \$1,000,000 - Each Occurrence Limit
    - \$1,000,000 - Personal and Accidental Injury Limits
    - \$ 50,000 - Fire Damage Limit
    - \$ 5,000 - Medical Expense
- 3.9.4 Upon execution of a Contract with the State, Contractor shall provide the State with current certificates of insurance, and shall update such certificates from time to time, as directed by the State.
- 3.9.5 The State shall be named as an additional named insured on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage (Worker's Compensation excepted). Certificates of insurance evidencing this coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Procurement Officer, by certified mail, not less than 60 days advance notice of any non-renewal, cancellation, or expiration. In the event the State receives a notice of non-renewal, the Contractor shall provide the State with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.
- 3.9.6 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the State with the same documentation as is required of the Contractor.

## **SECTION 4 – PROPOSAL FORMAT**

### **4.1 Two Part Submission**

Offerors shall submit proposals in separate volumes:

- Volume I - TECHNICAL PROPOSAL
- Volume II - FINANCIAL PROPOSAL

### **4.2 Proposals**

Volume I-Technical Proposal shall be sealed separately from Volume II-Financial Proposal but submitted simultaneously to the Procurement Officer (address listed on Key Information Summary). An unbound original, so identified, and three (3) copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word format and the Volume II- Financial Proposal in MS Word format shall also be submitted with the unbound originals technical or financial volumes, as appropriate. Electronic media is to be submitted on a CD and shall bear a label on the outside containing the RFP number and name, the name of the Offeror and the volume number.

### **4.3 Submission**

Each Offeror is required to submit a separate file for each "Volume", which is to be labeled Volume I- Technical Proposal and Volume II-Financial Proposal. Each file shall bear the RFP title and number, name and address of the Offeror, the volume number (I or II), and closing date and time for receipt of the proposals.

All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

### **4.4 Volume I – Technical Proposal**

#### **4.4.1 Transmittal Letter**

A transmittal letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. See Offeror's responsibilities in Section 1.20.

#### 4.4.2 Additional Required Technical Submissions

- A) Completed Bid/Proposal Affidavit (Attachment B – with original of Technical Proposal only)
- B) Completed Mercury Affidavit (Attachment H – with original of Technical Proposal only)
- C) Completed Living Wage Affidavit (Attachment J—with original of Technical Proposal only).
- D) Completed Minimum Qualifications Sheet (Attachment K—with original of Technical Proposal only)

#### **4.4.3 Format of Technical Proposal**

Inside a sealed package described in Section 4.3, above, an unbound original, to be so labeled, three copies and the electronic version shall be provided. Section 3 of this RFP provides requirements and Section 4 provides reply instructions. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposals should be organized and numbered in the same order as this RFP. This proposal organization will allow State officials and the Evaluation Committee to "map" Offeror responses directly to RFP requirements by paragraph number.

The Technical Proposal shall include the following section in this order:

#### **4.4.4 Title and Table of Contents**

The Technical Proposal should begin with a title page bearing the name and address of the Offeror and the name and number of this RFP. A table of contents shall follow the title page for the Technical Proposal. Note: Information which is claimed to be confidential is to be placed after the Title page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in the Offeror's Financial Proposal. An explanation for each claim of confidentiality shall be included.

#### **4.4.5 Executive Summary**

The Offeror shall condense and highlight the contents of the technical proposal in a separate section titled "Executive Summary".

The summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment A), or any other attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If no exceptions to terms and conditions are made, the summary shall indicate this.

#### **4.4.6 Offeror Experience and Capabilities**

Offerors shall include information on past experience with similar projects and particularly with ISP services. General requirements of the Offeror and personnel are outlined in Section 2. Offerors shall describe how their organization can meet the qualifications of this RFP and shall include the following:

4.4.6.1 An overview of the Offeror's experience and capabilities providing Internet services. This description shall include:

- The extent of network architecture and infrastructure used to provide services to the existing customer base;
- The number of peering points and locations of these interconnections with other Internet Service Providers;
- The number of years the Offeror has provided these services; and ,
- The number of clients and geographic locations that the Offeror currently serves.

4.4.6.2 The names and titles of the key management personnel directly involved with supervising the services rendered under this Contract.

4.4.6.3 The process for resolving billing errors.

4.4.6.4 At least three references from its customers who are capable of documenting The Offeror's ability to provide Internet services of comparable bandwidth and service delivery method.

Each client reference shall be from a client for whom the Offeror provided service and shall include the following information:

- Name of client organization
- Name, title, and telephone number of point of contact for client organization
- Value, type, duration, and services provided of contract(s) supporting client organization

**DBM reserves the right to request additional references.**

4.4.6.5 As part of its proposal, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which have been completed within the last 5 years. For each identified contract the Offeror is to provide:

- The State contracting entity
- A brief description of the services/goods provided
- The dollar value of the contract
- The term of the contract
- The State employee contact person (name, title, telephone number and if possible e-mail address)
- 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 considered as part of the responsibility determination by the Procurement Officer.

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

The Offeror shall address each major section in the Technical Proposal and describe how its proposed services will meet the requirements as described in the RFP. The Offeror shall identify the location(s) it proposes to provide the service, any current facilities that it operates at that location, and any required construction to satisfy the State's requirements as outlined in this RFP. If the State is seeking Offeror agreement to a requirement, the Offeror shall state agreement or disagreement.

Offerors must identify which location (see Sections 3.1.5 and 3.1.6) they propose to offer services in each region they propose. An Offeror may only propose one location in each region.

As stated above, any exception to a term or condition may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. Any paragraph that responds to a work requirement shall include an explanation of how the work will be done.

**Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing will only be included in the Financial Proposal (Volume II).**

#### **4.4.8 Problem Reporting and Coordination Procedures:**

The Offeror shall submit its written procedures for reporting problems or suspected problems for the installed services in this RFP. The procedures submitted in response to this section meet the requirement of Section 3.4. The Offeror shall submit its written coordination procedures for installation and repair services in this RFP.

#### **4.4.9 The process for resolving billing errors**

The Offeror shall submit a copy of their process for resolving billing errors.

#### **4.4.10 Financial Capability and Statements**

The Offeror shall include Financial Statements, specifically, an abbreviated Profit and Loss (P&L) and an abbreviated Balance sheet for the last two years (independently audited preferred).

#### **4.4.11 Certificate of Insurance**

The Offeror shall provide a copy of the Offeror's current certificate of insurance with the prescribed limits set forth in Section 3.9.

#### **4.4.12 Legal Action Summary – Describe:**

1. Any outstanding legal actions or potential claims against the Offeror
2. Any settled or closed legal actions or claims against the Offeror over the past five years
3. Any judgments against the Offeror within the past five years, including the case name, number, court and final ruling or determination from the court.
4. The judge and court location in instances where litigation is ongoing and the Offeror has been directed by the court not to disclose information

### **4.5 Volume II - Financial Proposal**

Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 4.3, the Contractor shall submit an original unbound copy, three copies, and an electronic version in MS Word of the Financial Proposal. The Financial Proposal shall contain all price information in the format specified in Attachment E. Complete the price sheets only as provided in the Price Proposal Instructions. One-time installation fees that reflect the price to deliver the service at the location proposed by the Offeror must be included, including the price of extending fiber resources and network hardware.



## **SECTION 5– EVALUATION CRITERIA AND SELECTION PROCEDURE**

### **5.1 Evaluation Criteria**

Evaluation of the proposals will be based on the criteria set forth below. The Contracts resulting from this RFP will be awarded to the Offeror that is most advantageous to the State, considering price and the technical factors set forth herein. In making this determination, price will receive greater weight than technical factors.

### **5.2 Technical Criteria**

The criteria to be applied to each Technical Proposal are listed in descending order of importance:

- Offeror’s Technical Response to RFP Requirements. An Offeror’s response to the RFP shall illustrate a comprehensive understanding of the requirements and include an explanation of how the service will be provided.
- Offeror Experience and Capabilities (Ref. Section 4.4.6)
- Proposed Problem Reporting and Coordination Procedures (Ref. Section 4.4.8)

### **5.3 Financial Criteria**

All qualified Offerors will be ranked from the lowest to the highest price based on their total price proposed within the stated guidelines (as submitted on Attachment E—Price Proposal Form).

### **5.4 Reciprocal Preference**

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement Contract. The preference given shall be identical to the preference that the other state, through law, policy or practice gives to its residents.

### **5.5 Selection Procedures**

#### **5.5.1 General Selection Process**

The Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03. The competitive sealed proposals method is based on discussions and revision of proposals during these discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without

holding discussions. In either case of holding discussions or not doing so, the State may determine an Offeror to be not responsible and/or an 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 the review of those proposals. If the State finds an Offeror to be not responsible and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, an Offeror's financial proposal will be returned unopened.

### **5.5.2 Selection Process Sequence**

- 5.5.2.1 The first step in the process will be an evaluation for technical merit. 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, and to facilitate arrival at a Contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two weeks of the delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.
- 5.5.2.2 Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.
- 5.5.2.3 The financial proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of qualified Offerors, the Procurement Officer may again conduct discussions to further evaluate the Offeror's entire proposal.
- 5.5.2.4 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs). However, the State reserves the right to make an award without issuing a BAFO if/when it's determined to be in the State's best interest.

### **5.5.3 Award Determination**

Upon completion of all discussions and negotiations, reference checks, and site visits, if any, the Procurement Officer will recommend award of the Contracts to the responsible Offerors whose proposals are determined to be the most advantageous to the State considering technical evaluation factors and price factors as set forth in this RFP. In making the most advantageous Offeror determination, price factors will be given greater weight than technical factors. The State will evaluate the combination of proposals by Offerors for service in Baltimore and Washington DC to arrive at the most advantageous proposal. DBM intends to award one Contract to two Offerors whose proposals, in combination, are deemed most advantageous to the State. Offerors can propose service in one or both regions. An Offeror will not be selected for both regions.

## **ATTACHMENTS**

**ATTACHMENT A** is the State's Contract. It is provided with the RFP for informational purposes and is not required at proposal submission time. However, it must be completed, signed and returned by the selected Offeror to the Procurement Officer expeditiously upon notification of proposed Contract award.

**ATTACHMENT B** – Bid/Proposal Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

**ATTACHMENT C** – Contract Affidavit. IT is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer within 5 working days of notification of proposed award.

**ATTACHMENT D** – Pre-Proposal Conference Response Form. It is requested that this form be completed and submitted as described in RFP section 1.7 by those potential Offerors who plan on attending the conference.

**ATTACHMENT E** – Price Proposal Instructions and Forms. Price Proposal forms must be completed and submitted as the Financial Proposal.

**ATTACHMENT F** – Procurement Officer Checklist. Used to as an aide to be certain all the components of the Technical Proposal are completed and submitted. The checklist will not be a part of the technical evaluation.

**ATTACHMENT G** – Non-Disclosure Form.

**ATTACHMENT H** – Mercury Affidavit.

**ATTACHMENT I** – Living Wage Information.

**ATTACHMENT J** – Living Wage Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

**ATTACHMENT K** -- Offeror's Qualification Sheet. This form must be completed and submitted with the Offeror's technical proposal.

**ATTACHMENT A – CONTRACT**

**INTERNET SERVICE PROVIDER  
FOR networkMaryland™**

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 2008 by and between \_\_\_\_\_ and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT, OFFICE OF INFORMATION TECHNOLOGY.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

**1. Definitions**

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

- 1.1 “Contract Manager” means Joe Scher of the Department.
- 1.2 “Contractor” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.
- 1.3 “Department” means the Maryland Department of Budget and Management.
- 1.4 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_.
- 1.5 “Procurement Officer” means Mike Yeager of the Department.
- 1.6 “Project Manager” means Tim Kwong of the Department.
- 1.7 “RFP” means the Request for Proposals for Internet Service Provider for networkMaryland™, Project 050B8800021, and any amendments thereto issued in writing by the State.
- 1.8 “State” means the State of Maryland.
- 1.9 “Technical Proposal” means the Contractor’s Technical Proposal, dated \_\_\_\_\_.

**2. Scope of Work**

2.1 The Contractor shall provide all deliverables as defined in the RFP Section 2. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- Exhibit A – The RFP
- Exhibit B – The Technical Proposal
- Exhibit C – The Financial Proposal
- Exhibit D - State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. 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 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

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

The Contract resulting from this RFP shall be for a period of two years beginning on the Contract execution date and ending two years later. The Contractor shall provide services upon receipt of a Notice to Proceed from the Procurement Officer.

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

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Exhibit C, Contractor's Financial Proposal. Except with the express written consent of the Procurement Officer, payment to the Contractor pursuant to this Contract shall not exceed \$\_\_\_\_\_. Contractor shall notify the Contract Manager, in writing, at least 60 days before payments reach the specified amount. After notification by the Contractor, if the State fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (i) promptly consult with the State and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete State-defined critical work in progress prior to the date the stated amount will be reached; and (ii) secure data bases, systems, platforms and/or applications which the Contractor is working on so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is\_\_\_\_\_. Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

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

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

4.4 Contractor's eMarylandMarketplace vendor ID number is \_\_\_\_\_.

## 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, 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 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 Manager, 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.

## 6. Exclusive Use

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.

## 7. Patents, Copyrights, Intellectual Property

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

7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with

Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.

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

## **8. Confidentiality**

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

## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

## **10. Indemnification**

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

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

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

**10.4** The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the

Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

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

No official or employee of the State, as defined under State Government Article, § 15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

#### **12. Disputes**

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, 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 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 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**

**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, Maryland Code Annotated, Commercial Law Article, Title 22, does not apply to this Contract, or to any purchase order, or Notice to Proceed, issued under this Contract.

**13.3** Any and all references to the Annotated Code of Maryland contained in this Contract shall be construed to refer to such Code sections as from time to time amended.

#### **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, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (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, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona



fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

**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 rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the 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 Cause**

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

**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; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

**19. Delays and Extensions of Time**

The Contractor agrees to perform this Contract continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**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 person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, §§14-101 - 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

**24. Retention of Records**

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract closeout and final payment by the State under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances.

**25. Compliance with Laws**

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

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

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **26. Cost and Price Certification**

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

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

## **27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 11 and 13 through 26 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

## **28. Liability**

**28.1** For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

A. For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

C. For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10, "Indemnification", of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's 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. Parent Company Guarantee (If Applicable)**

[Corporate name of 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 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 Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

### **30. Commercial Non-Discrimination**

- 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 or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by DBM, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, 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 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth 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.

### **31. Administrative**

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

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

If to the State: Joe Scher  
Maryland Department of Budget and Management  
Office of Information Technology  
45 Calvert Street, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401

Attention: \_\_\_\_\_

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

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

CONTRACTOR

STATE OF MARYLAND  
BY: DEPARTMENT OF BUDGET AND  
MANAGEMENT

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

\_\_\_\_\_  
By: T. Eloise Foster, Secretary

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Approved for form and legal  
sufficiency this \_\_\_\_ day \_\_\_\_\_, 2008.

\_\_\_\_\_  
Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_  
(Date) (BPW Item #)

**ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the (title) \_\_\_\_\_ and the duly authorized representative of (business) \_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

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

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

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

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

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

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

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

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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**G. SUB-CONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;



(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

#### I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### K. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business' policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

(g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;

(h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;

(i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or

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

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

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

(4) I acknowledge and agree that:

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

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

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

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic \_\_\_ ) (foreign \_\_\_ ) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is: Name: \_\_\_\_\_ Address: \_\_\_\_\_ .

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

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

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

Date: \_\_\_\_\_ By: \_\_\_\_\_ (Authorized Representative and Affiant)

**ATTACHMENT C - CONTRACT AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

I HEREBY AFFIRM THAT:

I am the \_\_\_\_\_(title)\_\_\_\_\_ and the duly authorized representative of \_\_\_\_\_(business)\_\_\_\_\_ and that I possess the legal authority to make this Affidavit on behalf of myself and the business for which I am acting.

**B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT**

I FURTHER AFFIRM THAT:

(1) The business named above is a (domestic\_\_\_\_) (foreign\_\_\_\_) corporation registered in accordance with the Corporations and Associations Article, Annotated Code of Maryland, and that it is in good standing and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation, and that the name and address of its resident agent filed with the State Department of Assessments and Taxation is: Name:\_\_\_\_\_ Address:\_\_\_\_\_.

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

**C. CERTAIN AFFIRMATIONS VALID**

I FURTHER AFFIRM THAT:

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

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF. Date:\_\_\_\_\_ By:\_\_\_\_\_(Authorized Representative and Affiant)\_\_\_\_\_

**ATTACHMENT D – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

**Project No. 050B8800021  
Internet Service Provider for networkMaryland™**

A Pre-Proposal Conference will be held at 10:00 AM, on April 14, 2008, at 45 Calvert Street, Room 164 A&B, Annapolis, MD 21401. Please return this form by April 10, 2008, advising whether or not you plan to attend.

Return or fax this form to the Procurement Officer:

Mike Yeager  
Department of Budget and Management  
Procurement Unit  
45 Calvert Street, Room 144  
Annapolis, MD 21401  
Fax # (410) 974-3274

Please indicate:

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

- 1.
- 2.

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

\_\_\_\_\_  
Signature Title

## ATTACHMENT E – PRICE PROPOSAL FORM INSTRUCTIONS

### PRICING INSTRUCTION FORM

#### A. Instructions

In order to assist Offerors in the preparation of their price proposal and to comply with the requirements of this solicitation, Price Instructions and a Price Proposal Form have been prepared. Offerors shall submit their price proposal on the form in accordance with the instructions on the form and as specified herein. Do not alter the forms or the price proposal shall be rejected. The Price Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to all proposed prices.

The price proposal form is used to calculate the Offeror's TOTAL PRICE PROPOSED.

- A) All Unit/Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15
- B) All Unit Prices must be the actual unit price the State shall pay for the proposed item per 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, i.e. .344 shall be 34 and .345 shall be 35.
- D) All goods or services required or requested by the State 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 the price proposal form shall be filled in.
- F) Except as instructed on the form, nothing shall be entered on the price proposal form that alters or proposes conditions or contingencies on the prices.
- G) It is imperative that the prices included on the Price Proposal Form have been entered correctly and calculated accurately by the vendor and that the respective total prices agree with the entries on the Price Proposal Form. Any incorrect entries or inaccurate calculations by the vendor will be treated as provided in COMAR 21.05.03E and 21.05.02.12.

## Attachment E - Price Proposal Form

### Baltimore Service Delivery

Column A Description of Services	Column B Proposed Unit Price	Column C Quantity	Column D Total Extended Price (B * C = D)
Proposed service delivery address (including suite #)			
One-time Installation Price for a Giga-bit Interface			
			\$
Monthly Price for 100 Mbps of ISP Service	\$	24 units	\$
Monthly Price per Unit of 25 Mbps of ISP Service	\$	12 units *	\$
<b>Grand Total Price Proposed (Add Column D)</b>			<b>\$</b>

### WASHINGTON DC SERVICE DELIVERY

Column A Description of Services	Column B Proposed Unit Price	Column C Quantity	Column D Total Extended Price (B * C = D)
Proposed service delivery location ((including suite #)			
One-time Installation Price for a Giga-bit Interface			
			\$
Monthly Price for 100 Mbps of ISP Service	\$	24 units	\$
Price per Unit of 25 Mbps of ISP Service	\$	12 units *	\$
<b>Grand Total Price Proposed (Add Column D)</b>			<b>\$</b>

\* The units listed are for evaluation purposes. The price in Column B is the price the State will pay for any ordered changes from the base 100 Mbps ISP Service. The actual number of units will vary and are not guaranteed.

Submitted By:  
Authorized Signature

Date

Printed Name and Title

Company Name

Company Address

FEIN

eMM i.d.

Telephone #

Fax #

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**ATTACHMENT F—PROCUREMENT OFFICER CHECKLIST**

<b>RFP</b>	<b>Requirement</b>	<b>Y/N</b>	<b>Remarks</b>
4.2	Was Vol I sealed separately from Vol II but submitted simultaneously?		
4.2	Were there an unbound original and three copies of the Vol I-Technical Proposal?		
4.2	Was an electronic version submitted in MS Word format for Vol I enclosed in the original copy of the Tech Proposal?		
4.2	Was the electronic media labeled with the RFP title/number, Offeror name and Vol I?		
4.3	Were separate volumes labeled Vol I—Technical Proposal and Vol II—Financial Proposal, in sealed packages bearing RFP title & number, name/address of Offeror, and closing date/time on outside of the packages? Were tech proposal pages numbered consecutively?		
4.4.1	Was there a letter which transmitted the technical proposal, acknowledged the receipt of addenda and was the letter signed by an individual authorized to commit the Offeror to the services and requirements of the RFP?		
4.4.2	Did the Offeror provide a completed Bid/Proposal Affidavit (Atch B), Mercury Affidavit (Atch H), Living Wage Affidavit (Atch J) and Offeror Qualifications (Atch K) —all with the original of technical proposal only? Were all the blocks filled in and were the Affidavits signed?		
4.4.3	Were proposals numbered to match numbering in RFP?		
4.4.4	Did the technical proposal begin with a title page bearing the name and address of the Offeror and the name and number of the RFP followed by a table of contents for the tech proposal? Was confidential info identified after title page?		
4.4.5	Is there a separate executive summary, which condenses and highlights the contents of the technical proposal?		
4.4.5	Does the executive summary identify any exceptions the Offeror has taken to the requirements of the RFP, the contract (Atch A) or any other attachments? <b>(Warning—Exceptions may result in proposal being rejected)</b>		
4.4.5	If there are no exceptions, does the executive summary so state?		
4.4.6	Does Exp & Capabilities info include overview, org chart and 3 references?		
4.4.7	Did the Offeror address each applicable criterion in the RFP?		
4.4.8	Did the Offeror submit Problem Reporting and Coordination Procedures?		
4.4.9-12	Did the Offeror submit process for billing resolution, financial statements, certificates of insurance, legal summary		

## ATTACHMENT G - NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, 200 \_\_, by and between the State of Maryland (hereinafter referred to as "the State"), acting by and through its Department of Budget & Management (hereinafter referred to as the “Department”), and \_\_\_\_\_, a corporation with its principal business offices located at \_\_\_\_\_ (hereinafter referred to as “Offeror”).

### RECITALS

**WHEREAS**, Offeror intends to submit a proposal in response to RFP #050B8800021 for Internet Service Provider for networkMaryland™ (the “RFP”) for the State of Maryland-owned and operated high-speed communications network that serves as the backbone for transacting State business over the Internet; and

**WHEREAS**, in order for the Offeror to submit such a proposal, it will be necessary for the State to provide the Offeror with access to certain confidential information regarding the State’s proprietary fiber optic network known as networkMaryland™, including, by way of example only, its physical layout and available fiber count (collectively, the “Confidential Information”).

**NOW, THEREFORE**, in consideration of being given access to the Confidential Information in connection with the Offeror’s proposal to the RFP (hereinafter referred to as the “Proposal”), and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Recitals. The Recitals are not merely prefatory but are an integral part hereof.
2. Offeror’s qualifications. Offeror represents and warrants that:
  - A. It is qualified to do business in the State and that it will take such actions, from time to time hereafter, as may be necessary to remain so qualified during the period covered by this Agreement;
  - B. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the period covered by this Agreement;
  - C. It is in compliance with all federal, State and local laws, regulations, and ordinances applicable to its business and it is not aware of any actual or threatened actions, claims, suits, orders, or other matters that would prevent or limit its ability to satisfactorily and fully perform its obligations under this Agreement or under any subsequent agreement that it may enter into with the State in connection with its Proposal; and

D. It is the correctly named and identified entity that intends to submit the Proposal and it is not controlling, controlled by, or under common control with the entity that intends to submit the Proposal. If the Proposal will be submitted by a joint venture or any other group of separate business entities, each entity comprising such group has been clearly identified in and has executed this Agreement.

3. Term of Agreement. The term of this Agreement shall commence on the date it is fully signed by both parties and shall continue thereafter until the earlier to occur of: (i) three (3) years following the return of the Confidential Information in accordance with Section 6 of this Agreement; (ii) receipt of written notice given by the State to Offeror terminating this Agreement; or (iii) the date upon which the terms of this Agreement are expressly superseded by the confidentiality provisions of any subsequent agreement which the parties may enter into in connection with the Proposal. If all Confidential Information is not returned to the State in accordance with Section 6 of this Agreement, then this Agreement shall continue in full force and effect until such time as all Confidential Information is returned to the State and the State acknowledges its receipt in writing.

4. What constitutes “Confidential Information”. Confidential Information means any and all information provided by or made available by the State to Offeror in connection with the Proposal, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that Offeror views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State for Offeror to prepare and submit its Proposal.

5. Use of Confidential Information. In consideration of the State’s allowing Offeror access to the Confidential Information:

A. Offeror hereby agrees to hold the Confidential Information in trust and in strictest confidence, and to take all measures necessary to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

B. Offeror shall not, without the State’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of preparing its Proposal. Offeror shall limit access to Confidential Information to its employees and agents (“Offeror’s Personnel”) who have a demonstrable need to know such Confidential Information in order to prepare the Proposal and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of Offeror’s Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute and date Exhibit A next to their name and by doing so agrees to be subject to the terms and conditions of this Agreement to the same extent as Offeror. If Offeror intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the preparation of the Proposal or who will otherwise have a role in performing any aspect of the Proposal, Offeror shall first obtain the written consent of the State to any such dissemination.

The State may grant, deny, or condition any such consent as it may deem appropriate in its sole and absolute subjective discretion.

6. Return of Confidential Information. Offeror shall return all Confidential Information to the Department within five (5) business days of the State's acceptance of Offeror's Proposal. If Offeror does not submit a Proposal, Offeror shall return the Confidential Information to the Department within 30 days of receiving the material. All Confidential Information returned to the State shall be accompanied by the Certification that is attached hereto and made a part hereof as Exhibit B and shall be signed by an officer of Offeror authorized to bind the Offeror.

7. Liability for Confidential Information. Offeror acknowledges that any failure by Offeror or Offeror's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, Offeror and each of Offeror's Personnel agree that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Offeror and each of Offeror's Personnel consent to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and/or to seek damages from Offeror and/or each of Offeror's Personnel, as applicable, for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by Offeror or any of Offeror's Personnel to comply with the requirements of this Agreement, Offeror and such Offeror's Personnel shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and/or costs.

8. Unauthorized Use. Offeror shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of Confidential Information by any of Offeror's Personnel or Offeror's former Personnel. Offeror shall, at Offeror's expense, cooperate with the State in seeking injunctive or other equitable relief against any such person.

9. Governing law. This Agreement shall be governed by the laws of the State of Maryland.

10. False and fraudulent statements. Offeror acknowledges that pursuant to Section 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland a person may not willfully make a false or fraudulent statement or representation of a material fact in connection with a procurement contract. Persons making such statements are guilty of a felony and on conviction subject to a fine of not more than \$20,000 and/or imprisonment not exceeding 5 years or both. Offeror further acknowledges that this Agreement is a statement made in connection with a procurement contract.

11. Signing authority for Offeror. The individual signing below on behalf of Offeror warrants and represents that s/he is fully authorized to bind Offeror to the terms and conditions specified in this Agreement. The individual signing below acknowledges that a breach of this warranty and representation may result in personal liability.

12. Other obligations. The parties further agree that, unless otherwise agreed in writing: (a) this Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and none of the terms of this Agreement may be amended or modified except by a written instrument signed by both parties; (b) the State may waive any rights under this Agreement only by written waiver duly signed by the State, and no failure by the State to exercise or delay in exercising a right under this Agreement shall constitute a waiver of such right; (c) the rights and obligations of Offeror may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State; (d) the State makes no representations or warranties as to the accuracy or completeness of any Confidential Information; (e) the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement; (f) all notices under this Agreement must be in writing and shall be deemed to have been delivered to and received by a party, and will otherwise become effective, on the date of actual delivery thereof (by personal delivery, express delivery service or certified mail) to the Notice Address of such party set forth below; and (g) signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures.

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

If to the State: Department of Budget and Management  
Office of Information Technology  
45 Calvert Street, 4<sup>th</sup> Floor  
Annapolis, Maryland 21401  
Attention: \_\_\_\_\_

If to the Offeror: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Agreement as of the day and year first above written.

STATE OF MARYLAND

OFFEROR

By: DEPARTMENT OF BUDGET &  
MANAGEMENT

\_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT A**

**LIST OF OFFEROR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS  
TO THE CONFIDENTIAL INFORMATION**

<b>Printed Name and Address of Individual/Agent</b>	<b>Employee (E) or Agent (A)</b>	<b>Signature</b>	<b>Date</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**EXHIBIT B**

**CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Agreement by and between the State of Maryland and \_\_\_\_\_ (“Offeror”) dated \_\_\_\_\_, 200\_\_ (“Agreement”) is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Offeror to this affirmation.

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

DATE: \_\_\_\_\_

NAME OF OFFEROR: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)



**ATTACHMENT H – MERCURY AFFIDAVIT**

**MERCURY AFFIDAVIT**

**AUTHORIZED REPRESENTATIVE THEREBY AFFIRM THAT:**

I am the \_\_\_\_\_ (Title) and the duly authorized representative of \_\_\_\_\_ (Business). I possess the legal authority to make this affidavit on behalf of myself and the business for which I am acting.

**MERCURY CONTENT INFORMATION:**

The product(s) offered do not contain mercury.

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

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

\_\_\_\_\_ By \_\_\_\_\_  
Date Signature

Print Name: \_\_\_\_\_  
Authorized Representative and Affiant

## Attachment I – Living Wage Requirements for Service Contracts

### Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- 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 Title 18, State Finance and Procurement, Annotated Code of Maryland.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the

Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.

- J. Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.



**Attachment-J Affidavit, Maryland Living Wage Requirement**

**Affidavit of Agreement**

Maryland Living Wage Requirements-Service Contracts

Contract No. \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**If the Contract is Exempt form the Living Wage Law**

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt form Maryland’s Living Wage Law for the following reasons (check all that apply):

- \_\_\_ Bidder/Offeror is a nonprofit organization
- \_\_\_ Bidder/Offeror is a public service company
- \_\_\_ Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- \_\_\_ Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

**If the Contract is a Living Wage Contract**

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living rate in effect at the time service is provided for hours spend on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

**Affidavit of Agreement**  
**Maryland Living Wage Requirements-Service Contracts**

B. \_\_\_\_\_ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- \_\_\_\_\_ All employee(s) proposed to work on the contract will spend less than one-half of the employee's time during every work week on the State contract;
- \_\_\_\_\_ All employee(s) proposed to work on the contract will be 17 years of age or younger during the duration of the contract; or
- \_\_\_\_\_ All employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness Name (Typed or Printed)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

## ATTACHMENT K – OFFER QUALIFICATIONS

(Attachments May Be Included)

IMPORTANT NOTE: BOTH ITEMS MUST BE ANSWERED

Contractor (Include Name, Address, and Telephone Number)

Offerors must demonstrate their ability to meet the following requirements for network interconnectivity and infrastructure as an Internet Service Provider:

- 1) **National Optical Backbone:** Offeror must have a national optical backbone with at least OC-12 (622 Mbps) between major metropolitan area exchange (MAE) and national access points (NAP) and public Internet switching points with a daily average round-trip latency no greater than 65ms on the backbone. Be sure to list specific details and address each technical criterion listed above.
- 2) **Relationships:** Must show at least three private peering relationships with other Internet Service Providers that operate with a network infrastructure that is equal to or better than Contractor's. The offeror must provide the company name with whom private peering relationships were entered into with, along with a contact person and telephone number.