

MARYLAND STATE TREASURER'S OFFICE

**Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401**

REQUEST FOR PROPOSALS

FOR

CUSTODIAL SERVICES

RFP #CUST-02042011

Due Date: March 22, 2011

Issued: February 4, 2011

KEY INFORMATION SUMMARY SHEET

**Maryland State Treasurer's Office
Request for Proposals
For
Custodial Services
RFP # CUST-02042011**

Procurement Officer: Anne Jewell
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Email: procurement@treasurer.state.md.us

Submit Proposals to: Maryland State Treasurer's Office
Attn: Procurement Officer
Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401

Solicitation Issue Date: February 4, 2011

Deadline for Receipt of Questions: February 23, 2011, by 2:00 p.m., Local Time

Proposal Due Date and Time: March 22, 2011, by 2:00 p.m., Local Time

Oral Presentation, if any April 4 - 5, 2011

Tentative Contract Award: April 12, 2011

Notice: Prospective offerors (the "Offerors") who received this document from www.eMarylandMarketplace.com, or from a source other than the Issuing Office, should immediately contact the Procurement Officer and provide their name and mailing address in order that amendments to this Request for Proposals ("RFP" or "solicitation") or other communications can be sent to them. Any prospective Offeror who fails to notify the Issuing Office with this information assumes complete responsibility in the event that they do not receive the solicitation from the Issuing Office prior to the closing date.

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SECTION I. PROCUREMENT OBJECTIVE

1.01 Summary Statement

The Maryland State Treasurer's Office (the "Office") is responsible for the deposits, investments, and disbursements of funds into or out of the State Treasury. The purpose of this procurement is to select a financial institution to provide custodial services for the State's investment securities.

1.02 Issuing Office and Procurement Officer

Maryland State Treasurer's Office
Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401

Procurement Officer: Anne Jewell
Phone: (410) 260-7903
E-mail: procurement@treasurer.state.md.us

The sole point of contact for purposes of this procurement is the Procurement Officer. The Procurement Officer may designate others to act on her behalf. The Office may change the Procurement Officer or the limits of her authority at its discretion.

1.03 Procurement Method

The contract arising out of this RFP (the "Contract") will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

1.04 Contract Officer

The Contract Officer monitors the daily activities of the Contract and provides technical guidance to the Contractor. The State Contract Officer is:

Mary Christine Jackman, Director of Investments
Maryland State Treasurer's Office
Louis L. Goldstein Treasury Building
80 Calvert Street, Room 109
Annapolis, Maryland 21401
Tel: (410)260-7129
Email: mcjackman@treasurer.state.md.us

1.05 Use of “eMaryland Marketplace”

eMaryland Marketplace (www.emarylandmarketplace.com) is a free electronic commerce system administered by the Maryland Department of General Services. The RFP, associated materials, and all other solicitation related material will be provided via eMaryland Marketplace.

This means that all such information is immediately available to subscribers of eMaryland Marketplace. All subscribers will receive solicitation notifications as well as solicitation update/change order notifications. Because of the instant access afforded by eMaryland Marketplace, it is recommended that all Offerors interested in doing business with Maryland State agencies subscribe to eMaryland Marketplace.

1.06 Schedule of Events

<u>Event</u>	<u>Date</u>
Notice in “eMaryland Marketplace”	February 4, 2011
RFP Release Date	February 4, 2011
Deadline for Receipt of Questions	February 23, 2011 (by 2:00 p.m.)
Proposal Due Date	March 22, 2011 (by 2:00 p.m.)
Oral Presentations, if any	April 4-5, 2011
Tentative Date of Contract Award	April 12, 2011

1.07 Pre-proposal Conference

A pre-proposal conference will not be held.

1.08 Questions and Inquiries

All questions and inquiries should be directed to the Procurement Officer identified in Section I., 1.02 above. Questions must be submitted in writing by mail or via email and received by the Issuing Office before 2:00 p.m. on Wednesday, February 23, 2011. Oral questions will not be permitted. If the questions or inquiries pertain to a specific section of the RFP, the page and section number(s) must be referenced.

1.09 Submission Deadline

To be considered, a written original and 5 copies (total of 6) of the Technical Proposal and the Price Proposal, each submitted separately in sealed envelopes, shall indicate the RFP Title and number and the Offeror’s name and address. Each proposal must arrive at the Issuing Office no later than 2:00 p.m. local time on Tuesday, March 22, 2011. Additionally, one electronic copy of the Technical Proposal and one electronic copy of the Price Proposal must be submitted to the Procurement Officer on compact disks. As with the written submission, the electronic copy submission of the Technical Proposal must be provided on one disk and the Price Proposal submitted on another disk, in separate sealed envelopes. Refer to Section IV. Proposal Format, for Two-Volume Submission.

Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail and internal delivery time to ensure timely receipt at the Issuing Office. Proposals or unsolicited amendments to proposals arriving after the closing date and time will not be considered. Proposals submitted by electronic means only (facsimile or e-mail) will not satisfy the submission deadline and will not be considered.

1.10 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 general.* - In connection with a procurement contract a person may not willfully:
 - (1) falsify, conceal, or suppress a material fact by any scheme or device;
 - (2) make a false or fraudulent statement or representation of a material fact; or
 - (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- (b) *Aiding or conspiring with others.* – A person may not aid or conspire with another person to commit an act under subsection (a) of this section.
- (c) *Penalty.* – A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

1.11 Duration of Offer

Proposals submitted in response to this solicitation are irrevocable for 120 days following the later of the proposal due date or the date final best and final offers, if any, are received. This period may be extended at the Procurement Officer's request only by an Offeror's written agreement.

1.12 Electronic Distribution

This RFP is available for distribution by e-mail. Potential Offerors wishing to receive copies of the written document should contact the Procurement Officer identified in Section I.,1.02, above.

SECTION II. GENERAL INFORMATION

2.01 Purpose

The overall purpose of this RFP is to provide information to Offerors interested in preparing and submitting proposals to meet the State's requirements for custodial services as described in Section III.

2.02 Revisions to the RFP

The Office reserves the right to amend this RFP at any time prior to the proposal due date and time. If it becomes necessary to revise this RFP at any time prior to the proposal due date and time, amendments will be provided to all prospective Offerors that were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. Written acknowledgment of the receipt of all amendments will be required. In addition, amendments to the RFP will be posted on the Office's Web Page at www.treasurer.state.md.us, (select "Procurement Information" and then "RFP for Custodial Services"), and through eMaryland Marketplace at www.emarylandmarketplace.com. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

2.03 Cancellation of the RFP; Rejection of All Proposals

The Office may cancel this RFP, in whole or in part, or may reject all proposals submitted in response whenever this action is determined to be fiscally advantageous to the State or otherwise in its best interests.

2.04 Proposal Acceptance; Discussions

The Office reserves the right to 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 Offerors in any manner necessary to serve the best interests of the State of Maryland. The Office also reserves the right, in its sole discretion, to award the Contract based upon the written proposals received without prior discussions or negotiations.

2.05 Oral Presentation

In support of their proposals, Offerors may be required to make an oral presentation, or conduct a demonstration, or both, not more than two calendar weeks after the Office has requested an Offeror to do so. Failure to be prepared to make an oral presentation or conduct a demonstration within this time period may prevent the Offeror's proposal from receiving further consideration. All written representations will become part of the Offeror's proposal and are binding if the Contract is awarded to the Offeror.

2.06 Incurred Expenses

The State will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal in response to this RFP, including costs incurred in making an oral presentation, if required.

2.07 Proposal Form

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposal for meeting the requirements of this procurement. Oral, telegraphic, facsimile, mailgram, or electronically transmitted proposals will not be accepted.

2.08 Multiple Proposals

Neither multiple nor alternate proposals will be accepted.

2.09 Access to Public Records Act Notice

An Offeror should give specific attention to the 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 Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. A fee may be charged for copies and search and preparation time, in accordance with COMAR 25.01.04.09. The Office may require payment of such fees before releasing the requested information.

2.10 Protests

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).

Any protest regarding this solicitation must be filed in writing with the Procurement Officer only. If the reason for the protest is apparent before the proposal opening, the protest must be filed before the proposal opening. In all other cases, the protest must be filed within 7 calendar days after the reason for the protest is known or should have been known.

The term "filed" means receipt by the Procurement Officer who has issued this solicitation.

The protest must be in writing and must contain (1) the name and address of the protester; (2) the appropriate identification of the solicitation and, if a Contract has been awarded, the Contract number if it is known; (3) a statement of the reasons for the protest; and (4) any supporting exhibits, evidence, or documents to substantiate any claims unless the documents are not available within the filing time, in which case the date by which the supporting documents are expected to be available is to be noted.

2.11 Proposal Opening

Proposals will not be opened publicly. When the Contract is awarded, those portions of proposals available under Maryland laws regarding access to public information will be made available upon written request to the Procurement Officer.

2.12 Bid/Proposal Affidavit

All proposals submitted by an Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Appendix B to this RFP.

2.13 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 Appendix C to this RFP. This Affidavit need not be submitted with an Offeror's proposal.

2.14 Acceptance of Terms and Conditions

By submitting a proposal in response to this RFP, the Offeror (a) accepts all of the terms and conditions set forth in this RFP, and (b) represents 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 (the "State Obligations"). If selected for award, the Offeror agrees (a) that it will comply with all federal, State and local laws applicable to its activities and obligations under the Contract, (b) that it shall not become in arrears under any State Obligation during the term of the Contract, and (c) to all terms and conditions set forth in the form of standard contract included as Appendix D to this RFP.

2.15 Minority Business Enterprises

A minority business enterprise subcontractor participation goal has not been established for this solicitation, but certified MBE subcontract participation may be considered in evaluating Proposals. A directory of certified MBEs is maintained by the Maryland State Department of Transportation Office of Minority Business Enterprise, P.O. Box 8755, B.W.I. Airport, Maryland 21240-0755. The phone number is 410-865-1244. The directory is available online at www.mdot.state.md.us. Select the "Minority/Disadvantaged Business Enterprise" label.

2.16 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 this solicitation (see Appendix G entitled Living Wage Requirements for Service Contracts). If the Offeror fails to complete and submit the Affidavit of Agreement (see Appendix H), 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 \$12.28 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least \$9.23 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.

All proposals must be accompanied by a completed Living Wage Affidavit of Agreement. A copy of this Affidavit is included as Appendix H to this RFP.

2.17 No Guarantee of Work

No Contractor is guaranteed any minimum amount of work or compensation.

2.18 Order of Precedence

The Contract between the parties will be embodied in the Contract documents which will consist of the following, listed in their order of precedence:

1. the Contract and Contract modifications executed by both parties;
2. the RFP; and
3. the Contractor's proposal.

Modifications to the order of precedence provision of this solicitation will not be accepted. If any terms and conditions inconsistent with the requirements of the solicitation are proposed, those terms and conditions must be stated in the proposal.

SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

3.01 Background

The Investment Division of the Office primarily invests cash balances that are temporarily idle between the time revenue is collected and the time budgeted amounts are disbursed. The Investment Division invests State Lottery funds for the payment of some lottery prizes and General Obligation bond proceeds. Sections 6-222 through 6-226 of the State Finance and Procurement Article govern the investment of the State's unexpended money. (See Exhibit 1). Investments are made according to State law and the Treasurer's Investment Policy. (See Exhibit 2).

Brief Description of the Portfolio

Size of investment portfolio	\$6.5 billion as of 12/31/10
Repurchase Agreements	24%
U.S. Government Agencies	72%
Money Market Mutual Funds	4%
Treasuries	<1%
CDs	<1%
Municipals	0
MSLA (STRIPS)	\$73 million, 80 separate issues.
2010 average monthly incoming securities	150
2010 average monthly outgoing securities	150
Average number of securities held each month	150

The current investment portfolio is posted on the Office's Web Page at: <http://www.treasurer.state.md.us/investments.htm>.

To date, the average daily cash flow for investments for FY 2011 is \$500 million. The Office targets \$200 million as an overnight investment and typically may invest another \$100 million to \$300 million short-term, as available. Additional investments may be directed by the Office. The Office investment policy requires delivery versus payment basis for settlement.

There are multiple days during the fiscal year when the State's disbursements total \$2-\$3 billion, and \$1 billion disbursement days are frequent. Therefore, each and every day, funds from the sale of and the maturing of investments must be delivered to the Office's disbursing bank before 10 AM.

Custodial services are currently provided to the Office by M&T Bank. M&T Investment Group Institutional Services currently handles the settlement and safekeeping of the repurchase agreement collateral as well as the securities purchased.

3.02 Mandatory Requirements

Each Offeror shall specifically and clearly state in its proposal that it meets the following requirements. Failure to do so may result in the rejection of the proposal by the Procurement Officer.

1. The Offeror must be a financial institution as defined in Section 6-201(e) of the State Finance and Procurement Article of the Annotated Code of Maryland. (See Exhibit 3).
2. The Offeror must be certified by or a member in compliance with the Federal Deposit Insurance Corporation (“FDIC”).
3. The Offeror must have a LACE rating, or a similar financial strength rating from a nationally recognized statistical rating organization such as Kroll Bond Rating Agency of Frederick, Maryland, of at least a "C".
4. The Offeror must be a member of, or have the ability to clear transactions or cash through, all major book entry or electronic securities depositories, such as the DTC/ID system and the Federal Reserve System.
5. The Offeror must have a plan for business continuity and recovery as a result of disaster.
6. The Offeror must be able and ready to provide collateral for accounts in accordance with the requirements set forth in Sections 6-202, 6-209, and 6-222 of the State Finance and Procurement Article. (See Exhibits 1, 3, and 4).
7. The Offeror’s financial statements must be audited annually by an independent certified public accounting firm and receive an unqualified opinion of the auditor in connection with the audit.

3.03 General Requirements

In its proposal, each Offeror shall acknowledge and agree to comply with the following for the term of the Contract:

1. The Offeror shall maintain its LACE or similar financial strength rating from a nationally recognized statistical rating organization, such as Kroll Bond Rating Agency of Frederick, Maryland, of at least a "C" for the term of the Contract. Should the Offeror's rating drop below "C", the Maryland State Treasurer (the “Treasurer”), at her discretion, may dismiss the Offeror, require additional collateral of the Offeror, or take other actions as she deems necessary under the circumstances to protect the interests of the State of Maryland.
2. The Offeror shall provide collateral for accounts in accordance with the requirements set forth in Sections 6-202, 6-209, and 6-222 of the State Finance and Procurement Article.

The collateral shall be on deposit in the name of the Treasurer, State of Maryland, either, (a) with the Federal Reserve Bank of Boston or (b) at the sole discretion of the Treasurer, on deposit with an independent financial institution acceptable to the Treasurer.

3.04 Custodial Services

Please indicate your compliance with the following requirements in your proposal. Indicate compliance with a “yes” if you do meet the requirement or “no” if you do not meet the requirement. You may also supply brief supporting statements.

REQUIREMENT	OFFEROR'S COMPLIANCE
Custodial Services	
1. The Offeror has the capability to settle 10,000 security transactions annually and safekeep a total portfolio of at least \$10 billion.	
2. The Offeror will settle all State of Maryland transactions on a delivery versus payment basis facilitated through the Federal Reserve or the Depository Trust Company.	
3. The Office reserves the right to execute tri-party agreements outside the terms of this procurement.	
4. The Offeror must provide a system for all State securities that:	
(i) collects interest and principal payments on securities and either credits the Office custody account or remits as directed by the Office on the payable date;	
(ii) accepts wireable securities at the Federal Reserve in the Offeror's account;	
(iii) collects interest and principal payments for collateral securities (mostly mortgage backed) and remits to brokers entitled to such payments under repurchase agreements, on the payable date;	
(iv) accepts repurchase agreement collateral information from the broker/bank after the Office notifies the custodian of the terms of the investment;	

REQUIREMENT	OFFEROR'S COMPLIANCE
(v) returns repurchase agreement collateral on the closing date without additional Office instruction.	
5. Offeror maintains a daily market value of the collateral for repurchase agreements according to margin requirements established by the State.	
6. Offeror will verify and maintain Repo collateral valued at 102%, value the collateral daily and make margin calls on behalf of the State when the collateral is under value.	
7. Offeror will coordinate collateral substitutions and margin calls as requested by brokers/banks and insure that the market value of the collateral is sufficient.	
8. Offeror must provide daily online reports that compare the market value of the collateral to the related investment, aggregated on a broker by broker basis. In addition, the custodian shall provide a daily online report detailing all substitution and margin calls.	
9. The Offeror provides a daily online securities pricing system.	
10. The Offeror accepts physical deliveries (at the Office's discretion).	
11. The Offeror has an overnight investment vehicle for all funds remaining in or received by the Office account(s) after 10 a.m. each day. Any investment program must meet the requirement of Section 6-222 of the State Finance and Procurement Article. Also, any investment program utilizing repurchase agreements must provide that collateral is held at the Federal Reserve in the Offeror's account (for the State of Maryland) or, at the option of the Office, by a third party.	
12. The Offeror provides secure internet access to an online accounting system that will provide comprehensive real time reporting including, but not limited to all income and security transactions and accruals.	

REQUIREMENT	OFFEROR'S COMPLIANCE
13. Monthly reports will be provided detailing the activity for the month, the balances in the custodial account, and the market value of each security held in the account. The Offeror will also provide a report detailing all securities transactions for the month and an inventory of all securities held by maturity of the investment and by broker.	
14. Reports shall be available online as well as in hard copy. The online reports should be presented in a manner allowing the Office to easily download and manipulate the data into a format suitable for its own analytical purposes.	
15. The Offeror will invoice the Office for all fees and services. The Office Account(s) shall at no time be debited for service fees.	
16. The Offeror shall deliver the to the Office's disbursing bank all funds from the sale of investments and the maturing investments by 10:00 a.m. each business day.	

3.05. Additional Custodial Services Questions

1. Custody Operations

- A. Provide for the most recent 12 month period the following volumes and values:
- Wireable security transactions settled
 - Total investments under safekeeping (volume and par value)
 - Error ratio
- B. Briefly describe how your organization handles the following securities processing. Where automated processing is available, indicate the nature of the automation and level of availability (batch or real-time):
- Notification of trade instructions
 - DTC affirmation processing
 - Notification of trades settled, pending trades, and failed trades
 - Securities holdings reporting and reconciliation
 - Processing payments of principal, interest, and maturities
 - Processing cash receipts and disbursements
 - Trade discrepancies

- Physical securities
 - Reporting of income on securities held
 - Callable securities
 - Repo collateral securities
- C. Provide notification and time frames for processing and delivery instruction for the following:
- DTC eligible securities
 - Physical deliveries (including Commercial Paper, if different)
 - Fed Wireable (Book Entry) (Govt's, FFCB's, FAMAC, FHLB's, FNMA's, FHLMC's, etc.)
 - Cash wires
- D. Describe your procedures to insure that all trades are settled delivery versus payment.
- E. Briefly describe your policy on failed trades and what is done to minimize trade failures. What is the organization's policy regarding restitution of lost interest on failed trades?
- F. Does your system have built in edit features to ensure accuracy in trade input (e.g., security description/CUSIP cross check features, calculations of remaining par on factor based securities, computation of accrued interest)?
- G. What is your policy for posting income (i.e., contractual vs. actual)?
- H. Describe how the Office executing tri-party agreements will affect you.
- I. Describe your competitive advantages.
- J. Describe your plan for business continuity and recovery as a result of disaster with particular focus and great detail in regard to Custody Services.

2. Pricing of Securities

- A. How frequently are prices updated?
- B. Which vendors are used for pricing?
- C. What procedures and control points do you have in place to ensure that securities are priced accurately?
- D. Do you have secondary or back up pricing methods?
- E. Can clients request alternate pricing sources?

3. Cash Investment

- A. Describe your short-term investment fund capabilities:
- Fund names
 - Investment philosophy and objectives
 - Types of allowable investments
 - Investment performance
 - Interest crediting
 - Minimum purchase unit
 - Management/administration fees and conditions
 - Historical performance of these funds over a 1, 3 & 5 year period
 - Are these funds open on Good Friday and other days that Money Markets are closed but banks are open?
- B. Can the Office utilize a short-term fund not managed by your organization?
- C. Describe the details of how the organization sweep product works: including cutoff times, minimum balances, available investment instruments and payment of interest.
- D. What process do you use to ensure cash balances are invested?
- E. Are there other late in day investment alternatives to sweep accounts? If yes, provide appropriate details.

4. Reporting/Inquiry

- A. Describe your secure internet online accounting service product and reports.
- B. Indicate if an inquiry is through a preset format (i.e., canned) or if the client has the ability to design and execute free form inquiries based on selection of available data elements and screening criteria (i.e., ad hoc).
- C. Indicate whether inquiry functions are real-time.
- D. Provide copies of all canned report formats and data field menus for which ad hoc query capability exists.
- E. How soon after month end, quarter and year-end can audited reports be expected on-line and in hard copy? What are your accuracy standards? How are re-runs handled?
- F. Describe your system of quality control to ensure reporting accuracy? Are accounting statements audited before they are delivered to clients? If so, who performs the audits? Are the hard copies of the month and quarter-end statements

preliminary or fully audited? Describe your process of revising and re-publishing incorrect accounting statements?

- G. What income forecast reporting is available (e.g. cash balance projection reporting)?
- H. Are you willing and able to integrate assets at other locations into your custody system and reports?

5. Systems and Services

- A. What audit controls or special features does your organization offer?
- B. What cycle applies for internal audits of the following:
 - Safekeeping/operations (trade processing)
 - Income collection
 - Vault (physical assets)
 - Asset reconciliation
 - Security operations
 - System data processing controls
- C. List the on-line performance information system's features, functionality, and data provided.
- D. Does the system provide compliance monitoring? Can the client specify the test criteria?
- E. Briefly describe your technology backup, support, and recovery systems.
- F. Describe security measures in place to protect against unauthorized access to the custody system.

6. Insurance Coverage

- A. Describe the insurance coverage your organization carries with respect to acts or omissions of any personnel resulting in the loss of a securities or funds.
- B. To what extent do you indemnify custody clients against losses not covered by your insurance?
- C. Does the insurance include: mysterious disappearance, computer-related crimes and loss of securities in transit?
- D. Indicate whether your organization has filed any claims for losses under the coverage described in the previous questions in the last five (5) years.

7. Agreements

Provide standard operating agreements that the Offeror proposes for custodial services.

3.06 Term

The initial term of the Contract shall be for a period beginning July 1, 2011 and ending June 30, 2014. The Contract will also contain an option to renew, upon the same terms and conditions, for two additional one-year periods. Exercise of the renewal option will be solely at the discretion of the Treasurer.

3.07 Compensation

By submitting a response to this solicitation, the Offeror agrees to accept any payments from the State by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using form 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/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form may be downloaded from: www.comp.state.md.us, select "Compnet," then "General Accounting Division," and then "Electronic Funds Transfer, Form X-10."

By submitting a response to this solicitation, the Offeror will invoice the Office for all fees and services. The Office account(s) shall at no time be debited for service fees.

SECTION IV. PROPOSAL FORMAT

4.01 Transmittal Letter

A brief transmittal letter prepared on the Offeror's business stationery must accompany the original and required copies of the two-volume proposal.

The transmittal letter accompanying the proposal must be signed by an individual authorized to bind the selected Offeror to all statements, including services and prices, contained in the proposals. This letter should also indicate that, if selected, the Offeror will execute a contract materially the same as Appendix D and the Collateral Security Agreement materially the same as Appendix E.

4.02 Two-Volume Submission

The selection procedure for this procurement requires that the initial technical evaluation of each proposal be completed before consideration of an Offeror's pricing proposal. Consequently, each proposal must be submitted in two volumes as indicated below.

4.03 Volume I - Technical Proposal

This volume shall be labeled "Volume I – Request for Proposals for Custodial Services - Technical." This volume must be organized as described below and contain sufficient information to enable the evaluators to evaluate the proposal. This proposal shall contain the transmittal letter (Section 4.01) and the completed Bid/Proposal Affidavit (Appendix B) and the Affidavit of Agreement Maryland Living Wage Requirements-Service Contracts (Appendix H).

The ideal response would reiterate each subsection and then list the Offeror's response, item by item so that an evaluator can read the requirement followed by the response. The Technical Proposal should be prepared in a clear and concise manner and address all requirements and services set forth in this solicitation.

The proposal shall provide all required information in the following subsections:

1. Request for General Information
 - A. Name of Financial Institution;
 - B. Mailing address of the office from which the proposal is being submitted;
 - C. Name of individual who will represent the Offeror as the primary contact person on matters relating to the proposal; and
 - D. Telephone and facsimile numbers and e-mail address of the individual identified in C above.

2. Offeror's Qualifications

- A. Each Offeror shall specifically and clearly state in its proposal that it meets each Mandatory Requirement in Section 3.02 and comply with the general requirements of Section 3.03 of this RFP.
- B. The Offeror shall provide evidence of certification and/or membership and compliance with Federal Deposit Insurance Corporation ("FDIC").
- C. The Offeror shall include one and only one copy of the Offeror's most recent audited financial statements with all attachments, including the unqualified audit opinion, in the original volume of its Technical Proposal.
- D. The Offeror shall include a brief description of its plan for business continuity and recovery as a result of disaster.

3. Offeror's Capabilities

- A. Indicate your compliance with the requirements listed in Section 3.04 Custodial Services, of this RFP. You may also provide brief supporting statements.
- B. Provide responses to the questions in Section 3.05 Additional Custodial Services Questions, of this RFP.

4. Personnel

This section should include the personnel who are to be assigned to this project if the Offeror is awarded the contract, and should indicate the proposed project role or assignment and resume of key personnel (project manager, team leader, and assigned project team members).

5. Client References

In this section, the Offeror should provide three client references for whom the Offeror has performed services similar to those required under this RFP with three years. Furnish each reference's entity name, and a contact person's name, title, and telephone number.

6. Community Benefits

- A. The Offeror shall provide its rating on its most recent examination under the Federal Community Reinvestment Act of 1977, P. L. Number 95-128, as required under Section 6-203(b) of the State Finance and Procurement Article of the Maryland Annotated Code. If the Offeror operates in a state other than Maryland, the Offeror shall provide Maryland-specific information within the assessment area section of its Community Reinvestment Act report. (See Exhibit 3).

- B. The Offeror shall state whether, during the previous 5 years, a court in the State of Maryland or in another state has found, in a final adjudication, that the Offeror, its affiliate or an entity acquired by the Offeror has violated any antidiscrimination statute or regulation.
- C. Pursuant to Section 6-203(d) of the State Finance and Procurement Article of the Annotated Code of Maryland, the Offeror shall provide information to demonstrate whether during the past 5 years, the financial institution has:
 - 1. successfully made loans in Maryland through State or federal lending programs designed to assist small and minority-owned businesses;
 - 2. had an active outreach program to assist small and minority-owned businesses through which the Offeror has made efforts in Maryland; and
 - 3. established strategic partnerships in Maryland with entities whose mission is to provide technical assistance to small and minority-owned businesses.

7. Economic Benefits to the State of Maryland

Each proposal submitted in response to this solicitation must describe the benefits that will accrue to the Maryland economy as a direct result of the Offeror's performance of the contract resulting from the solicitation. Economic benefits include:

- A. The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers, and partners. Offerors should be as specific as possible and provide a breakdown of expenditures in this category. Do not provide actual dollars for each category. Include percent of the total budget requested.
- B. The numbers and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification, and the aggregate payroll to which the contractor has committed at both prime, and if applicable, subcontract levels. Do not provide actual dollars for each category. Include percent of the total budget requested.
- C. Tax revenues to be generated for Maryland and its political subdivisions as a result of this Contract. Indicate the tax category (sales tax, payroll taxes, inventory taxes, and estimated personal income taxes for new employee). Provide a forecast of the total tax revenues resulting from the Contract. Do not provide actual dollars for each category. Include percent of the total budget requested.
- D. Subcontract dollars committed to Maryland Small Business and Minority Business Enterprises. Do not provide actual dollars for each category. Include percent of the total budget requested.

- E. In addition to the factors listed above, the Offeror should explain any other economic benefits to the State of Maryland that would result from the Offeror's proposal.

8. Company Literature:

- A. Please provide prospectuses for Money Market Funds or Sweep Accounts recommended in your response.
- B. If company literature or other material is intended to respond to any RFP requirement, it must be included in this section and the Offeror's responses in previous sections of the proposal must include reference to the document by name and page citation. Proposals submitted without these citations will be considered complete without need to refer to documents in this section for the Offeror's responses to RFP requirements.

4.04 Disclosures

Disclose any relationships with persons or entities that may create a conflict of interest, or the appearance of a conflict of interest. Disclose specific details of any pending legal proceedings (criminal or civil), or regulatory or disciplinary actions by any state or federal regulatory agency, involving the firm or members of the firm; or any convictions, judgments or settlements resulting from such proceedings or actions within the past five years.

4.05 Volume II - Price Proposal

This volume shall be labeled "Volume II - Request for Proposals for Custodial Services - Price," and sealed separately. The volume must consist of a completed and signed Price Proposal, included as Appendix A to this RFP. Appendix A must be signed by an individual authorized to bind the selected Offeror to all statements and fees contained in the proposal.

SECTION V. EVALUATION AND SELECTION PROCEDURE

5.01 Qualifying Proposals

The Procurement Officer, with the assistance of Director of Investments, first will review each proposal received by the submission deadline for compliance with the Mandatory Requirements set forth in Section 3.02 of this RFP. Each Offeror submitting a proposal must assume full responsibility for meeting the Mandatory Requirements and procedural requirements established for this procurement.

5.02 Evaluation and Selection Committee

All qualifying proposals will be evaluated by an Evaluation Committee (“Committee”), appointed by the Treasurer or the Treasurer’s designee.

5.03 Technical Evaluation

After the Procurement Officer selects the qualifying proposals (those proposals that are reasonably susceptible to selection for Contract award) the Evaluation Committee will conduct an initial evaluation of the technical merit of each qualifying proposal. This evaluation will be made on the basis of the evaluation criteria set forth in Section 5.05, below and may include information obtained during oral presentations, if any.

5.04 Price Evaluation

Following completion of the initial technical evaluation, the Committee will conduct an initial evaluation of the pricing of each proposal and will establish a financial ranking of all proposals.

5.05 Evaluation Criteria

The Proposals will be evaluated on the basis of the following factors listed in the order of relative importance for each category of service proposed:

1. Offeror’s Qualifications
2. Offeror’s Capabilities
3. Personnel and Client References
4. Community Benefits
5. Economic Benefits to Maryland

5.06 Responsibility

1. General

- (a) The procurement regulations in COMAR Title 21 define a “responsible” Offeror as one “...who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability that shall assure good faith performance.”
- (b) COMAR Title 21 also requires that the Procurement Officer determine before awarding a contract to an Offeror whether the Offeror is responsible. The determination of responsibility is based on the subjective judgment of the Procurement Officer about whether the Offeror meets the definition of a “responsible” Offeror.
- (c) In addition, the unreasonable failure of an Offeror to supply information promptly in connection with the determination of responsibility shall be grounds for a determination that the Offeror is not responsible.

2. Discussions

The Office reserves the right to discuss and negotiate with qualified Offerors or potentially qualified Offerors, (i.e., which are reasonably susceptible of being selected for award). Discussions or negotiations will be conducted with all qualified Offerors. The Office, however, is not obligated to conduct any discussions or negotiations. Each Offeror should be aware that the Office can select a proposal without first discussing the matter with the selected Offeror.

5.07 Best and Final Offer

When deemed in the best interest of the State, the Procurement Officer may permit qualified Offerors to revise their initial proposals by submitting best and final offers. The Procurement Officer shall notify each qualified Offeror of the scope of the requested best and final offer, and shall establish a date and time for the submission. The Procurement Officer may require more than one series of best and final offers and discussions, if determined that it is in the State’s best interest to do so. If more than one best and final offer is requested, an Offeror’s immediate previous offer shall be construed as its best and final offer unless the Offeror submits a timely notice of withdrawal or another best and final offer. The Procurement Officer may consult with and seek the recommendation of the Evaluation Committee during the best and final offer process.

5.08 Final Evaluation and Recommendation for Award

Following oral presentations, proposal negotiations, and reference checks, and site visits, if any, the Committee will perform its final evaluations and will make a recommendation to the Procurement Officer for award of the Contract to the responsible Offeror whose proposal is determined to be the most advantageous to the State based on the results of the final technical and financial evaluations. Technical merit will be given more weight than price in determining the Committee's final ranking. Contract award, if any, is subject to the approval of the Treasurer or Chief Deputy Treasurer upon recommendation of the Procurement Officer.

5.09 Debriefing of Unsuccessful Offerors

Unsuccessful Offerors shall be debriefed upon their written request, provided the request is made within a reasonable period of time after receiving notice of a final determination of award from the Procurement Officer. Request for debriefings shall be honored by the Office at the earliest feasible time after the request has been received. Debriefings shall be held in accordance with COMAR 21.05.03.06.

APPENDIX A

PRICE PROPOSAL FORM INSTRUCTIONS

1. Offerors must submit their price proposals on Appendix A, Price Proposal form for Custodial Services, in accordance with these instructions and as specified on the form. The price proposal must be separately sealed as directed in Section 4.05 Volume II-Price Proposal.
2. Appendix A is to be completed and signed by an individual who is authorized to bind the firm to all fees offered.
3. All data and information included on Appendix A is for price evaluation purposes. The State reserves the right, at its sole discretion, to purchase more services, fewer services, or not to purchase any services for which offers are solicited under this RFP.
4. On Appendix A:
 - A. Fees must be recorded with dollars and cents, e.g., \$24.15.
 - B. Nothing shall be entered on any Price Proposal Form that alters or proposes conditions or contingencies on the proposed prices.
5. It is imperative that the fees have been recorded correctly on the Price Proposal form. Any incorrect entries or inaccurate rate by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12.

**APPENDIX A
PRICE PROPOSAL**

**REQUEST FOR PROPOSALS FOR CUSTODIAL SERVICES
RFP #-CUST-02042011**

(Firm Name)

(Address)

Maintenance /Flat Fee (monthly)	\$ _____
Security Transaction Fee	\$ _____
Other Fees (monthly)	\$ _____

In compliance with the RFP and with all terms and conditions set forth therein, the undersigned represents that he/she has full authority to submit the above Custodial Services Fees.

Authorized Official: _____

Typed Name: _____

Title: _____

APPENDIX 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.

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.

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; 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 C and subsections 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):

_____.

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. 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)

APPENDIX 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)

APPENDIX D

**CONTRACT FOR
CUSTODIAL SERVICES**

BETWEEN

MARYLAND STATE TREASURER'S OFFICE

and

CONTRACT

THIS CONTRACT (the "Contract") is made as of the ___ day of _____, 20___, by and between [NAME AND ADDRESS] (the "Contractor"), and the **MARYLAND STATE TREASURER'S OFFICE**, 80 Calvert Street, Annapolis, Maryland 21401 (the "Office"), an office of the **STATE OF MARYLAND** (the "State").

IN CONSIDERATION OF the premises and the covenants herein contained, the parties agree as follows:

ARTICLE I - SCOPE OF SERVICES

The Office hereby engages the Contractor to perform the services set forth below:

- 1.1. General Services. The Contractor shall provide Custodial Services as described in this Contract, which includes the following exhibits:
 1. Exhibit: The Office Request for Proposals ("RFP") for Custodial Services, RFP #CUST-02042011;
 2. Exhibit: Contractor's Proposal dated _____;
 3. Exhibit: Contractor's Price Proposal dated _____;
 4. Exhibit: Collateral Security Agreement dated _____;
 5. Exhibit: Designation of Depository; and
 6. Exhibit: Bid/Proposal Affidavit and Contract Affidavit.
- 1.2. If there are any inconsistencies between this Contract and the Exhibits, this Contract shall control. If there is any conflict among the Exhibits, Exhibit __ shall control.
- 1.3. The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 4.5., Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

ARTICLE II - TERM

- 2.1. The initial term of this Contract shall be for the period beginning July 1, 2011 and ending June 30, 2014.
- 2.2. In addition there shall be two additional one-year renewal options, which may be exercised at the sole discretion of the Office.
- 2.3. After the end of the Contract term, should a new contract be awarded to a contractor other than the incumbent, the Contractor shall continue to perform any Contract services that were in process on the expiration date of the Contract and shall receive the payment specified in the Contract for such services, until such time as the transition to the new contractor is complete. Contractor shall also assist the Office during any transition period to a new contractor and provide all necessary information and data to any subsequent contractor.
- 2.4. The provisions of Sections 4.1, 4.5, 4.21, 4.22, 4.25 and 4.26 of this Contract shall survive termination of this Contract for any reason.

ARTICLE III - CONSIDERATION, PAYMENT AND PERFORMANCE

- 3.1. Agency shall pay the fees set forth in the attached Contractor's Price Proposal in Exhibit ___ which shall not be adjusted during the term of the Contract.
- 3.2. Payments to the Contractor may be withheld, without interest or penalty, when in the sole discretion of the Maryland State Treasurer, the Contractor's performance of any of the services under this Contract is unsatisfactory, or does not meet generally accepted industry standards. Notice of such withholding of payment and the reasons therefore shall be promptly provided to the Contractor, who shall be afforded an opportunity to cure any performance deficiencies.
 - 3.3.1. All invoices for goods and services shall be submitted to:

Maryland State Treasurer's Office
Attn: Accounts Payable
Louis L. Goldstein Treasury Building
80 Calvert Street
Annapolis, Maryland 21401
 - 3.3.2. Invoices must be submitted either:
 - (a) For ongoing services, on a monthly basis for goods or services rendered in the preceding month; or

- (b) For one-time or periodic services, with 30 days of delivery or completion of the goods or services.

3.3.3. Except as provided in Section 3.3.2 above, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after receipt by the Office of a proper invoice from the Contractor. Each invoice for services rendered must reflect the Contractor's federal tax identification number, which is _____, and shall clearly indicate the specific type of service provided. 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, as from time to time amended, are prohibited.

ARTICLE IV – GENERAL CONDITIONS

4.1. Liability

The Contractor agrees to assume full responsibility for any and all damage to the property of the Office, both real and personal, which results from or arises in connection with, the performance of this Contract.

The Contractor hereby agrees to indemnify and save harmless the State against all claims, damages, costs, losses and liabilities whatsoever, for any and all injury to persons and property that may arise out of the performance of this Contract.

The Contractor agrees to maintain adequate insurance coverage in order to fulfill responsibility under this section.

4.2. Tax Exemption

The State is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Tax and Transportation Taxes. Exemption certificates shall be completed upon request.

4.3. 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 sell, transfer, or otherwise assign its obligations under this Contract, or any portion thereof, or any of its rights or obligations hereunder, without the prior written approval of the State; provided, however, that the Contractor may subcontract services under or make an assignment of this Contract to an affiliate of the Contractor that is fully capable of performing such services if the Contractor retains full responsibility for the Contract. Any such subcontract or assignment shall be subject to any terms and conditions that the Office deems necessary to protect the interest of the State.

The Office shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors.

4.4. Non-Hiring of Officials and Employees

No official or employee of the State of Maryland, 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.

4.5. 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 (Dispute Resolution), 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.

4.6. Maryland Law Prevails

The provisions of this Contract shall be governed by the Laws of Maryland.

4.7. Amendments

This Contract, including the exhibits hereto, constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this Contract. Any amendment to this Contract must first be approved in writing by the Procurement Officer, subject to any additional approvals required by State law. No amendment to this Contract shall be binding unless so approved and unless it is in writing and signed by the party to be charged.

4.8. 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 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.

4.9. Commercial Nondiscrimination Clause

4.9.1. 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, 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.

4.9.2. 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 of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 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 is 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.

4.10. Contingent Fee Prohibition

The Contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, architect, or engineer, 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 any other consideration contingent on the making of this Contract.

4.11 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 (SFP) Article, Annotated Code of Maryland.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.28 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total Contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least \$9.23 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. In the event 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.

This Contract has been deemed to be a Tier 1 contract.

4.12. Multi-Year Contracts Contingent Upon Appropriations

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 cancelled 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 non-recurring 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.

4.13. Termination for Default

If the Contractor fails to fulfill its obligation 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 Contractors fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by 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 determination

of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

4.14. Termination for Convenience

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

4.15. Delays and Extensions of Time

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

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.

4.16. Variations in Estimated Quantities

No equitable adjustment shall be permitted in favor of either the State or the Contractor in the event that the quantity of any pay item in this Contract is an estimated quantity and the actual quantity of such pay item varies from the estimated quantity stated in the Contract.

4.17. Suspension of Work

The Procurement Officer 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.

4.18. 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 Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

4.19. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State 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 these 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.

4.20. Political Contribution Disclosure

The Contractor shall comply with the 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.

4.21. Retention of Records/Audit

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State 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.

4.22. Compliance with Laws

The Contractor hereby represents and warrants that:

- 4.22.1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, hereafter may be necessary to remain so qualified;
- 4.22.2. 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;
- 4.22.3. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- 4.22.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

4.23. Liability for Loss of Data

In the event of loss of any data or records necessary for the performance of this Contract where such loss is due to the error or negligence of the Contractor, the Contractor shall be responsible, irrespective of cost to the Contractor, for recreating such lost data or records.

4.24. Cost and Price Certification

- 4.24.1. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
 - (1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
 - (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.
- 4.24.2. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

4.25. Ownership of Documents and Materials

The Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical,

artwork, and computations prepared by or for it under the terms of this Contract shall at anytime during the performance of the services be made available to the State upon request by the State and shall become and remain the exclusive property of the State upon termination or completion of the services. The State shall have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by this Contract. The State shall be the owner for purposes or copyright, patent or trademark registration.

4.26. Patents, Copyrights and Trade Secrets

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

4.26.2. Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against the State due to such infringement and all attorney fees and litigation expenses reasonably incurred by the State to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in paragraph 4.26.3. below.

4.26.3. If any product(s) furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for the State the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

4.27. Confidentiality

Subject to the Maryland Public Information Act and any other applicable laws, including 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 the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law and the confidentiality provisions of the RFP. 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.

ARTICLE V - NOTICES

- 5.1. All notices required to be given by one party to the other hereunder shall be in writing and shall be addressed as follows:

If to the Office:

Procurement Officer
Maryland State Treasurer's Office
Louis L. Goldstein Treasury Building
80 Calvert Street
Annapolis, Maryland 21401

If to the Contractor:

- 5.2. All invoices and all correspondence and inquiries relating to invoices or payments shall be addressed to:

Maryland State Treasurer's Office
Attn: Accounts Payable
Louis L. Goldstein Treasury Building
80 Calvert Street
Annapolis, Maryland 21401

ARTICLE VI - ADMINISTRATION

- 6.1. The work to be accomplished under this Contract shall be performed under the direction of the Contract Officer, Director of Investments. All matters relating to the administration of this Contract shall be referred to the Procurement Officer for determination.

ARTICLE VII - REPRESENTATIONS

7.1. Each party to this Contract represents and warrants to the other that it has full right, power, and authority to execute this Contract.

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

ATTEST:

[NAME]

By: _____

WITNESS:

**MARYLAND STATE
TREASURER'S OFFICE**

By: _____

Nancy K. Kopp
State Treasurer

WITNESS:

By: _____

Bernadette T. Benik
Chief Deputy Treasurer

Approved for form and legal sufficiency
for the Maryland State Treasurer's Office:

Counsel to the Treasurer

APPENDIX E
COLLATERAL SECURITY AGREEMENT

THIS COLLATERAL Security Agreement (the “Agreement”) is made and entered into as of _____ by and between the Maryland State Treasurer’s Office, hereinafter called the “Depositor”, and _____, [a national banking association, organized under the laws of the United States] or [organized under the laws of Maryland] and authorized by law to do banking business in the State of Maryland, hereinafter called the “Bank.”

Background

The Depositor, in accordance with Maryland State law, has designated the Bank as a depository for public funds of the Depositor under the Contract for Custodial Services dated as of _____ . During the term of this Agreement, the Depositor will designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of the Depositor in any and all matters of every kind arising under this Agreement. The Depository Agreement between the Depositor and the Bank is incorporated herein for all purposes; however, to the extent that any provision therein conflicts with any provision herein, this Agreement will control. All funds on deposit with the Bank to the credit of the Depositor are required to be secured by collateral as provided in Section 6-202 of the State Finance and Procurement Article of the Annotated Code of Maryland (hereinafter referred to as the “Public Funds law”).

To perfect the security interest of the Depositor in the collateral pledged by the Bank, a Federal Reserve Bank or a third party financial institution, acceptable to the Depositor, will hold the collateral in a custody account for the benefit of the Depositor. Such Federal Reserve Bank or third party financial institution is hereafter referred to as the “Trustee.”

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

1. In accordance with the terms of this Agreement, the Bank hereby pledges to the Depositor, and grants to the Depositor a security interest in, those assets owned by the Bank and held by the Trustee for the benefit of the Depositor (hereinafter, the “Collateral”), to secure the deposits held by the Bank for the Depositor as provided in the Public Funds law.
2. The total market value of the Collateral (which includes accrued interest or income to the extent it is not included in the market price) will be in an amount at least equal to such amount as is required under the Public Funds law. The market value of any security held as Collateral will be obtained from a primary dealer. The Bank will provide a monthly collateral report to the Depositor at no charge. The report includes the market value and description of each security pledged as of the last business day of the month.

3. The Bank has heretofore or will immediately hereafter deliver to the Trustee Collateral of the kind and character permitted by the Public Funds law of sufficient amount and market value to provide adequate Collateral for the funds of the Depositor deposited with the Bank. The Collateral or substitute Collateral, as hereinafter provided for, shall be kept and retained by the Trustee in trust so long as the depository relationship between the Depositor and the Bank shall exist hereunder.
4. The Bank shall cause the Trustee to accept the Collateral and hold the same in trust for the purpose herein stated.
5. Should the Bank fail at any time to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposit, or in case the Bank becomes insolvent or in any manner breaches its contract with the Depositor, Depositor shall give written notice of such failure, insolvency or breach to the Bank, and the Bank shall have ten days to cure such failure, insolvency or breach. In the event the Bank shall fail to cure such failure, insolvency or breach within ten days, it shall be the duty of the Trustee, upon demand of the Depositor (supported by proper evidence of any of the above-listed circumstances), to surrender the Collateral to the Depositor. The Depositor may sell all or any part of the Collateral and out of the proceeds thereof pay the Depositor all damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale, accounting to the Bank for the remainder, if any, of the proceeds or Collateral remaining unsold.
6. Any sale of the Collateral, or any part thereof, made by the Depositor hereunder may be either at public or private sale; provided, however, the Depositor shall give to the Bank ten days written notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder therefor for cash. The Depositor and the Bank shall have the right to bid at such sale.
7. If the Bank shall desire to sell or otherwise dispose of any one or more of the securities so deposited with the Trustee, it may substitute for any one or more of such securities other securities of at least the same market value and of the character authorized herein. Such right of substitution shall remain in full force and may be exercised by the Bank as often as it may desire; provided, however, that the aggregate market value of all Collateral pledged hereunder, shall be at least equal to the amount of Collateral required under the Public Funds law. If at any time, the aggregate market value of such Collateral so deposited with the Trustee shall be less than the total amount required under the Public Funds law, the Bank shall, upon request of the Depositor, deposit with the Trustee such additional Collateral as may be necessary to cause the market value of such Collateral to equal the total amount of required Collateral. The Bank shall be entitled to income on securities held by the Trustee, and the Trustee may dispose of such income as directed by the Bank without approval of the Depositor.

8. The Bank shall cause the Trustee promptly to forward to the Depositor copies of safekeeping or trust receipts and/or activity reports covering all the Collateral, including substitute Collateral as provided for herein.
9. If at any time the Collateral in the hands of the Trustee shall have a market value in excess of the required amount of Collateral, the Depositor shall authorize the withdrawal of a specified amount of Collateral, and the Trustee may deliver this amount of Collateral (and no more) to the Bank, taking its receipt therefor, and the Trustee shall have no further liability for Collateral so redelivered to the Bank.
10. Either the Depositor or the Bank shall have the right to terminate this Agreement by advance written notice to the other of its election to do so, and this Agreement shall be void from and after the expiration of sixty days after the receipt of such notice, provided all provisions of this Agreement have been fulfilled.
11. When the relationship of depositor and bank shall have ceased to exist between the Depositor and the Bank, and when the Bank shall have properly paid out all deposits of the Depositor, it shall be the duty of the Depositor to give the Trustee written notice to that effect; whereupon the Trustee shall, with the approval of the Depositor, redeliver to the Bank all Collateral then in its possession belonging to the Bank, taking its receipt therefor.
12. A. Any notice required to be given to the Bank in writing shall be sufficient if delivered to the following address:

The Bank may change the above address by notifying the Depositor by facsimile or by such other means as is consistent with the Bank's usual means of notification to the Depositor.

- B. Any notice to be given to the Depositor shall be sufficient if delivered to the following address:

Maryland State Treasurer's Office
Attn: Director of Banking Services
80 Calvert Street
Annapolis, Maryland 21401
Tel: (410)260-7264 – Fax: (410)974-2076

The Depositor may change the above address by notifying the Bank by facsimile or by such other means as is consistent with the Depositor's usual means of notification to the Bank.

13. This Agreement shall be binding upon, and shall insure to the benefit of, the parties hereto and their respective corporate successors.

14. No amendments or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

Executed by the undersigned duly authorized officers of the parties as of the date hereinabove set forth.

ATTEST

[NAME]

By: _____

WITNESS:

**MARYLAND STATE TREASURER'S
OFFICE**

By: _____

Nancy K. Kopp
State Treasurer

WITNESS:

By: _____

Bernadette T. Benik
Chief Deputy Treasurer

Approved as to form and legal sufficiency
for the Maryland State Treasurer's Office:

Counsel to the Treasurer

APPENDIX F
DESIGNATION OF DEPOSITORY

I, THE UNDERSIGNED, TREASURER OF THE STATE OF MARYLAND, DO HEREBY CERTIFY that, by my action duly taken, the following Designation has been duly made, has not been amended or modified, is not inconsistent with the Constitution and laws of the State of Maryland (the "State"), and is now in full force and effect:

IN ACCORDANCE with Section 6-205 of the State Finance and Procurement Article of the Annotated Code of Maryland, _____, (the "Bank") is hereby designated as a depository for funds of the State for the term of its Contract for Custodial Services, dated _____, as it may be amended, and that deposit accounts, whether demand, time, savings, disbursement, or like accounts may be opened and/or maintained from time to time in the name of the State with the Bank. The Bank, as a designated depository for funds of the State, is hereby authorized and directed to honor checks, drafts, or other orders for the payment of money drawn in the name of the State or its agencies, when bearing or purporting to bear the facsimile signature of one of the following: the Treasurer or the Chief Deputy Treasurer; and the countersignature of one of the following: the Comptroller or Deputy Comptroller, or the actual signatures of the certified officers or employees of each agency approved by the Treasurer and the Comptroller to establish an account with the Bank, as indicated on the Bank's standard account signature cards; and the Bank shall be entitled to honor and charge the State for all such checks, drafts and other orders, regardless of by whom or by what means the facsimile signatures thereon may have been affixed thereto from time to time by the Treasurer or other duly authorized officer of the State; and it is

FURTHER CERTIFIED, that the Treasurer or duly authorized agency representative shall certify to the Bank the names of the officers or employees of the State authorized to act with respect to each and every account, and shall from time to time hereafter as changes in such personnel may be made, immediately certify such changes to the Bank, and the Bank shall be fully protected in relying on such certifications of the Treasurer or duly authorized agency representative, and to the extent permitted by law shall be indemnified and saved harmless from any claims, demands, expenses, losses, or damages resulting from, or growing out of honoring the signature of an officer or employee so certified or refusing to honor any signature not so certified; and it is

FURTHER CERTIFIED, that the foregoing Designation shall remain in full force and effect until written notice of its amendment or rescission shall have been received by the Bank, and that receipt of such notice shall not affect any action taken by the Bank prior thereto.

I HEREBY CERTIFY that the following is the title, name, and official signature of the officer, in addition to me, authorized herein to act on behalf of the State:

<u>Title</u>	<u>Name</u>	<u>Official Signature</u>
Chief Deputy Treasurer	Bernadette T. Benik	_____

IN WITNESS WHEREOF, I have executed this Designation as of this ____ day of _____, 2011.

STATE OF MARYLAND

By: _____
Nancy K. Kopp
Treasurer

APPENDIX G
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.dlir.state.md.us/> and clicking on Living Wage.

APPENDIX H
Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from 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 Title 18, 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 wage rate in effect at the time service is provided for hours spent 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.

Attachment D (continued)
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 State 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 State contract will be 17 years of age or younger during the duration of the State contract; or
- ___ All employee(s) proposed to work on the State 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

EXHIBIT 1
State Finance and Procurement Articles

§6-222.

(a) The Treasurer may invest or reinvest unexpended or surplus money over which the Treasurer has custody in:

(1) an obligation for which the United States has pledged its faith and credit for the payment of the principal and interest;

(2) an obligation that a federal agency or a federal instrumentality has issued in accordance with an act of Congress;

(3) a repurchase agreement collateralized in an amount not less than 102% of the principal amount by an obligation of the United States, its agencies or instrumentalities, provided the collateral is held by a custodian other than the seller designated by the buyer;

(4) bankers' acceptances guaranteed by a financial institution with a short-term debt rating in the highest letter and numerical rating by at least one nationally recognized statistical rating organization as designated by either the United States Securities and Exchange Commission or the Treasurer;

(5) with respect to amounts treated by the Internal Revenue Service as bond sale proceeds only, bonds, notes, or other obligations of investment grade in the highest quality letter and numerical rating by at least one nationally recognized statistical rating organization as designated by the United States Securities and Exchange Commission issued by or on behalf of this or any other state or any agency, department, county, municipal or public corporation, special district, authority, or political subdivision thereof, or in any fund or trust that invests only in securities of the type described in this paragraph;

(6) commercial paper that has received the highest letter and numerical rating by at least two nationally recognized statistical rating organizations as designated by the United States Securities and Exchange Commission, provided that such commercial paper may not exceed 10% of the total investments made by the Treasurer under this subsection;

(7) money market mutual funds that:

(i) are registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., as amended;

(ii) are operated in accordance with Rule 2A-7 of the Investment Company Act of 1940, 17 C.F.R. § 270.2A-7, as amended; and

(iii) have received the highest possible rating from at least one nationally recognized statistical rating organization as designated by the United States Securities and Exchange Commission; and

(8) any investment portfolio created under the Maryland Local Government Investment Pool defined under Article 95, § 22G of the Code that is administered by the Office of the State Treasurer.

(b) The Treasurer may sell, redeem, or exchange an investment or reinvestment made under this section in accordance with the limitations of this section.

(c) Subject to § 2-1246 of the State Government Article, the Treasurer shall report by January 3 of each year to the General Assembly on investment activities for unexpended or surplus money over which the Treasurer has custody which have been conducted during the previous fiscal year. At a minimum, the report shall specify for General Fund investments and all other investments:

(1) the inventory of investments with maturity dates and the book and market value as of June 30;

(2) the net income earned;

(3) the percentage share of each category of investment in the portfolio; and

(4) any sale of investments prior to the maturity date.

(d) An investment made pursuant to this section shall be made:

(1) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(2) in a manner designed to reasonably match the anticipated cash flow of the State so that sufficient funds are available to pay obligations upon proper presentation for payment;

(3) so that a reasonable amount of cash or cash equivalents is available for unanticipated cash needs;

- (4) with due regard for minimizing risk while maximizing return;
- (5) using competitive purchasing practices except when impractical;
- (6) in accordance with a written investment policy;
- (7) so that the securities and collateral may continue to be priced on a market to market basis;

and

(8) to avoid the enhancement of the personal financial position of the Treasurer or any employee of the Treasurer who has responsibilities for such investments.

(e) (1) (i) Consistent with minority business purchasing standards applicable to units of State government under this article and consistent with the fiduciary duties of the Treasurer, the Treasurer shall attempt to use to the greatest extent feasible minority business enterprises for brokerage and investment management services under this section.

(ii) For purposes of this subsection, brokerage and investment management services shall include services relating to all allocated asset classes as described in subsection (a) of this section.

(2) (i) To assist the Treasurer in achieving the goal described under paragraph (1) of this subsection, the Treasurer shall undertake measures to remove any barriers that limit full participation by minority business enterprises in brokerage and investment management services opportunities afforded under this section.

(ii) The measures undertaken by the Treasurer shall include the use of a wide variety of media, including the Treasurer's website, to provide notice to a broad and varied range of potential providers about the brokerage and investment management services opportunities afforded by the Treasurer.

(3) In conjunction with the Governor's Office of Minority Affairs, the Treasurer shall develop guidelines to assist in identifying and evaluating qualified minority business enterprises in order to help the Treasurer achieve the objective for greater use of minority business enterprises for brokerage and investment management services under this section.

(4) On or before September 1 each year, the Treasurer shall submit a report to the Governor's Office of Minority Affairs and, subject to § 2-1246 of the State Government Article, the General Assembly on:

(i) the identity of the minority business enterprise brokerage and investment management services firms used by the Treasurer in the immediately preceding fiscal year;

(ii) the percentage and dollar value of the assets under the custody of the Treasurer that are under the investment control of minority business enterprise brokerage and investment management services firms; and

(iii) the measures the Treasurer undertook in the immediately preceding fiscal year in accordance with paragraph (2)(ii) of this subsection.

§6-223.

(a) Except as otherwise prohibited by law, the Treasurer may invest or reinvest, in a deposit with a financial institution in the State, unexpended or surplus money over which the Treasurer has custody if:

(1) the deposit is interest bearing; and

(2) as provided for a depository for State money:

(i) the financial institution provides collateral that has a market value that equals or exceeds the amount by which a deposit exceeds the deposit insurance; and

(ii) a custodian holds the collateral.

(b) The Treasurer may sell, redeem, or exchange an investment or reinvestment made under this section.

§6-224.

(a) Notwithstanding any other provision of law, the Treasurer may invest or reinvest unexpended or surplus State money in obligations that the Maryland Environmental Service issues for a capital project if:

(1) there is a commitment of federal funds for the project;

(2) the Service has not received the federal funds;

(3) the amount of the investment does not exceed the federal commitment; and

(4) as to any investment or reinvestment that exceeds \$500,000, the Board of Public Works approves the investment or reinvestment.

(b) The Treasurer shall set the conditions of the investment or reinvestment, including the term, the interest rate, and any service charge.

(c) The Maryland Environmental Service shall repay the investment or reinvestment when the term that the Treasurer sets ends or, if sooner, when the Service receives the final federal funds.

§6-225.

(a) Notwithstanding any other provision of law, the Treasurer may invest or reinvest State money in any obligation that the Maryland Higher Education Loan Corporation guarantees if:

- (1) a financial institution holds the obligation; and
- (2) the Governor approves the financial institution.

(b) (1) The Treasurer may set the conditions of the investment or reinvestment, including the term and any service charge.

(2) The investments and reinvestments under this section may not exceed:

- (i) for any 1 obligation, 80% of its principal;
- (ii) for any 1 financial institution, the amount by which its holdings in the obligations exceed 1% of the total deposits of the financial institution; and
- (iii) for all obligations, \$10,000,000.

(c) If the Treasurer invests or reinvests in an obligation under this section, the financial institution that holds the obligation is the collecting agent of the State for the investment or reinvestment.

§6-226.

(a) Except as otherwise specifically provided by law or by regulation of the Treasurer, the Treasurer shall credit to the General Fund any interest on or other income from State money that the Treasurer invests.

(b) (1) Notwithstanding any other provision of law, the Treasurer may invest separately or commingled in 1 or more pools amounts to be invested by law or regulation for State agencies.

(2) The Treasurer shall allocate net earnings on amounts commingled in a pool to the appropriate State agencies entitled to receive interest earnings under subsection (a) of this section.

**EXHIBIT 2
INVESTMENT POLICY**

MARYLAND STATE TREASURER’S OFFICE

I. POLICY

It is the policy of the Maryland State Treasurer’s Office (hereinafter referred to as “the STO”) to invest public funds in a manner which will provide the highest investment return with the maximum security while meeting the anticipated daily cash flow requirements of the State. The STO will not borrow funds for the express purpose of investing those funds. The policy will conform to all State laws governing the investment of public funds.

II. SCOPE

This investment policy applies to unexpended or surplus money over which the Treasurer has custody as authorized by State Finance and Procurement Article §6-222.

- A. General Fund
- B. Funds invested on behalf of other State agencies and other outside parties
- C. Bond Sale Proceeds

III. PRUDENCE

Investment shall be made with judgement and care – under circumstances then prevailing – which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The “prudent person” standard shall be applied in the context of managing an overall portfolio. Investment officers shall act in accordance with written procedures and the investment policy and while exercising due diligence. Deviations from expectations are to be reported in a timely fashion and appropriate action should be taken to control adverse developments.

IV. OBJECTIVE

The primary objectives of the State’s investment activities, in order of priority shall be:

- A. Safety: Safety of principal is the foremost objective of the investment program. To attain this objective, diversification, collateralization, third party safekeeping and delivery versus payment (DVP) will be required.
- B. Liquidity: The State’s investment portfolio will remain sufficiently liquid to enable the State to meet all operating requirements which might be reasonably anticipated plus a reasonable amount for unanticipated needs.

- C. Return on Investment: The State's investment portfolio shall be designed with the objective of attaining a market rate of return at least equal to the three month U.S. Treasury bill yield, with due regard for minimizing risk while maximizing return and considering the cash flow characteristics of the portfolio.

IV. DELEGATION OF AUTHORITY

Authority over the State's investment program is delegated to the State Treasurer in the Annotated Code of Maryland – State Finance & Procurement – Section §6-222. Management responsibility for the investments is delegated to the Director of Investments who shall establish written procedures for the operation of the investment program consistent with this investment policy.

Procedures should include reference to cash flow requirements, competitive bidding procedures, broker/dealer relationships, safekeeping, securities lending, Master Repurchase Agreements, security, collateral and mark to market requirements as well as oversight for the Local Government Investment Pool.

The procedures shall also include explicit delegation of authority to persons responsible for investment transactions. No person may engage in an investment transaction except as provided under the terms of this policy and the procedures established by the Director of Investments. The Director shall be responsible for all transactions undertaken and shall establish a system of controls to regulate the activities of subordinate officials.

V. ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Investment officials shall disclose to the State Ethics Commission any material financial interest in financial institutions that conduct business within the jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the State's portfolio. Employees and officers shall subordinate their personal investment transactions to those of the State, particularly with regard to the time of purchases and sales.

VI. AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The Treasurer shall maintain a list of financial institutions authorized to provide investment services. The following is a breakdown of the types of institutions used by the State along with the type of investment transactions handled by those institutions.

- A. Primary Government Dealers:
The Federal Reserve Bank of New York designates primary government dealers in government securities. The State can purchase all authorized

and suitable investments as listed in Section VIII of this policy, except for certificates of deposit and the Maryland Local Government Investment Pool, from primary dealers.

- B. Other Security Dealers:
The State may purchase repurchase agreements, U.S. Government securities, U.S. Government agency securities, commercial paper and bankers' acceptances from dealers other than primary government dealers and from dealer banks that market these securities. The Treasurer's policy is to make sure that local, regional and minority firms have an opportunity to bid on a portion of the State's investable funds.

All dealers must agree to the State's policy of delivery versus payment as described in Section X of this policy. Firms must have adequate capital to fulfill their commitments under adverse market conditions. All non-primary firms must provide copies of their audited financial statements and Financial and Operational Combined Uniform Single Report (FOCUS Report) for review and approval before initiating any transactions and annually thereafter.

VII. AUTHORIZED AND SUITABLE INVESTMENTS

The State Treasurer is authorized by statute to invest in the following types of securities subject to the restrictions in the statute, State Finance and Procurement Article §6-222.

- A. U.S. Treasury Obligations
- B. Certificates of Deposit
- C. Federal Agency or Instrumentality Obligations
- D. Repurchase Agreements
Master Repurchase Agreement and Addendum must be signed before any repurchase transactions are entered into.
- E. Banker's Acceptances
- F. Municipal Securities and Municipal Mutual Funds for bond sale proceeds only
- G. Commercial Paper limited to 10% of the total portfolio
- H. Money Market Mutual Funds
- I. Maryland Local Government Investment Pool

VIII. COLLATERALIZATION

Collateralization will be required on two types of permitted investments: Certificates of Deposit and Repurchase Agreements. In order to anticipate market changes and provide a level of security for all funds, the collateralization level will be at least 102% of the market value of the principal and accrued interest for Repurchase Agreements and 100% of the market value of the principal and accrued interest for Certificates of Deposit. State law limits acceptable collateral to U.S. Government Treasuries, Agencies and instrumentalities as defined in the statute, State Finance and Procurement Article §6-222. An independent third party with whom

the State has a current custodial agreement will always hold the collateral. Clearly marked evidence of ownership must be supplied to the State and retained.

The right of collateral substitution is granted and the seller will pay all associated costs. Collateral will be priced on a mark-to-market basis when the investment is initiated and daily for the term of the investment.

IX. SAFE KEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the State shall be conducted on a delivery versus payment (DVP) basis. A third party custodian designated by the Treasurer and evidenced by safe keeping receipts will hold securities.

X. DIVERSIFICATION

The state will diversify its investments by security type and institution in the following manner:

<u>Diversification by Security Type</u>	<u>Maximum % of Portfolio</u>
1. U.S. Treasury Obligations	100%
2. Agencies & Instrumentalities	80%
3. Repurchase Agreements	75%
4. Bankers' Acceptances	20%
5. Municipal Bonds & Municipal Funds	20%
6. Commercial Paper	10%
7. Money Market Funds	30%
8. Local Government Investment Pool	
Less than 10% of total LGIP Assets	

Diversification by Institution

1. Repurchase Agreements	30%
--------------------------	-----

XI. MAXIMUM MATURITIES

To the extent possible, the State will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the State will not directly invest in securities maturing more than five years from the date of purchase.

XII. INTERNAL CONTROL

The Treasurer's Office and the Investment Division are audited annually by an independent auditor and biannually by the legislative audit staff. These reviews assess internal controls by examining compliance with written policies and procedures.

XIII. PERFORMANCE STANDARDS

The investment portfolio is designed to obtain an average market rate of return during budgetary and economic cycles, taking into account the State's investment risk constraints and cash flow needs. The State's investment strategy is passive and the benchmark yield comparison shall be the yield on the three-month U.S. Treasury Bill.

XIV. REPORTING

Section §6-222 of the State Finance and Procurement Article requires the Treasurer to file a report with the General Assembly on General Fund investments and all other investments by January 3rd of each year. At a minimum, the report shall specify the

- inventory of investments as of June 30
- net income earned for the fiscal year
- percentage share of each type of security in the portfolio
- any sale of investments prior to maturity.

XV. INVESTMENT POLICY ADOPTION

The Treasurer shall approve the State's investment policy. The policy shall be reviewed on an annual basis.

DATE: June 21, 2010

NANCY K. KOPP
State Treasurer

EXHIBIT 3
State Finance and Procurement Article

§6-201.

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Banking institution” means an institution that is incorporated under the laws of the State as a State bank, trust company, or savings bank.
- (c) “Collateral” means collateral that is listed under § 6-202 of this subtitle.
- (d) “Deposit insurance” means insurance by:
- (1) the Federal Deposit Insurance Corporation; or
 - (2) the Resolution Trust Corporation created under § 21A of the Federal Home Loan Bank Act (12 U.S.C. § 1441a).
- (e) “Financial institution” means:
- (1) any banking institution;
 - (2) any national banking association;
 - (3) an institution that is incorporated under the laws of any other state as a bank; and
 - (4) an institution that is incorporated under the laws of this State or of the United States as a savings and loan association.
- (f) “National banking association” means an institution that is incorporated under federal law as a bank.
- (g) “State money” for purposes of §§ 6-209 and 6-210 of this subtitle includes moneys in a bank account maintained under the control of an employee or official of the clerk of the court or register of wills.

§6-202.

Collateral that may be used under this subtitle shall be:

- (1) an obligation of the United States or any of its agencies;
 - (2) an obligation guaranteed by the United States or by any of its agencies;
 - (3) an obligation insured by the United States;
 - (4) an obligation of the State or any of its units or instrumentalities;
 - (5) an obligation of a county of the State or any of its agencies;
 - (6) an obligation of a municipal corporation in the State or any of its agencies;
 - (7) an obligation of any other governmental authority in the State;
 - (8) an obligation of the Inter-America Development Bank;
 - (9) an obligation of the World Bank;
 - (10) an obligation of the following government-sponsored enterprises:
 - (i) the Federal Home Loan Bank System;
 - (ii) the Federal Home Loan Mortgage Corporation;
 - (iii) the Federal National Mortgage Association;
 - (iv) the Farm Credit System;
 - (v) the Federal Agricultural Mortgage Corporation; and
 - (vi) the Student Loan Marketing Association;
- (11) a surety bond if:
 - (i) subject to the terms and conditions of the bond, it is irrevocable and absolute;
 - (ii) the surety bond is issued by an insurance company authorized to do business in this State;
 - (iii) the issuer of the surety bonds does not provide surety bonds for any one financial institution in an amount that exceeds 10% of the surety bond insurer’s policyholders’ surplus and contingency reserve, net of reinsurance; and
 - (iv) the claims-paying ability of the authorized insurance company is rated, at all relevant times, in the highest category by at least two nationally recognized rating agencies acceptable to the Treasurer; or
- (12) an obligation or security of, or other interest in, any open-end or closed-end management type investment company or investment trust registered under the provisions of the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq., if:

(i) the portfolio of the open-end or closed-end management type investment company or investment trust is limited to direct obligations of the United States government and to repurchase agreements fully collateralized by United States government obligations; and

(ii) the open-end or closed-end management type investment company or investment trust takes delivery of that collateral, either directly or through an authorized custodian.

§6-203.

(a) The Treasurer shall give 15% of the weight of the decision to the standards established in this section in deciding whether to:

(1) designate a financial institution as a depository for State money under § 6-205 of this subtitle; and

(2) make an agreement with a financial institution for a banking service under § 6-229 of this subtitle.

(b) (1) The Treasurer shall consider whether the financial institution received a rating of “needs improvement” or “substantial noncompliance” in its most recent examination under the federal Community Reinvestment Act of 1977, P.L. Number 95-128.

(2) If a financial institution operates in a state other than Maryland, the Treasurer shall consider Maryland-specific information that is provided within the assessment area section of the Community Reinvestment Act report.

(c) (1) The Treasurer shall consider whether, during the previous 5 years, a court in Maryland has found, in a final adjudication, that a financial institution has violated any antidiscrimination statute or regulation.

(2) The Treasurer may consider whether, during the previous 5 years, a court outside Maryland has found, in a final adjudication, that a financial institution has violated any antidiscrimination statute or regulation.

(3) The Treasurer may determine how to assess a violation under paragraph (1) or (2) of this subsection if the violation was committed by:

(i) an affiliate of the financial institution; or

(ii) an entity acquired by the financial institution.

(d) The Treasurer shall consider whether the financial institution has demonstrated that during the previous 5 years, the financial institution has:

(1) successfully made loans in Maryland through State or federal lending programs designed to assist small and minority-owned businesses;

(2) had an active outreach program to assist small and minority-owned businesses through which the financial institution has made efforts in Maryland; and

(3) established strategic partnerships in Maryland with entities whose mission is to provide technical assistance to small and minority-owned businesses.

EXHIBIT 4
State Finance and Procurement Articles

§6-209.

- (a) State money on deposit with a financial institution shall be secured by:
 - (1) deposit insurance; or
 - (2) collateral as required by this section.
- (b) (1) The collateral for State money on deposit with a financial institution:
 - (i) must have, at all times, a market value that equals or exceeds the State money that is on deposit with the financial institution and is not covered by deposit insurance; and
 - (ii) must be approved by the Treasurer.
- (2) If the collateral is a surety bond under § 6-202 of this subtitle:
 - (i) the surety bond shall be in a form and amount acceptable to the Treasurer as determined by the Treasurer from time to time; and
 - (ii) the financial institution that provides the surety bond as collateral shall immediately notify the Treasurer if the rating assigned to the issuing insurance company by any rating agency, found acceptable to the Treasurer under § 6-202 of this subtitle, is withdrawn or downgraded, in which event the financial institution shall immediately provide the Treasurer with substitute collateral permitted under § 6-202 of this subtitle.
- (3) Subject to the requirements of this subsection, a financial institution may change its collateral from time to time.
- (c) (1) A custodian shall hold the collateral under this section for the benefit of the State.
- (2) A financial institution may use as a custodian:
 - (i) any banking institution that is approved by the Commissioner of Financial Regulation to conduct commercial banking business in the State;
 - (ii) a federal reserve bank; or
 - (iii) any national banking association that is approved by the Comptroller of the Currency to conduct banking business in the State.
- (3) A financial institution may not be approved as custodian for the collateral of a depository unless the assets of the financial institution equal or exceed 200% of the value of the collateral to be held for the depository.