

Office of the Attorney General

Department of Information Technology
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Baltimore, MD 21201-2305
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August 15, 2022

Request for Proposals to Serve as Assistant Information Security and Data Privacy Counsel to the Office of the Attorney General, Department of Information Technology, the Maryland Higher Education Division, and other to-be-determined State entities

Responses are due September 1, 2022

Dear Interested Party:

In this Request for Proposals (“RFP”), the Maryland Attorney General is seeking assistant information security and data privacy counsel (“Contractor”) to assist the Office of the Attorney General (“OAG” or “Office”), the Maryland Department of Information Technology (the “Department”), the institutions established under the Education Article of the Maryland Annotated Code and advised and represented by the Higher Education Division of the Office of the Attorney General (“HED”), and various other to-be-determined State entities (the “State entities”) on information security and data privacy law matters on an as-needed basis. **Offerors are invited to submit proposals by 4:00 p.m. on September 1, 2022.**

The Attorney General plans to retain one or more assistant counsel to provide assistance, as more fully outlined below, on information security and data privacy law matters, including international, national, and state/territorial laws involving information security and privacy requirements, and assistance with information breaches and contractual breach incidents involving IT. The work may also include requests for advice on and analysis of related contracts, other State or federal law, proposed legislation or regulations, and other laws involving data privacy rights or issues. Requests for assistance will be evidenced by issuance of a Task Order following completion of a conflicts check.

I am the sole point of contact for this request for proposals. All questions about this RFP must be submitted in writing no later than 4:00 p.m. on August 22, 2022. My email address is: kevin.harp@maryland.gov. A list of the written questions and the answers thereto will be provided to those persons who notify me that they have obtained this RFP (“Prospective Offerors”). Prospective Offerors may notify me that they have received this RFP by e-mail. There will be no pre-proposal conference.

Scope of Services

Subject to the provisions of each contract for these services (“Contract”), and the terms of the Task Order issued under that Contract, each Contractor shall provide, upon request, one or more of the following services:

- A. Advice on data privacy law matters, including:
 - (1) Federal privacy laws and regulations (e.g., HIPAA, GLBA, FERPA, etc.);
 - (2) International privacy laws (e.g., GDPR, PIPL, etc.);
 - (3) State laws governing the protection and handling of personally identifiable information and protected health information; and
 - (4) Medical privacy laws.
- B. Advice on contractual language relating to data privacy, information security requirements, and required breach response;
- C. Assistance with information breach response involving IT;
- D. Advice with respect to State, federal and municipal laws or regulations, and any proposed State, federal, municipal and/or international laws or regulations, involving data privacy rights or issues;
- E. Assistance in complying and verifying compliance with applicable State, federal, municipal and/or international laws or regulations involving data privacy rights; and
- F. Other related legal services, such as participation in litigation of claims or actions involving data privacy law, which are necessary for the proper performance of the services specified in the RFP.

General Conditions.

Payments Under the Contract. Assistant Information Security and Data Privacy Counsel employed for this purpose will be paid an hourly fee for services rendered under the Contract(s) and shall be reimbursed for approved expenses incurred in connection with the performance of those services on the terms and conditions set forth in the Contract(s). Contractor(s) will be paid based on a blended hourly rate. In addition, Assistant Attorneys General may handle all or a portion of the work.

No Guarantee of Work. No Contractor will be guaranteed any minimum amount of work or compensation. The Attorney General can make no assurances that any Task Orders will be issued, or that the OAG or the Institutions will require representation within the scope of this RFP, or that funds will be appropriated or otherwise made available by or to the OAG or the Institutions for payment of legal fees. Funds for payment of legal fees will be provided from funding mechanisms available to the Institutions.

Minority Participation. The Attorney General is an equal opportunity employer, committed to diversity in the workplace. Consistent with that commitment, the Attorney General desires that socially and economically disadvantaged individuals and minority business enterprises (“MBEs”) as defined in § 14-301 of the State Finance and Procurement Article of the Annotated Code of Maryland (“SFP”), have the maximum practicable opportunity to participate in the Contract(s). MBEs are encouraged to respond to this solicitation. When permitted or required by law, the Attorney General encourages the use of socially and economically disadvantaged individuals and MBEs for contracting and subcontracting opportunities. Assistant Information Security and Data Privacy Counsel should desire to promote and

undertake efforts to reach out to socially and economically disadvantaged individuals and MBEs to maximize their participation in the Contract(s).

Disclosure. The RFP, all proposals, and the resulting contracts are subject to disclosure pursuant to the provisions of §§ 4-101 through -601 of the General Provisions Article of the Annotated Code of Maryland (the “Public Information Act”). Offerors must specifically identify those portions of their Proposals, if any, which they deem to contain confidential or proprietary information or trade secrets, and must provide justification why such materials should not, upon request, be disclosed by the State under the Public Information Act.

ADA Compliance. In compliance with the Americans with Disabilities Act, alternative forms of this RFP will be provided upon request.

Expenses. The Institutions, the Attorney General, the OAG, and the State are not responsible for any expenses you may incur in connection with developing and submitting a proposal or for familiarizing yourself with relevant statutes and programs.

Procurement Regulations. This RFP and any Contract entered into as a result hereof is not subject to the provisions of Division II of SFP. Nonetheless, the requirements of SFP and the State procurement regulations, COMAR Title 21, as amended, will be applied to this RFP to the extent practicable and consistent with obtaining the best legal counsel for the Institutions, all as determined in the sole discretion of the Procurement Officer. The appeal procedures contained in the Procurement Article and in the State procurement regulations will not apply to this solicitation.

Amendment or Cancellation of the RFP. The Attorney General reserves the right to amend this RFP, and any amendments will be mailed or emailed to Prospective Offerors. **RECEIPT OF AMENDMENTS MUST BE ACKNOWLEDGED IN WRITING BY PROSPECTIVE OFFERORS.** The Attorney General also reserves the right to cancel this RFP, and notice of cancellation will be mailed or emailed to all Prospective Offerors.

Joint Responses. We will consider proposals submitted by joint ventures of not more than two parties (a party, for this purpose meaning a law firm or a lawyer) so long as the joint venture arrangement meets our clients’ needs. A Joint Venture is an “Offeror” and, except when otherwise expressly provided or when the context indicates otherwise, will be treated as one entity. If two persons or firms respond to the solicitation jointly, the specific services to be provided by each firm should be identified, and the Proposals should indicate how the firms expect to coordinate their work. Duplication of work by joint venturers will not be permitted.

Acceptance of Terms and Conditions. By submitting a Proposal: (A) the Offeror accepts all of the terms and conditions set forth in this RFP including all attachments; (B) the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract; (C) the Offeror shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and if selected for award, that it shall not become so in arrears during the term of the Contract; and (D) the Offeror, if selected for award, shall be deemed to have agreed to all terms and conditions set forth in the form of Contract (attached hereto as Attachment E). The terms and conditions of the contract are not subject to negotiation.

Proposals submitted in response to this RFP are irrevocable for 120 days following the date on which submissions are due.

Proposal Package. Offerors should submit Proposals by electronic means through e-mail to the Procurement Officer at kevin.harp@maryland.gov. Any Offeror wishing to deliver a hard copy (paper) Proposal shall contact the Procurement Officer for instructions.

Two-part E-mail submissions

- A. Technical Proposal files should be submitted with all supporting material (including the Proposal Affidavit and the Conflict of Interest Affidavit (Attachments B and C)) in searchable Adobe PDF format. The Technical Proposal may not exceed fifteen pages, excluding an executed copy of the Proposal Affidavit and any attached resumes. **Any proposal, request for modification, or request for withdrawal received after 4:00 pm on the closing date is late and may not be considered.**
- B. Offeror's Financial Proposal (Attachment D – Price Sheet) shall be submitted separately in searchable Adobe PDF format.
- C. All Technical and Financial Proposal files submitted via e-mail shall be sent with password protection.
- D. The Procurement Officer will not accept submissions after the due date and exact time stated above. The date and time of submission is determined by the date and time of arrival in the Procurement Officer's e-mail box. Time stamps on outgoing email from Offerors shall not be accepted. Requests for extension of this date or time will not be granted. Except as otherwise provided by law, Proposals received by the Procurement Officer after the due date will not be considered.
- E. The State has established the following procedure to restrict access to Proposals received electronically: all Technical and Financial Proposals must be password protected, and the password for the Technical Proposal must be different from the password for the Financial Proposal. Offerors will provide these two passwords to the Procurement Officer upon request or their Proposal will be deemed not susceptible for award. Subsequent submissions of Proposal content will not be allowed.
- F. Proposal files submitted via e-mail must not exceed 25 Mb. If a submission exceeds this size, split the submission into two or more parts and include the appropriate part number in the subject (e.g., part 1 of 2) after the subject line information below.
- G. The e-mail submission subject line shall state “**Information Security and Data Privacy Counsel for the OAG, the Department of Information Technology, the Maryland Higher Education Division, and Other State Entities**” and either “Technical” or “Financial.”

Technical Proposal.

Please include the following in your Technical Proposal:

1. Legal name and principal place of business of the law firm. Please indicate whether the firm is a minority business enterprise as defined in the Procurement Article.
2. Name, mailing address, email address, telephone number, and fax number for the person designated as the contact person for purposes of this RFP and any resulting contract.
3. General information on the areas of law in which the law firm concentrates.
4. Name, mailing address, email address, telephone number, and fax number for the person who will head the team of attorneys and other para-professionals (paralegals, legal assistants, and law clerks) participating in this engagement (collectively, the “Information Security and Data Privacy Counsel Team”).
5. Information demonstrating compliance with the enclosed Minimum Qualifications (Attachment A).
6. Name and address of each attorney included in the Information Security and Data Privacy Counsel Team and his or her respective position in the law firm. For each attorney, please submit a brief resume indicating relevant experience and in what jurisdictions the attorney is admitted to practice. Please state the availability of each attorney during the term of the Contract. Note that the Contract does not permit substitutions in the Information Security and Data Privacy Counsel Team without the prior written consent of the Procurement Officer.
7. The proposed role of each person who will participate on the Information Security and Data Privacy Counsel Team, and the planned division of responsibilities among the members of the Information Security and Data Privacy Counsel Team.
8. A statement of the Information Security and Data Privacy Counsel Team’s relevant experience, qualifications and expertise in Information Security and Data Privacy Law. Provide a detailed description of each member’s experience in the field of Information Security and Data Privacy law during the past ten (10) years, with emphasis on advising on and litigating claims or actions involving international, national, and state/territorial laws involving requirements related to the information security and the protection of information; and assistance with determining the applicability of privacy laws to an institution and developing processes for addressing data privacy requirements.

9. A brief description of areas of the law related to Information Security and Data Privacy in which your firm has expertise. Any specific experience with the law of foreign jurisdictions should be summarized as well.
10. Names, email addresses, and telephone numbers of three (3) clients (and respective contact persons for those clients) for whom you have provided services similar to those described in this RFP, with a brief description of the work performed. These persons will be references for your Technical Proposal.
11. Names, email addresses, and telephone numbers for contact persons at any units of the State for whom you have provided legal counsel in the last three (3) years. These persons also will be references for your Technical Proposal.
12. A detailed description of the firm's procedure for checking conflicts of interest and whether there are any potential current conflicts in representing the Department, HED, and/or the OAG. Please note that conflict checks will be requested prior to the issuance of a Task Order.
13. At least one (1) but not more than three (3) examples of creative or innovative solutions used by your firm to address an Information Security and Data Privacy law challenge or difficult matter.
14. Information on how you plan to use para-professionals, permanent law clerks, and law graduates not admitted to practice to promote economy and efficiency in the performance of the Contract and to assure the lowest possible costs under the Contract.
15. A statement addressing the firm's minority business enterprise status and which members of the Information Security and Data Privacy Counsel Team meet the definition of a socially and economically disadvantaged individual, as defined the Procurement Law.
16. An executed Proposal Affidavit (Attachment B) and an executed Conflict of Interest Affidavit (Attachment C).
17. The name and address of the firm's professional liability insurance carrier that has issued or will issue professional liability insurance (effective as of the commencement date of the Contract) that meets the minimum requirements for insurance set forth in this RFP.
18. If you are a joint venture, discuss the division of responsibilities between the joint venturers, including the type and approximate amount of work to be performed by each party, the approximate percentage of time each party expects to devote to performing services for the Department, HED, the OAG, and/or other to-be-determined State entities and how advice will be rendered by them. Also please discuss the safeguards that will be employed to avoid duplication of effort by the members of the joint venture.
19. Any other information which you consider essential to a fair evaluation of your firm's experience and capabilities.

20. Written affirmation that the person(s) submitting the proposal is/are authorized to do so on behalf of the firm and certification that, to the best of his or her knowledge, the information submitted in the Technical Proposal is accurate, complete, and correct as of the date of the Technical Proposal.

Evaluation of the technical proposals will be as described below.

Price Proposal.

The Price Proposal must be submitted using the form attached as Attachment D and must be in a separate email and password protected file as described above. It shall include the following information:

1. The one blended hourly rate that will be charged for all attorneys rendering services under the Contract; and
2. The one blended hourly rate that will be charged for para-professionals (paralegals and legal assistants) rendering services under the Contract.

Price will be an important factor in the selection process but not necessarily the determining factor.

Contracts will be awarded from this RFP on the basis of fixed, hourly, all-inclusive rates. However, prospective Offerors should be aware that the Attorney General reserves the right to enter into negotiations with Assistant Counsel concerning other methods of compensation on a task order by task order basis. For example, the Procurement Officer and/or Agency Contract Officer reserves the right to enter into negotiation with Assistant Counsel for compensation on a fixed fee per task order or a fixed fee per transaction basis. The Offeror may submit a statement, not more than one page in length, with respect to any such alternative billing proposals.

Evaluation and Selection.

We reserve the right to meet with qualified Offerors to discuss this RFP and the Offeror's proposal and ability to perform the proposed contract. We anticipate meeting qualified Offerors by web-based virtual meeting (e.g., Microsoft Teams, Google Meet). The Procurement Officer will contact qualified Offeror's in September to schedule meetings. We will try to accommodate your needs. The meeting will be approximately one hour and will be informal and will include substantive questions. Technical proposals and oral presentations will be evaluated before price proposals are opened. After reviewing the price proposals, there may be additional discussions with Offerors, including a request for best and final offers. The following evaluation factors will be used and are listed in the order of relative importance: (a) as reflected in the written technical proposal and the oral presentation (if any), the proposed Legal Team's demonstrated experience and expertise in providing Information Security and Data Privacy counsel services similar to those being sought in this RFP; (b) price; (c) conflict of interest policy; (d) participation of MBEs and socially and economically disadvantaged individuals, to the extent permitted by law; and (e) any other factors that the Attorney General deems to be relevant.

Contract award(s) will be made to that Offeror or Offerors whose proposal contains the combination of those criteria offering the best overall value to the Attorney General and the State. Selection of Assistant Information Security and Data Privacy Counsel will be solely the decision of the Attorney General and this Office reserves the right to reject any and all proposals, to waive informalities and minor irregularities in proposals, and to negotiate with any and all Offerors. The Attorney General may select the successful Offeror or Offerors on the basis of initial written proposals without discussions with Offerors and without requesting a best and final offer, so please take care in submitting your technical and price proposals.

A successful Offeror will be required to complete a Contract Affidavit in the form attached hereto as Attachment F at the time of execution of the contract entered into as a result of this RFP (“Contract”). The form of the Contract is attached hereto as Attachment E. An executed Contract Affidavit should not be submitted with an Offeror’s proposal.

If you have any questions, please submit them to me in writing. Thank you for your interest.

Very truly yours,

/s/

Kevin W. Harp

Assistant Attorney General

Department of Information Technology

Attachments:

- A – Minimum Qualifications
- B – Proposal Affidavit (to be completed and returned with Technical Proposal)
- C – Conflict of Interest Affidavit and Disclosure
- D – Price Proposal Form (to be completed and returned in separate password protected file)
- E – Form Contract
- F – Form of Contract Affidavit
- G – Form of Task Order

Attachment A

Minimum Qualifications

1. At least one principal of the Offeror must be admitted to practice law before the Court of Appeals of Maryland.
2. The Offeror must have an office in Maryland, or within 75 miles of Baltimore, Maryland.
3. In order to meet the Attorney General's standards for production and electronic transmission of documents, the Offeror must have the capacity to create complex documents, electronically transmit and receive complex documents and data, and share documents in a format compatible with the format and/or software used by the Office of the Attorney General.

Attachment B
Proposal Affidavit
(Authorized Representative and Affiant)

A. Authority

I HEREBY AFFIRM THAT:

I (print name) _____ possess the legal authority to make this Affidavit.

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, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test, 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.

B-1. Certification Regarding Minority Business Enterprises.

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

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

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

B-2. Certification Regarding Veteran-Owned Small Business Enterprises.

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

_____.

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;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) § 7201, Attempt to Evade or Defeat Tax;
 - (b) § 7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) § 7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
 - (d) § 7206, Fraud and False Statements, or
 - (e) § 7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. § 286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. § 287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. § 371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:

- (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
 - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)--(14) of this regulation, 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):

 _____.

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).

 _____.

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):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

I. CERTIFICATION OF TAX PAYMENT

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

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

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

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

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

I FURTHER AFFIRM THAT:

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

M. I FURTHER AFFIRM THAT:

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

N. ACKNOWLEDGEMENT

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

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

Date: _____

By: _____ (print name of Authorized Representative and Affiant)
_____ (signature of Authorized Representative and Affiant)

Attachment C

Conflict Of Interest Affidavit And Disclosure

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

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

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

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

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

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

Date: _____ By: _____ (Authorized Representative and Affiant)

Attachment D

State of Maryland
Request for Proposals – Assistant Information Security and Data Privacy Counsel

PRICE PROPOSAL

Name of Offeror: _____

Address of Offeror: _____

In response to the Request for Proposals for Assistant Information Security and Data Privacy Counsel to represent the Maryland Department of Information Technology and the Office of the Attorney General, Offeror submits the following price proposal as the one fixed blended hourly rate offered during the term of the Contract:

a) all Attorneys rendering services \$ _____/hour

b) paralegals and attorneys not
admitted to practice \$ _____/hour

Offeror submits the following price proposal as the one fixed blended hourly rate offered during any extension period of the Contract:

a) all Attorneys rendering services \$ _____/hour

b) paralegals and attorneys not
admitted to practice \$ _____/hour

The undersigned is authorized to and certifies for the Offeror that, to the best of his or her knowledge, the information submitted in this Price Proposal is accurate, complete and correct as of the date set forth below.

Signature: _____

Name: _____

Title: _____

Date: _____

Attachment E

Form of Contract

**ASSISTANT INFORMATION SECURITY AND DATA PRIVACY COUNSEL CONTRACT
ATTORNEY GENERAL OF MARYLAND ON BEHALF OF THE MARYLAND
DEPARTMENT OF INFORMATION TECHNOLOGY, THE MARYLAND
HIGHER EDUCATION DIVISION, AND OTHER STATE ENTITIES
Contract No. OAG-DOIT-00X-10**

THIS CONTRACT, dated this ____ day of _____, 20__ (“Commencement Date”), by and between the Attorney General of Maryland for the use of the Maryland Department of Information Technology (the “Department”), the Institutions established under the Education Article of the Maryland Annotated Code and advised and represented by the Higher Education Division of the Office of the Attorney General, Maryland Higher Education Division (“HED”), the Office of the Attorney General (the “OAG” or the “Office”), other to-be-determined State entities (the “State entities”), and the State of Maryland, all collectively hereinafter referred to as the “STATE,” and _____ [and _____ (if a joint venture)] hereinafter [collectively] referred to as the “FIRM.”

WHEREAS, the STATE, has need for specialized legal services concerning information security and data privacy law, including but not limited to: (a) federal and state privacy laws; (b) international privacy law; and (c) advice regarding the areas of information security and data privacy law in general; and

WHEREAS, these matters and issues require skill and experience in the highly specialized field of information security and data privacy law; and

WHEREAS, the FIRM is well versed in this area of the law; and

WHEREAS, it is the intention of the STATE to employ the FIRM on a three-year basis on the terms set forth in this Contract, with two one-year options, to be exercised by the Attorney General solely within his discretion,

NOW, THEREFORE, THIS CONTRACT WITNESSETH:

That for and in consideration of the covenants and conditions herein contained, the receipt and sufficiency of which both parties hereby acknowledge, the parties hereto agree as follows:

ARTICLE I
CONTRACT

A. **Contract Documents**. This Contract consists of the matters identified in this Article I (“Contract Documents”), all of which are part of this Contract as if fully set forth herein (all as amended from time to time):

1. This Contract;
2. Request for Proposals – for Assistant Information Security and Data Privacy Counsel dated _____ - __, 2022 (“RFP”);
3. Contract Affidavit (the “Affidavit”).
4. Written task orders issued under the Contract (“Task Order”); and
5. FIRM’s Technical Proposal, including the Proposal Affidavit and the Conflict of Interest Affidavit, dated _____, 2022 and the FIRM’s Price Proposal [as amended,] dated _____, 2022 [and _____ respectively] (the Technical Proposal and the Price Proposal collectively being the “Proposal”).

If there is any conflict among the Contract Documents, the following order of precedence shall determine the prevailing provision: this Contract, the RFP, Affidavit, Task Orders and the Proposal.

B. Contract Term. The work specified in Article II hereof will be performed for a term of three (3) years, and shall commence on _____ (the “Commencement Date”) and shall expire on the later of (a) three (3) years after the Commencement Date (the “Expiration Date”), or (b) upon completion of all work authorized on or before the Expiration Date, unless renewed or sooner terminated in accordance with this Contract. At the option of the Attorney General, this Contract may be continued for two (2) one-year terms. The Attorney General shall notify the FIRM of its exercise of the option for each one (1) year extension prior to the termination of the then-current term. Such extension shall be on the same terms and conditions as herein provided (except for any increase in blended hourly rates as set forth in the Price Proposal).

ARTICLE II **EMPLOYMENT**

The FIRM asserts that it is thoroughly qualified and familiar with all required duties and responsibilities and is prepared to discharge the same fully and properly on an independent contractual basis.

ARTICLE III **SCOPE OF SERVICES**

The general scope of work for this Contract is set forth in the Contract Documents, collectively. The FIRM shall serve as Assistant Information Security and Data Privacy Counsel to the State, and shall perform the services described in the RFP and in any Task Order issued under the Contract. The FIRM shall provide these services in accordance with the terms and conditions of this Contract. The Attorney General shall have the unilateral right to require changes in the scope of services, provided such changes are within the general scope of the work to be performed.

The FIRM shall perform services for a specific State agency only upon receipt of a written Task Order from the Agency Contract Officer (who will be identified in the written Task Order), the form of

which is attached hereto as Attachment G. The FIRM shall familiarize itself with the agency's programs without cost to the agency, the Attorney General or the State. All services are to be provided only at the request of an Agency Contract Officer or his or her designee. The FIRM may not devote time to any or all of the services performed or incur expenses absent the prior authorization of the Agency Contract Officer or individuals identified by that contract officer.

ARTICLE IV
COMPENSATION

A. INVOICES. At the end of each month, the FIRM shall prepare an invoice setting forth the amount to be paid thereunder and bearing the following statement: "Certified just and correct and payment not received." The invoice must include the date(s) of services rendered, a full description of the services rendered and complete time records, (and any coding symbols necessary to interpret the records), indicating the name and position of the attorney, para-professional, and law graduate, the hourly rate being billed, and the hours of time (or fraction of hours) spent by each such individual performing such work under this contract. The invoice shall be submitted in such detail as to permit easy corroboration with the FIRM'S office records, such records to be made available for inspection by the Attorney General, the STATE and any auditors acting on their behalf upon reasonable notice. All invoices for services rendered shall be sent to the Agency Contract Officer for review, after which the invoice will be forwarded to the State entity for whom services have been received for payment. Each invoice shall indicate the FIRM'S Federal Tax Identification Number. The FIRM'S Federal Tax Identification Number is _____ [both identification numbers to be included if the FIRM is a joint venture]. In addition, such records shall be available to the Procurement Officer or his designee, the State and any auditors acting on their behalf, at all reasonable times during the term of the Contract and for a period of three (3) years after the termination of the Contract.

B. PAYMENT. Payment for all services performed by FIRM will be as follows:

1. Fee

a. The one fixed blended hourly rate of compensation for the attorneys performing services under this Contract shall be _____ per hour. The one fixed blended hourly rate of compensation for each para-professional and law school graduate not admitted to practice performing services under this Contract shall be _____ per hour.

b. The one fixed blended hourly rate of compensation for the attorneys performing services under any extensions under this Contract, shall be _____ per hour. The one fixed blended hourly rate of compensation for each para-professional and law school graduate not admitted to practice performing services under any extensions of this Contract shall be _____ per hour.

c. The hourly rates constituting the fees, as set forth above, shall be the full compensation, except as provided in Section 2 below, "Reimbursable and Non-Reimbursable Expenses," for performance of all basic services.

d. No compensation will be permitted for law clerks.

2. Reimbursable and Non-Reimbursable Expenses

a. The FIRM shall be reimbursed for all reasonable, allowable and allocable direct costs and expenses incurred by the FIRM in the performance of the services hereunder and shall include, but not be limited to costs of:

(i) travel expenses including transportation, meals and lodging at the rates set in the State's standard travel regulations, as amended from time to time, but excluding telephone calls, facsimile costs and travel between the office of the STATE and the FIRM;

(ii) postage and messenger or overnight delivery services;

(iii) long distance telephone calls, and facsimile costs at actual cost;

(iv) extraordinary photocopying costs may be reimbursed only with the prior written approval of the Agency Contract Officer or his/her designee; and

(v) any other costs incurred may be made with the prior written approval of the Agency Contract Officer or his/her designee.

b. The FIRM shall not be reimbursed for indirect costs such as:

(i) secretarial services;

(ii) preparation and review of billings;

(iii) in-house messenger services;

(iv) para-professional overtime costs;

(v) long distance telephone or other communication services between joint venturers in a Contract, if any; and

(vi) electronic legal research (unless pre-approved).

Non-reimbursable expenses may not be recovered indirectly through charges for hours worked. The agency shall not withhold federal, State, local and/or FICA taxes from payments made to the FIRM.

ARTICLE V
PROCUREMENT OFFICER

The Procurement Officer for the Contract is Kevin W. Harp, Assistant Attorney General, or such other person designated by the Attorney General.

ARTICLE VI
EXCLUSIVE AGREEMENT

A. This Contract together with the Attachments appended hereto constitutes the entire agreement between the parties. Any other communications between the parties before the execution of the Contract, whether written or oral, with reference to the subject matter of the Contract, are superseded by the agreements contained herein

B. The parties expressly acknowledge that this Contract is the product of mutual negotiations, and intend that neither party shall be construed to be the primary drafter thereof, and no provisions of this Contract may be changed, modified, amended, or altered except by written instrument executed by the parties hereto and approved by the Procurement Officer. A Task Order shall not be deemed to be a modification to the Contract.

ARTICLE VII
GOVERNING LAW

The Contract shall be governed by Maryland law. Any disputes arising under this Contract shall be brought in a Maryland State forum located in the State of Maryland.

ARTICLE VIII
NONDISCRIMINATION

The FIRM shall comply with all applicable federal and State laws, rules and regulations and the policies and procedures of the Office and the State involving nondiscrimination on the basis of race, color, creed, political or religious opinion or affiliation, marital status, sexual orientation, national origin, ancestry, age, gender, or physical or mental disability. The FIRM certifies that it prohibits, and covenants to continue to prohibit, discrimination on the basis of: (i) political or religious opinion or affiliation, marital status, sexual orientation, race, color, creed, ancestry, or national origin; or (ii) gender or age, except when gender or age constitutes a *bona fide* occupational qualification; or (iii) the physical or mental disability of a qualified individual with a disability. Upon request, the FIRM will submit information to the Procurement Officer or his/her designees relating to the Contractor's operations with regard to the above.

ARTICLE IX
FIRM RESPONSIBILITIES

During the term of the Contract, the FIRM shall:

- A. Assume sole responsibility for all work to be performed under the Contract;
- B. Perform the services with the standard of care, skill, and diligence normally provided by nationally recognized legal counsel in the performance of services similar to the services to be performed hereunder;
- C. Not make any changes in the designation of the identities or relative responsibilities of the attorneys identified in the Request for Proposals without the prior written consent of the Procurement

Officer or his designees. Any changes without the prior written consent of the Procurement Officer or his designees may be deemed an event of default by the FIRM under the Contract; and

D. Prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

ARTICLE X
SUBCONTRACTING

The FIRM shall not subcontract, in whole or in part, for any of the services to be performed under this Contract without the prior written consent of the Attorney General and the Procurement Officer or his designee which is in their sole discretion.

ARTICLE XI
NON-ASSIGNABILITY

The FIRM shall not assign, in whole or in part, any of the services to be performed under this Contract without the prior written consent of the Attorney General and the Procurement Officer or his designees, which is in their sole discretion.

ARTICLE XII
DISSEMINATION OF INFORMATION

During the term of the Contract, the FIRM shall:

A. Not (and shall not permit its agents or employees to) release, disseminate, publish, distribute or circulate, in any manner whatsoever, any information, data, documents or materials related to the services or performance of the services under the Contract or to the Contract, nor publish any final reports or documents, without the prior written consent of the Procurement Officer or his designee; and

B. Within the limitations of the Maryland Lawyers' Rules of Professional Conduct, indemnify and hold harmless the Department, the OAG, HED, the Attorney General, and the State, their respective officers, agents and employees, from all liability which may be incurred by reason of the release, dissemination, publication, distribution or circulation, in any manner whatsoever including electronic transmission, of any information, data, document, or materials pertaining in any way to the Contract by the Firm, its agents or employees.

ARTICLE XIII
CONTINGENT FEE PROHIBITION

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

Contract. For breach or violation of this warranty, the Attorney General shall have the right to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

ARTICLE XIV
RETENTION OF RECORDS

The FIRM shall maintain all records and documents (including information stored by electronic means) relating to this Contract for three (3) years after final payment hereunder 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 his designee, at all reasonable times.

ARTICLE XV
COST AND PRICE CERTIFICATION

The FIRM has submitted cost or price information and certifies that, to the best of its knowledge, the information submitted is accurate, complete and current as of the Commencement Date. The prices under the Contract or any Contract modification, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the FIRM furnished cost or price information that, as of the Commencement Date, was inaccurate, incomplete or not current.

ARTICLE XVI
MANDATORY DISCLOSURE

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

ARTICLE XVII
PROFESSIONAL LIABILITY INSURANCE

A. The FIRM shall maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$5 million (the “Insurance Amount”) to include coverage for the services to be performed hereunder. The FIRM agrees that thereafter it shall maintain, for the entire period in which it and each of its attorneys (subject to any applicable statute of limitations) may incur any professional liability in connection with the performance or failure to perform services under the Contract, professional liability insurance in the aggregate amount of not less than the Insurance Amount.

B. If the FIRM is a joint venture, and one party of the joint venture does not have such liability insurance, this requirement may be satisfied if the co-venturer with the liability insurance shall provide assurances of indemnity, satisfactory to the Procurement Officer or his designee, that it will be liable for the performance of the other co-venturer.

C. The FIRM shall purchase and maintain during the term of the Contract, and shall provide to the Procurement Officer upon Contract award, evidence of its current insurance policies in effect for its professional liability coverage and for all other coverage required by the RFP.

D. The FIRM shall not commence work under the Contract until evidence of all the insurance coverage has been reviewed and approved by the Procurement Officer.

E. The FIRM shall not alter or change, reduce the limit of liabilities, cancel or non-renew any of the required insurance coverage without sixty (60) days prior written notice of same to the Procurement Officer, and shall maintain all coverage until it receives notice from the Procurement Officer that Contract services have been completed.

ARTICLE XVIII
CONFLICT OF INTEREST

To avoid potential conflicts of interest which may arise from the FIRM's representation, upon request, the FIRM agrees to check for potential conflicts and provide the OAG with the results of its conflicts check, on a task order, matter-specific basis, prior to the FIRM's acceptance of a task order for that matter. The FIRM also agrees to examine its client/matter listings carefully on a periodic basis, to notify the Procurement Officer immediately of any potential conflict of interest and, if requested, to undertake immediate action to eliminate the source of the potential conflict of interest. The Procurement Officer reserves the right to make the FIRM aware of situations in which he/she believes the FIRM is involved which may present a conflict of interest and to request that the FIRM promptly remedy the situation. The FIRM hereby acknowledges and agrees that, in the event the FIRM has accepted a task order after the FIRM either (1) reported no conflict, or (2) obtained a waiver from the Attorney General of a conflict identified by the FIRM, then, upon request of the Procurement Officer and the Attorney General (or their respective designees), the FIRM, to the extent permitted by the Code of Professional Responsibility, will withdraw from representation of parties whose interests subsequently are identified as adverse to the interests of the State or the OAG with respect to the matter that is the subject of that task order. The FIRM hereby further acknowledges and agrees that the Attorney General reserves the right, in his sole discretion, to select another contractor or law firm to represent the State in a particular matter if the conflict of interest is not resolved to the satisfaction of the Attorney General or his designee.

ARTICLE XVIV
COMPLIANCE WITH LAW

The FIRM hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, 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 of Maryland, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. It shall comply with all federal, State and local laws 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.

ARTICLE XX
NON-HIRING OF EMPLOYEES

No official or employee of the State of Maryland, as defined under State Government Article, Section 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 FIRM.

ARTICLE XXI
TERMINATION AND SUSPENSION

A. TERMINATION OF CONTRACT FOR DEFAULT. If the FIRM fails to fulfill its obligations under the Contract properly and on time, is unable to continue staffing the Contract as set forth in the Proposal, or otherwise violates any provisions of the Contract, the Attorney General may terminate the Contract by written notice to the FIRM. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the FIRM shall, at the Attorney General's option, become the property of the Attorney General provided the sums, if any, due to the FIRM pursuant to this clause have been paid. The FIRM shall be paid: (a) fair and equitable compensation (at the rates of compensation described in Article IV hereof) for satisfactory performance prior to receipt of notice of termination; and (b) all reasonable expenses incurred by the FIRM prior to receipt of such notice, less the amount of damages caused by FIRM's breach. If the damages are more than the compensation payable to the FIRM, the FIRM shall remain liable after termination and the Attorney General can affirmatively collect damages.

B. TERMINATION OF CONTRACT FOR CONVENIENCE. The performance of work under this Contract may be terminated by the Attorney General in accordance with this clause in whole, or from time to time in part, whenever the Attorney General shall determine that such termination is in the best interest of the Attorney General or the State. The FIRM shall be paid: (a) compensation for services satisfactorily performed prior to the date of termination at the rates set forth in Article IV hereof; and (b) all reasonable expenses incurred by the FIRM prior to such date of termination.

C. TERMINATION OF MULTI-YEAR CONTRACT. If funds are not appropriated or if funds are not otherwise made available for the continued performance of this Contract at any time during the Contract term, this Contract shall be canceled as of the time for which funds were not appropriated or otherwise made available; however, this will not affect the Attorney General's rights under any other termination clause of this Contract. The effect of termination of this Contract pursuant to this Article XXI C will be to discharge the FIRM, the STATE and the Attorney General from future performance of this Contract, but not from their obligations existing at the time of termination. The FIRM shall be paid: (a) compensation for services satisfactorily performed prior to the date of termination at the rates set forth in Article IV hereof; and (b) all reasonable expenses incurred by the FIRM prior to such date of termination.

The Attorney General shall notify the FIRM within thirty (30) days prior to the termination of the FIRM pursuant to this Section of the Contract.

D. SUSPENSION. The Procurement Officer and/or the Agency Contract Officer unilaterally may order the FIRM in writing to suspend, delay, or interrupt all of any part of the work for such period of time as he may determine to be appropriate for the convenience of the STATE.

ARTICLE XXII
INDEMNIFICATION

A. The FIRM shall, within the limitations of the Maryland Lawyers' Rules of Professional Conduct, indemnify and hold harmless the Attorney General, the Department, HED, the Office, the State entities for which the FIRM has undertaken representation, the State, and all of their respective officers, agents, contractors and employees from and against all claims, suits, judgments, expenses, actions, damages and costs (including reasonable attorneys' fees) of every name and description, arising out of or resulting from the performance of the services of the FIRM under the Contract or a breach of any or all of the FIRM's obligations under this Contract.

B. The State has no obligation to provide legal counsel or defense to the FIRM in the event that a suit, claim, or action of any character is brought by any person against the FIRM as a result of or relating to the FIRM's obligations under this Contract.

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

D. The Attorney General, the Department, HED, the Office, the State entities for which the FIRM has undertaken representation, and the State shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance of this Contract.

E. The FIRM shall immediately notify the Procurement Officer of any claim or suit made or filed against the FIRM resulting from or relating to the FIRM'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 FIRM's performance under this Contract.

ARTICLE XXIII
CORRECTION OF ERRORS, DEFECTS AND OMISSIONS

The FIRM agrees to perform work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delays and without cost to the Attorney General, the Department, the State entities for which the FIRM has undertaken representation or the State. The acceptance of the work set forth herein by the Attorney General shall not relieve the FIRM of the responsibility of subsequent correction of such errors.

ARTICLE XXIV
ANTI-BRIBERY

The FIRM is required to be aware of Procurement Article, §§ 16-201 *et seq.* which require that any person convicted of bribery, attempted bribery, or conspiracy to bribe, in the obtaining of a contract from the State of Maryland or any of its subdivisions be subject to disqualification pursuant to the Procurement Article, §§ 16-201 *et seq.* from entering into a contract with the State of Maryland, or any county or any subdivision of the State of Maryland for the supply of materials, equipment, or services by the person.

ARTICLE XXV
ANTI-BRIBERY, NON-COLLUSION AND FINANCIAL DISCLOSURE AFFIDAVIT

See Attachment B (Proposal Affidavit) attached hereto and made a part hereof .

ARTICLE XXVI
POLITICAL CONTRIBUTION DISCLOSURE

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

ARTICLE XXVII
DRUG AND ALCOHOL FREE WORKPLACE

The FIRM certifies that it shall make a good faith effort to eliminate illegal drug use and alcohol and drug abuse from its workplace during the term of this Contract. Specifically, the FIRM shall:

- A. prohibit the unlawful manufacture, distribution, dispensation, possession, or use of drugs in its workplace;
- B. prohibit its employees from working under the influence of alcohol or drugs;
- C. not hire or assign to work on an activity funded in whole or in part with State funds, anyone whom it knows, or in the exercise of due diligence should know, currently abuses alcohol or drugs and is not actively engaged in a *bona fide* rehabilitation program;

D. promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if it or any of its employees has observed the violation or otherwise has reliable information that a violation has occurred; and

E. notify employees that drugs and alcohol abuse are banned in the workplace, impose sanctions on employees who abuse drugs and alcohol in the workplace, and institute steps to maintain a drug and alcohol free workplace.

ARTICLE XXVIII
OWNERSHIP OF DOCUMENTS AND MATERIALS

A. The FIRM agrees that all documents and materials in FIRM’s possession in any format or medium, and drafts of and forms for such documents, prepared by or for the FIRM under the terms of this Contract (the “Files”) shall at any time during the performance of the services be made available to the Attorney General upon request by the Attorney General or the Procurement Officer and shall become and remain the property of the Attorney General upon termination or completion of the services. The Attorney General shall have the right to use same without restriction or limitation and without compensation to the FIRM other than that provided in this Contract.

B. Immediately upon termination or expiration of this Contract, the Firm shall deliver the Files to the Procurement Officer or to a location within the State designated by the Procurement Officer. The FIRM shall have the right to retain copies of those portions of the Files that the Firm reasonably requires for professional liability purposes.

ARTICLE XXIX
PROCUREMENT REGULATIONS

This Contract is not subject to the provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland or the State procurement regulations set forth in COMAR Title 21.

ARTICLE XXX
NO ASSURANCE OF WORK

The FIRM acknowledges that the Attorney General may award more than one Contract for Assistant Information Security and Data Privacy Counsel. The FIRM further acknowledges that it has received no assurances of any minimum amount or type of work under this Contract. The Procurement Officer or his designee shall have the sole discretion to determine which contractor shall be assigned to handle a particular case or matter and shall have the further right to assign a particular case to the FIRM if the Procurement Officer or his designee determines such action to be in the best interest of the State.

ARTICLE XXXI
PRODUCTS AND PROGRESS

The products of the efforts of the FIRM shall become and remain property of the STATE, and the FIRM will, at all times, keep the STATE informed of efforts and progress made in the performance of the aforementioned duties, or any other such duties as may be assigned.

ARTICLE XXXII
PROPOSAL AFFIDAVIT AND CONFLICT OF INTEREST AFFIDAVIT

See Attachments B and C attached hereto and made a part hereof.

ARTICLE XXXIII
CONTRACT AFFIDAVIT

See Attachment F attached hereto and made a part hereof.

ARTICLE XXXIV
PRICE PROPOSAL

See Attachment D attached hereto and made a part hereof.

ARTICLE XXXV
WAIVER

The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach by either party.

ARTICLE XXXVI
NOTICE

Any notice given pursuant to this Contract shall be considered to have been given when actually received, via registered or certified mail, by the parties or their agents, and addressed as follows:

A. If to the STATE:

Kevin W. Harp
Assistant Attorney General
301 W Preston Street, Suite 1306
Baltimore, MD 21201-2305

B. If to the FIRM:

ARTICLE XXXVII
EFFECTIVE DATE

This Contract shall take effect as of the date stated above, upon approval and execution by the Attorney General, provided it has first been duly executed by the Contractor.

ARTICLE XXXVIII
INCORPORATION BY REFERENCE

The covenants, representations, terms and conditions of the Bid/Proposal Affidavit, the Conflict of Interest Affidavit, and the Contract Affidavit attached hereto, are incorporated by reference and made a part hereof, as if more particularly set forth herein.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first above written.

ATTEST:

_____ (Name of Firm)
By: _____
(Typed Name)

(Title) (Seal)

(Taxpayer Identification Number)

(Date)

WITNESS: **ATTORNEY GENERAL OF MARYLAND**

_____ Brian E. Frosh

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Assistant Attorney General

List of Attachments:

- A. Request for Proposals
- B. Proposal Affidavit
- C. Conflict of Interest Affidavit and Disclosure
- D. Price Proposal
- E. Omitted
- F. Contract Affidavit
- G. Sample Task Order

Attachment F

Form of Contract Affidavit

CONTRACT AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number: _____

Address: _____.

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

Name and Department ID Number: _____

Address: _____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. 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 \$200,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

By: _____ (printed name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

Attachment G

SAMPLE TASK ORDER

(ON OAG LETTERHEAD)

Date

[Information Security and Data Privacy Counsel Firm Name and Address]

RE: Information Security and Data Privacy Counsel Contract
Task Order Re: [client name and description of matter]

Dear _____:

On behalf of _____ (the "Client"), and in accordance with the Information Security and Data Privacy Counsel Contract by and between your firm and the Attorney General of Maryland (the "Contract"), your firm is hereby directed to perform the following task(s):

_____.

You will also perform such other services as are customarily associated with the above described task(s).

Your firm will be reimbursed for its services by the Client in strict accordance with Article IV of the Contract. Invoices must be submitted to me at the address shown above. No deviations from the rates specified in the Contract shall be permitted. The [not-to-exceed] amount for this Task Order is \$ _____.

This Task Order shall not be deemed a modification of the Contract. By acceptance of this Task Order your firm acknowledges that it has performed an examination of its client list as required by Article XVIII of the Contract, and there are no conflicts of interest in its representation of the Client in this matter. Please contact me as soon as possible.

Sincerely,

Assistant Attorney General

Reviewed and acknowledged for
funding availability:

Title