

**STATE OF MARYLAND**

**MARYLAND STATE TREASURER'S OFFICE**

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

**REQUEST FOR PROPOSALS**

**FOR**

**FINANCIAL ADVISORY SERVICES**

**RFP #FA-11212011**

**Due Date: December 22, 2011**

**Issued: November 21, 2011**

**KEY INFORMATION SUMMARY SHEET**

**Maryland State Treasurer's Office  
Request for Proposals  
For  
Financial Advisory Services  
RFP #FA-11212011**

**Procurement Officer:** Anne Jewell  
Tel.: (410)260-7903  
Fax: (410)974-3530  
Email: [procurement@treasurer.state.md.us](mailto: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:** November 21, 2011

**Deadline for Receipt of Questions:** December 6, 2011 by 11:00 a.m. Local Time

**Proposal Due Date and Time:** December 22, 2011 by 11:00 a.m. Local Time

**Oral Presentation, if any** January 10-11, 2012

**Tentative Contract Award:** January 18, 2012

**Notice:** Prospective offerors (the "Offerors") who received this document from [www.eMarylandMarketplace.com](http://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 coordinating the administrative activities related to the sale of State of Maryland general obligation bonds and other bonds, capital leases and public finance transactions as provided by law. The Office, has also provided financial advice relating to bonds and other forms of public finance to the Board of Public Works (the "Board"), and, upon request, to other State Agencies.

The purpose of this RFP is to select a pool of financial advisors to assist the Office and, from time to time, the Board and other State agencies in carrying out these duties and to provide advisory services on a broad range of issues in the area of public finance, for the term of January 23, 2012 through December 31, 2014, with an option to renew the Contract for one additional year.

### **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](mailto:procurement@treasurer.state.md.us)

The sole point of contact for purposes of this RFP 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:

Director of Debt Management  
Maryland State Treasurer's Office  
Louis L. Goldstein Treasury Building  
80 Calvert Street, Room 109  
Annapolis, Maryland 21401  
Tel: (410)260-7155

**1.05 Use of “eMaryland Marketplace”**

eMaryland Marketplace ([www.emarylandmarketplace.com](http://www.emarylandmarketplace.com)) is a free electronic commerce system administered by the Maryland Department of General Services. The RFP and related materials 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”	November 21, 2011
RFP Release Date	November 21, 2011
Deadline for Receipt of Questions	December 6, 2011 by 11:00 a.m. Local Time
Proposal Due Date	December 22, 2011 by 11 a.m. Local Time
Oral Presentations, if any	January 10-11, 2012
Tentative Date of Contract Award	January 18, 2012

**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 by 11:00 a.m. on Tuesday, December 6, 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 11 a.m. local time on Thursday, December 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 financial advisory 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](http://www.treasurer.state.md.us), (select "Procurement Information" and then "RFP for Financial Advisory Services"), and through eMaryland Marketplace at [www.emarylandmarketplace.com](http://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 may enter into two or more separate contracts to provide the described services. The Office also reserves the right, in its sole discretion, to award the Contract[s] 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 RFP. 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 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 D entitled Living Wage Requirements for Service Contracts). If the Offeror fails to complete and submit the Affidavit of Agreement (see Appendix E), 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.

## **2.15 Minority Business Enterprises**

A minority business enterprise subcontractor participation goal of 10% has been established for this solicitation. Offerors should indicate in their proposals which services under Section 3.03 will be performed by minority firms, and complete the appropriate MBE participation forms in Appendix F.

This RFP is designed to encourage the participation of socially and economically disadvantaged individuals (members of a group as defined in Section 14-301 (i)(1) of the State Finance and Procurement Article of the Annotated Code of Maryland (the “Procurement Article”) and minority business enterprises as defined in Section 14-301 (f) of the Procurement Article.

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](http://www.mdot.state.md.us). Select the “Minority/Disadvantaged Business Enterprise” label.

## **2.16 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 G to this RFP.

## **2.17 No Guarantee of Work; Multiple Contracts**

It is the intention of the Office to select one firm to serve as Senior Financial Advisor and award a Contract to that firm for advisory services related to the sale, issuance and refunding of general obligation bonds.

The Office also intends to select a pool of firms to provide advisory services related to the sale of Certificates of Participation and for general advisory services (lease financing, disclosures, rating agency relations, research on alternative methods of financing, evaluation of other State agencies’ financing plans, and any other financing assignment from the Office.) The Office may select more than one firm from the pool for award of a Contract. **Contractors are not guaranteed a minimum type or amount of work or a minimum amount of compensation.**

**The Office currently has a contract with an Investment Advisory Firm to provide investment advice for sinking funds for Qualified School Construction Bonds and Qualified Zone Academy Bonds and for investments for refunding escrows. These financial advisory contracts will not include any investment advisory services.**

## **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.

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## SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

### 3.01 Background

In Maryland, general obligation bonds, certificates of participation and capital leases are authorized, sold and issued primarily to provide funds for State-owned capital improvements, including improvements for institutions of higher education and construction of locally owned public schools. Bonds have also been issued to fund local government improvement projects, correctional facilities and repayable loans or outright grants to private, nonprofit, cultural and educational institutions.

As of June 30, 2011, the outstanding total of general obligation bonds was approximately \$7.0 billion. The State's general obligation bonds have been consistently rated AAA by all three rating agencies (since 1961 for S&P, 1993 for Fitch, and 1970 for Moody's). On August 4, 2011 Moody's assigned a negative outlook to the State's AAA rating, because of an indirect link to the rating of the U.S. government which was assigned a negative outlook by Moody's on August 2, 2011. Further review of the negative outlook by Moody's is pending as of November 21, 2011.

The Treasurer has adopted a Debt Management Policy that is available at: [http://www.treasurer.state.md.us/media/22126/debt\\_management\\_policy.pdf](http://www.treasurer.state.md.us/media/22126/debt_management_policy.pdf).

The Office handles the following activities related to the sale of the State's general obligation bonds: determining the amount of the sale and the method of sale, managing the preparation of the official statements, scheduling calls and meetings with the rating agencies, coordinating the resolutions and actions by the Board of Public Works, negotiating the sale of bonds with underwriters, receiving and verifying competitive bids, and coordinating settlement.

The Office also handles matters related to post-sale compliance with federal regulations and is responsible for tracking private activity and determining any rebate liability. Furthermore, throughout the year, the Office manages relationships with the rating agencies by updating financial information (e.g., budgets, revenue estimates, Fiscal Digest and the Comprehensive Annual Financial Report). The Office is also responsible for compliance with Continuing Disclosure Agreements and for the Preliminary and Final Official Statements.

Payments for debt service on the general obligation bonds are made from the Annuity Bond Fund, whose primary source of revenue is state property taxes. The Office is the paying agent for all outstanding general obligation bonds with the exception of one issue of tax credit bonds – the 2009 Qualified School Construction Bonds. The Office projects future debt service and assists in the preparation of budgets for the Annuity Bond Fund.

Currently, the State sells general obligation bonds two times a year in roughly equal amounts, in late February or early March and late July or early August. Typically the bonds are tax-exempt; however, in recent years the State has issued taxable bonds with direct federal subsidies such as Build America Bonds and Qualified School Construction Bonds. The federal authorization for most of these taxable bonds has expired; however, the State expects to continue to issue Qualified Zone Academy Bonds. General obligation bonds have a maximum maturity of 15

years and are issued as serial maturities with level debt service for years 3 – 15. The State also permits the use of term bonds. Bonds with maturities greater than 8 to 10 years are generally callable. Official Statements for general obligation bonds issued since 2004 are available at <http://www.treasurer.state.md.us/debtmanagement/debt-management-reports.aspx>.

Currently, all the bonds issued by the State are fixed rate. However, the State does have the option to issue variable rate bonds. Statute limits the amount of variable rate debt to 15% of the outstanding bonds. Maryland law permits Interest Rate Exchange Agreements, but their use is not anticipated in the near future.

The Office manages two capital lease programs for equipment and energy improvements. The Office periodically requests bids from qualified lessors and administers all aspects of these programs including draw downs and repayments. The Office anticipates annual financing of approximately \$10 million in Equipment leases (3 to 5 year terms for office equipment, computers, etc). In addition, the Office expects to finance \$88 million in Energy Performance Contracts (12-15 year terms for energy improvements) in fiscal years 2012 and 2013. Finally, the State expects to issue Certificates of Participation (5 year term) to finance approximately \$85 million for Video Lottery Terminals in September 2012.

In addition to its duties with respect to the general obligation bond program, the Office occasionally provides advice to State agencies that enter the bond market infrequently, including but not limited to the procurement of financial services (e.g. financial advisor, trustee, underwriter) and participation in the development of official statements.

The Office also responds to requests for information from State agencies and the legislature on various financing issues, including, for example, funding options for Pensions and Other Post Employment Benefits (“OPEB”) and financing capital projects by securitizing various revenue streams. The State has also expanded the use of Public-Private Partnerships in Maryland, such as the proposed State Center project and the Seagirt Marine Terminal, resulting in a greater need for the Office to analyze the financial impacts of such partnerships.

The Treasurer is the chairman of the Capital Debt Affordability Committee (“CDAC”) and the Commission on State Debt. The reports of both entities are available on the Treasurer’s website at <http://www.treasurer.state.md.us/debtmanagement/debt-management-reports.aspx>.

The Financial Advisor may assist the Office in debt projections and assumptions of personal income and revenues (including property taxes) that are necessary for CDAC analyses. The Office may request guidance from the Financial Advisor on the evaluation of affordability criteria particularly if there are changes to the accounting treatment of operating leases.

### **3.02 Objectives**

This procurement has two objectives. The first is to select a Senior Financial Advisor for advisory services related to the sale, issuance and refunding of general obligation bonds.

The second objective is to select a pool of financial advisory firms to provide advisory services for the sale of Certificates of Participation and for a broad range of issues in the area of public

finance (e.g., lease financing, disclosures, rating agency relations, research on alternative methods of financing, evaluation of other State agencies' financing plans, and any other financing assignment from the Office.) The Office will determine, in the Office's sole discretion, which Contractor is best suited and available to provide advice on any particular matter at any given time.

The term of the Contract(s) for financial advisors is anticipated to be in effect from January 23, 2012 to December 31, 2014, with an option to renew for one additional year.

### **3.03 Financial Advisory Services**

Upon request of the Office, the Contractor(s) will:

1. Advise the Office on general market conditions and outlook for bonds, COPs and capital leases including, but not limited to, new issues, refundings, new products, derivatives, market trends, and investor preferences, and perform analyses related to such matters;
2. Advise the Office on the structuring of bond issues, including the use and amount of fixed and variable rate debt, serial and term bonds, maturity schedules, refundings, and other structuring options to achieve the lowest rates while maintaining the State's credit ratings;
3. Prepare cash flows both prior to and after the issuance of securities as requested by the Office;
4. When requested by the Office, analyze various financing proposals that are presented by investment bankers;
5. Advise the Office on the continued use of retail order periods for the sale of bonds;
6. Participate in the preparation and review of material for the Preliminary and Final Official Statements, other offering documents, and closing documents;
7. Advise the Office of continuing disclosure requirements and best practices. Assist the Office (as needed) in posting disclosures on EMMA;
8. Advise the Office on rating agency matters and strategies for rating agency meetings including, if requested by the Office, the preparation of material in final form for inclusion in a briefing book for rating agency visits or calls, scheduling of meetings, identification and background of rating agency personnel and a synopsis of their likely concerns, a general script for the State participants including outlines of talking points to be made by each State presenter, and potential questions and answers;
9. Provide the Office with any training, newsletter and other informational material routinely provided to clients;

10. Advise the Office on all issues relating to the marketability of State bonds and perform analysis related to the marketing of the bonds;
11. Assist, as needed, in making presentations on proposed bond issues and lease financings to rating agencies, the Board of Public Works and other elected officials, and potential purchasers of the securities;
12. Upon the written request of the Office, provide financial advisory services to the Board and to other State agencies engaged in bond sales or other public finance transactions;
13. Attend bond sales, assist in the evaluation of bids for both competitive and negotiated sales, and recommend acceptance of bids;
14. Complete post bond sale analyses. For negotiated sales, review bond underwriter performance and costs of issuance. Report the results of the sale compared to similar transactions in the market and the distribution of bonds among the underwriters. For competitive sales, compare the results with Municipal Market Data information, other indices, and other similar transactions in the market at the time of the general obligation sale. For variable rate debt, report remarketing results;
15. Provide guidance to the Office on post-sale compliance matters, as requested;
16. Advise the Office on other matters as required including, but not limited to, matters related to debt affordability, budgeting of debt service, and alternative ways to finance capital projects other than general obligation bonds, such as the use of public-private partnerships, securitization of revenue streams, etc.;
17. Advise the Office on revising and updating debt, swap and disclosure policies. Advise the Office on the issuance and reporting of hedged and unhedged variable rate debt. Advise the Office on written Post-Issuance Compliance policies and procedures;
18. When requested, assist the Office in the procurement and selection (including by subcontract when and as directed by the Office) of agents and services necessary or desirable for the sale and issuance of State bonds, including but not limited to verification agents, underwriters, remarketing agents, dealers, tender agents, insurers, liquidity providers, counterparties, printers, electronic bidding and posting services and advertising. Review the performance of any of these entities at the request of the Office;
19. Advise on proposed and enacted statutory and regulatory changes affecting the State and imposed by Congress, the U.S. Treasury and other regulatory agencies; including, but not limited to, IRS, SEC, MSRB, etc.;
20. As directed, assist the Office in any response to inquiries or audits from any of these agencies;



21. Provide assistance, and when appropriate, training to the Office staff in order to enhance Office capacity for a variety of bond-related activities;
22. Assist the Office in any matters regarding capital leases, including bidding, structuring, and sale alternatives such as COPS;
23. Perform other tasks consistent with the purpose of this Contract as may be specified by the Office including any other service necessary, customary, or incidental to the sale of the issuance of debt and the financing of capital projects including but not limited to: preparation of term sheets and solicitation of bids/proposals for the private sale of certain bonds (e.g. QZABs) and capital leases.

All services will be performed only upon request of the Office. Work plans and budgets for any studies or special analyses must be approved in advance by the Office.

### **3.04 Independence**

During the term of the Contract, the selected Offeror, as well as its parent, its subsidiaries, and its affiliates (if any), may not:

1. Serve as an underwriter or member of an underwriting syndicate for the financing transactions upon which the selected Offeror has advised the Office.
2. Make political contributions or give gifts or gratuities in violation of rules promulgated or proposed by the Municipal Securities Rulemaking Board.
3. Engage in other activities (such as fee splitting or paying finders' fees) that could present a real or perceived conflict of interest with the duties of the selected Offeror under the Contract.

Any such affiliation or action made known to the Office during the term of the Contract may cause the Office to terminate the Contract. The selected Offeror shall, at the commencement of the Contract, deliver to the Office a letter containing the disclosures and undertakings required by draft Rule G-46 of the Municipal Securities Rulemaking Board (as drafted if not yet implemented, or as implemented, and in either case as such Rule may be modified and amended).

### **3.05 Compliance with Applicable Rules and Regulations**

During the term of the Contract, the selected Offeror shall maintain all required registrations, and comply with all applicable regulatory agency rules, including but not limited to those of the Municipal Securities Rulemaking Board and the U. S. Securities and Exchange Commission. Failure to comply with such rules may result in termination of the Contract.

### **3.06 Minimum Qualifications**

To be considered for this Contract, the Offeror's firm must have served as senior financial advisor for at least five state or local government general obligation bond financings with a total aggregate issuance amount of over \$500 million since January 1, 2008, must be registered as a

municipal advisor with the U. S. Securities and Exchange Commission and MSRB, and must include information evidencing its compliance with this requirement in its Technical Proposal as set forth in Section 4.03 of this RFP.

### **3.07 Term**

The term of the Contract will be from January 23, 2012 through December 31, 2014, with one one-year renewal option, exercisable at the sole discretion of the Office. The Contract extends to settlement of any financing transactions in process at the conclusion of the Contract.

### **3.08 Compensation**

Financial advisory services shall be compensated at two different hourly rates. The primary rate shall be a hourly rate for professional level personnel reviewing complex financial analyses and advising the Office. A lower rate shall apply to services performed by associate level professionals (e.g., production of refunding analysis, cash flows). Projects requiring significant associate-level effort must use associate level fees. All invoices will be reviewed for appropriate assignment of personnel. Both financial advisor rates must include all expenses other than (a) express mail charges where the Office directs the Contractor to use express mail; and (b) direct out of pocket travel expenses, which will be invoiced and reimbursed in accordance with the State's standard travel regulations (COMAR 23.02.01), and (c) charges for outside services that are authorized by the Office (such as postings of the POS on Parity). All invoices for payment must include specific information on the personnel assigned and time spent for each task.

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](http://www.comp.state.md.us), select "General Accounting Division," "Electronic Funds Transfer," and then "Form X-10."

The selected Offeror may not engage in activities on behalf of the Office that produce a direct or indirect financial gain for the Offeror, other than the agreed-upon compensation, without the Office's informed consent.

Payments to the selected Offeror shall be made no later than 30 days after receipt by the Office of monthly invoices from the Contractor. Each invoice for services rendered must reflect the Contractor's federal tax identification number. 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.

### **3.09 Staffing Requirements.**

The Office expects that personnel will be assigned to the project as described in Section 4.03.5 and of the Offeror's Technical Proposal. If one or more of the proposed personnel become unavailable for continuation of the work assignment, the Contractor shall replace said individual(s) with personnel of substantially equal ability and qualifications. However, any changes to designated personnel will require the prior written approval of the Office. If the proposed replacement personnel are accepted by the Office, the changes in personnel shall be effected without additional cost to the Office and without formal modification of the Contract.

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## **SECTION IV. PROPOSAL FORMAT**

### **4.01 Transmittal Letter**

A brief transmittal letter prepared on the Offeror's business stationery should accompany the original and required copies of the two-volume proposal. The letter must be signed by an individual authorized to bind the selected Offeror to all statements, including services and prices, contained in the proposal. The transmittal letter should also indicate that, if selected, the Offeror will execute a Contract materially the same as Appendix G.

### **4.02 Two -Volume Submission**

The selection procedure for this RFP requires the Office to complete the technical evaluation of each portion of an Offeror's Technical Proposal before consideration of an Offeror's Price Proposal. Consequently, each proposal must be submitted in two volumes as indicated below.

### **4.03 Volume I - Technical Proposal**

The Technical Proposal volume shall be labeled "Maryland State Treasurer's Office Request for Proposals for Financial Advisory Services - Technical." This volume shall contain the transmittal letter (Section IV., 4.01), the completed Bid/Proposal Affidavit (Appendix B), the Affidavit of Agreement, Maryland Living Wage Requirements-Service Contracts (Appendix E) and Minority Business Enterprise Participation forms (Appendix F).

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 should address all requirements and services set forth in the solicitation.

The Technical Proposal shall provide all required information in the following subsections:

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

2. Minimum Qualifications

Indicate how the Offeror meets the Minimum Qualifications cited in Section III., 3.06.

3. Firm Capabilities

- A. Describe your firm, including when organized, corporate structure, and type of ownership;
- B. By location, number of professional level employees, associate level employees, and support staff engaged fulltime in advising tax exempt issuers, (other than health care and housing issuers), on matters related to the issuance of tax-exempt bonds; and
- C. Approximate portion of firm's revenues derived from financial advisory services to tax-exempt entities other than health care and housing issuers.

4. Financing Experience

A. Firm's Financial Advisory Experience – Tax Exempt General Obligation Bond Issuers.

- 1. Provide a representative list of tax exempt general obligation bond issuers which are similar to the State of Maryland for which your firm has served as a primary financial advisor since January 1, 2008. Also, include any Maryland State agency or Maryland local government agency issuers for which your firm has served as primary financial advisor since January 1, 2008 indicating:

- (i) Name of issuer;
- (ii) Amount of issue;
- (iii) Date of issue;
- (iv) Type of issue, e.g., fixed, variable, taxable;
- (v) Use of derivative products;
- (vi) Purpose/use of proceeds;
- (vii) Method of sale;
- (viii) Personnel assigned and role performed;
- (ix) Whether or not a current or advance refunding; and
- (x) Nature of your services.

- 2. Select two of the issuers listed above and discuss how the experience gained from working for these issuers relates to the services requested by the Office. Be sure to indicate any unusual or exceptional problems, conditions, or situations that your firm faced and solved.

B. Firm's Financial Advisory Experience – Capital Lease Financing.

1. Provide a representative list of governmental units engaged in capital lease financing (including COPs) for which your firm has served as a primary financial advisor since January 1, 2008, indicating:
  - (i) Name of government;
  - (ii) Amount of financing;
  - (iii) Date of financing;
  - (iv) Description of financing (type; use of proceeds; method);
  - (v) Personnel assigned and role performed; and
  - (vi) Nature of your services.
2. Select 2 of the entities listed above and discuss how the experience gained from working for these entities relates to the services requested by the Office. Be sure to indicate any unusual or exceptional problems, conditions, or situations that your firm faced and solved.

C. Firm's Financial Advisory Experience - Public/Private Partnerships.

1. Provide a representative list of public entities engaged in public/private partnerships ("PPP") for which your firm has served as a primary financial advisor since January 1, 2008, indicating:
  - (i) Name of public entity;
  - (ii) Amount of PPP financing;
  - (iii) Date of PPP financing;
  - (iv) Description of PPP financing (type; use of proceeds; method);
  - (v) Personnel assigned and role performed; and
  - (vi) Nature of your services.
2. Select 2 of the entities listed above and discuss how the experience gained from working for these entities relates to the services requested by the Office. Be sure to indicate any unusual or exceptional problems, conditions, or situations that your firm faced and solved.

5. Proposed Professional Level and Associate Level Personnel

- A. Indicate the manner in which you would organize your firm's resources to provide the appropriate assistance to the Office by including the following:
- (i) Identify the individual who will be the principal advisor to the Office.
  - (ii) How many years' experience does this individual have with the firm?
  - (iii) How many years' experience does this individual have in providing financial advisory services to issuers of general obligation bonds?
  - (iv) How many years' experience does this individual have in providing financial

advisory services to issuers of tax exempt revenue bonds?

- (v) Define this individual's position with the firm.
  - (vi) What is this person's availability i.e., what is the nature of this person's responsibility for other clients?
  - (vii) Did this individual participate with any of the issuers listed in 4.A, B and C? If yes, what role did this individual play?
- B. Identify other professional level and associate level staff that will be assigned to this project, their availability to work on the project, their roles and responsibilities, their participation with any of the issuers listed on 4.A, B and C and the relevant aspects of their background.
- C. Identify any other professional level and associate level staff that you might propose to be assigned to the project in the event that the individuals listed above are not available for assignment.
- D. Provide information on how you expect to assign the services listed in Section III., 3.03 to the firm's personnel assigned to this Contract, and to the MBE firms which will be participating in this Contract.
- E. Provide resumes for the individuals listed in 5.A. and 5.B. above and any appropriate individuals listed in 5.C.

6. Rationale for Appointment

This section of the Technical Proposal should be used by each Offeror to present the case for its appointment as financial advisor. The section may include any additional material the Offeror may choose to submit.

7. Client References

Provide five client references. The list must include references related to engagements:

- A. on which the principal advisor proposed in 5. A. i. above played a lead role; and
- B. for which the services provided are similar to the services expected to be provided to the Office.

Furnish name, title, agency and telephone number for each reference.

The State reserves the right to contact any previous client of the firm whether or not the client is listed as a reference.

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 this RFP. 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 joint venture 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.

**4.04 Disclosures**

Disclose specific details of any pending legal proceedings (criminal or civil), or regulatory or disciplinary actions by any state or federal 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 "Maryland State Treasurer's Office Request for Proposals for Financial Advisory Services - Price." The price proposal will include an hourly rate for all senior level professional personnel and a separate hourly rate for associate level personnel. The financial ranking for Financial Advisory Services will be evaluated by applying the Offeror's



senior and associate level professional hourly rates to a model to be determined by the Office in its sole discretion.

When assigning personnel, projects requiring significant associate level effort (e.g., production of refunding analyses, cash flows) must use associate level fees. All invoices will be reviewed for appropriate assignment of personnel. The proposed rates must include all expenses except for authorized travel, services and express mail charges.

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## SECTION V. EVALUATION AND SELECTION PROCEDURE

### 5.01 Evaluation and Selection Committee

All qualifying proposals received by the submission deadline will be evaluated by an Evaluation and Selection Committee appointed by the Treasurer or Treasurer's designee.

### 5.02 Qualifying Proposals

The Procurement Officer first will review each proposal for completeness of response to requirements contained in Section IV, "Proposal Format," 4.03- Volume I – Maryland State Treasurer's Office Request for Proposals for Financial Advisory Services - Technical. Failure to respond to the appropriate questions where indicated may disqualify an Offeror's proposal from consideration by the Committee.

### 5.03 Technical Evaluation

After the Procurement Officer selects the qualifying proposals, the 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 5.05, below, and may include information obtained during oral interviews, if any.

### 5.04 Evaluation Criteria

Only proposals determined to be qualifying proposals pursuant to subsection 5.02 above will be evaluated by the Committee.

For the technical evaluation, the Committee will take into consideration the information related to the questions in Section IV. in order of importance (greatest first):

1. Financing Experience;
2. Proposed Personnel;
3. Rationale for Appointment;
4. Firm's Capabilities; and
5. Economic Benefits to the State of Maryland.

### 5.05 Price Evaluation

Following completion of the initial technical evaluation, the Committee will conduct an initial evaluation of the price of each proposal and will establish a financial ranking of all proposals. The Committee will evaluate the rates for senior and associate level professional personnel.

## **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 proposal by submitting a best and final offer. 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, if any, the Committee will perform its final evaluations and will make a recommendation to the Procurement Officer for award of the contract to that responsible Offeror or Offerors whose proposals are determined

to be the most advantageous to the State based on the results of the final technical and price 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 State Treasurer or the Treasurer's designee upon the 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.

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## **APPENDIX A**

### **PRICE PROPOSAL FORM INSTRUCTIONS**

1. Offerors must submit their price proposals on Appendix A-Price Proposal form for Financial Advisory Services in accordance with these instructions and as specified on the form. The Price Proposal (Appendix A) must be separately sealed and labeled as directed in Section 4.05.
2. The Price Proposal (Appendix A) is to be completed and signed by an individual who is authorized to bind the firm to all unit prices offered.
4. On the Price Proposal (Appendix A):
  - A. Prices must be recorded with dollars and cents, e.g., \$24.15. Fractional prices are not acceptable.
  - B. The State will pay the proposed rates per this RFP which may not be contingent on any other factor or condition in any manner.
  - C. Nothing shall be entered that alters or proposes conditions or contingencies on the proposed prices.
5. It is imperative that the prices recorded on the Price Proposal form (Appendix A) have been recorded correctly in order to accurately calculate the Offeror's financial proposal. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12.
6. If one or more of the aforementioned personnel becomes unavailable for continuation of a work assignment, the Contractor shall replace said individual(s) with personnel of substantially equal ability and qualifications. Any changes to designated key personnel shall be effected without additional cost to the Office and without formal modification of the Agreement.

**APPENDIX A**  
**PRICE PROPOSAL FOR FINANCIAL ADVISORY SERVICES**

RFP for Financial Advisory Services, RFP #FA-11212011

PROPOSAL:

\_\_\_\_\_  
(Firm Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

The Offeror shall submit labor rates for the personnel identified in the technical proposal in sections 4.03.5. A, B and C. The Offeror should assume that the Office will require 544 hours in financial advisory services per fiscal year.

(1) Senior Level Professional Hourly Rate \$ \_\_\_\_\_

Identify staff who will be billed at this rate.

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

(2) Associate Level Professional Hourly Rate \$ \_\_\_\_\_

Identify staff who will be billed at this rate.

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

The Hourly Rates for the senior level professionals and for the associate level professionals submitted by the Offeror via this Price Proposal shall be firm for the term of the Contract. The Contractor shall submit bills to the Office monthly that identifies the personnel, task, date and hourly rate. The Contractor should submit invoices within 30 days after the end of each month.

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 Rates.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Name and Title of Authorized Official

## APPENDIX B

### Bid/Proposal Affidavit

#### A. AUTHORITY

I HEREBY AFFIRM THAT:

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

#### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, 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):

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D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;



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

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

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

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

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

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and 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):

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#### E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

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F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

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G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State

Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

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

**K. ACKNOWLEDGEMENT**

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

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

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

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

**APPENDIX C**

**CONTRACT AFFIDAVIT**

**A. AUTHORITY**

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number: \_\_\_\_\_ Address: \_\_\_\_\_

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

Name and Department ID Number: \_\_\_\_\_  
Address: \_\_\_\_\_.

**C. FINANCIAL DISCLOSURE AFFIRMATION**

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business

that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$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.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$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.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

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

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

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

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

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

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

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

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

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

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

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

(4) I acknowledge and agree that:

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

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

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

**F. CERTAIN AFFIRMATIONS VALID**

**I FURTHER AFFIRM THAT:**

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

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

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

By: \_\_\_\_\_ (printed name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

## APPENDIX D

### 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 E**

**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 E (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

## APPENDIX F

### MINORITY BUSINESS ENTERPRISE PARTICIPATION

#### PURPOSE

Contractor shall structure its procedures for the performance of the work required in this contract to attempt to achieve the minority business enterprise (MBE) goal stated in the Invitation for Bids or Request for Proposals. MBE performance must be in accordance with this Exhibit, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this Exhibit.

#### MBE GOALS AND SUB GOALS

An MBE subcontract participation goal of \_\_\_ percent of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the bidder or offeror agrees that this percentage of the total dollar amount of the contract will be performed by certified minority business enterprises.

OR

An overall MBE subcontract participation goal of \_\_\_ percent of the total contract dollar amount has been established for this procurement. This percentage of the total dollar amount includes:

- A sub goal of \_\_\_ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as women-owned businesses.
- A sub goal of \_\_\_ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as African American-owned businesses.

By submitting a response to this solicitation, the bidder or offeror agrees that these percentage of the total dollar amounts of the contract will be performed by certified minority business enterprises as specified.

- ◆ A prime contractor — including an MBE prime contractor — must accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors.
- ◆ A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE subcontract goal with certified MBE subcontractors.

## SOLICITATION AND CONTRACT FORMATION

A bidder or offeror must include with its bid or offer a completed *Certified MBE Utilization and Fair Solicitation Affidavit (Attachment A)* whereby:

- (1) the bidder or offeror acknowledges the certified MBE participation goal or requests a waiver, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
- (2) the bidder or offeror responds to the expected degree of Minority Business Enterprise participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The bidder or offeror shall specify the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

*If a bidder or offeror fails to submit Attachment A with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.*

Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.

- (1) **Outreach Efforts Compliance Statement** (Attachment B)
- (2) **Subcontractor Project Participation Statement** (Attachment C)
- (3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented waiver request that complies with COMAR 21.11.03.11.
- (4) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

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

## CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

1. Submit monthly to the Department a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. At the option of the procurement agency, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### ATTACHMENTS

- A. Certified MBE Utilization and Fair Solicitation Affidavit (must be submitted with bid or offer)
- B. Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- C. Subcontractor Project Participation Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)

## MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with bid or offer)

This document **MUST BE** included with the bid or offer. If the Bidder or Offeror fails to complete and submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. \_\_\_\_\_, I affirm the following:

1.  I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of \_\_\_\_ percent and, if specified in the solicitation, sub goals of \_\_\_\_ percent for MBEs classified as African American-owned and \_\_\_\_ percent for MBEs classified as women-owned. Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

### OR

I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11.

6. **2. I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.**

- (a) Outreach Efforts Compliance Statement (Attachment B)
- (b) Subcontractor Project Participation Statement (Attachment C)
- (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

3. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.

4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total contract amount allocated to each MBE for this project. I hereby affirm that the MBE firms are only providing those products and services for which they are MDOT certified.

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Project Number:	

**List Information For Each Certified MBE Subcontractor On This Project**

Minority Firm Name	MBE Certification Number
Certification Category For Dually Certified MBE Subcontractors ( <i>Check Only One Certification Category</i> )	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
-----	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category For Dually Certified MBE Subcontractors ( <i>Check Only One Certification Category</i> )	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
-----	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors ( <i>Check Only One Certification Category</i> )	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
-----	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors ( <i>Check Only One Certification Category</i> )	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
-----	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors ( <i>Check Only One Certification Category</i> )	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
-----	
Percentage of Total Contract	

Continue on a separate page, if needed.

**SUMMARY**

Total <i>African-American MBE</i> Participation:	_____ %
Total <i>Woman-Owned MBE</i> Participation:	_____ %
Total <i>Other</i> Participation	_____ %
<b>Total All MBE Participation:</b>	_____ %

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Bidder/Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Affiant  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



## Outreach Efforts Compliance Statement

**Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.**

In conjunction with the bid or offer submitted in response to Solicitation No. \_\_\_\_\_, Bidder/Offeror states the following:

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
  - a.  This project does not involve bonding requirements.

**OR**

  - b.  Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
  - a.  Bidder/Offeror did/did not attend the pre-bid/proposal conference.

**OR**

  - b.  No pre-bid/proposal conference was held.

\_\_\_\_\_  
Bidder/Offeror Printed Name

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

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

## Subcontractor Project Participation Certification

*Please complete and submit one form for each MDOT certified MBE listed on Attachment A within 10 working days of notification of apparent award.*

\_\_\_\_\_ (*prime contractor*) has entered into a contract with \_\_\_\_\_ (*subcontractor*) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	MBE Certification Number
Work To Be Performed	
Percentage of Total Contract	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have 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 business enterprise in its bid or proposal;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of 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.

**PRIME CONTRACTOR SIGNATURE**

**SUBCONTRACTOR SIGNATURE**

By: \_\_\_\_\_  
 Name, Title  
 Date

By: \_\_\_\_\_  
 Name, Title  
 Date

## **Attachment 5**

### **WAIVER REQUEST PROCEDURE**

- A. If, for any reason, the apparent successful bidder or offeror is unable to achieve the contract goal for each certified MBE classification specified as having a subcontract goal or the overall MBE contract goal, the bidder or offeror may request, in writing, a waiver to include the following:
- (1) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs, including the work to be performed by each MBE classification if an MBE subgoal has been specified, in order to increase the likelihood of achieving the stated goal;
  - (2) A detailed statement of the efforts made to contact and negotiate with certified MBEs, and if appropriate, by certified MBE classification, including:
    - (a) The names, addresses, dates, telephone numbers, and classification of certified MBEs contacted, and
    - (b) A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;
  - (3) As to each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;
  - (4) A list of certified MBEs including, if applicable, certified MBEs in each MBE classification, found to be unavailable, which shall be accompanied by an MBE unavailability verification form signed by the certified MBE, or a statement from the apparent successful bidder or offeror that the certified MBE refused to give the written verification;
  - (5) The record of the apparent successful bidder's or offeror's compliance with the outreach efforts required under COMAR 21.11.03.09C(2)(a)—(e); and
  - (6) If the request for a waiver is for a certain MBE classification within an overall MBE goal, the bidder or offeror shall demonstrate reasonable efforts to meet the overall MBE goal with other MBE classification or classifications.
- B. A waiver of a certified MBE contract goal may be granted only upon a reasonable demonstration by the bidder or offeror that certified MBE subcontract participation was unable to be obtained, or was unable to be obtained at a reasonable price or in the appropriate MBE classifications, and if the agency head or designee determines that the

public interest is served by a waiver. In making a determination under this section, the agency head or designee may consider engineering estimates, catalogue prices, general market availability, and availability of certified MBEs in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and non-MBE cost of participation, and their impact on the overall cost of the contract to the State and any other relevant factor.

- C. An agency head may waive any of the provisions of Regulations in COMAR 21.11.03 .09—.10 of for a sole source, expedited, or emergency procurement in which the public interest cannot reasonably accommodate use of those procedures.
- D. When a waiver is granted, except waivers under §C of this regulation, one copy of the waiver determination and the reasons for the determination shall be kept by the MBE liaison officer with another copy forwarded to the Office of Minority Affairs.

**Attachment 6**  
**STATE TREASURER'S OFFICE**  
**MINORITY BUSINESS ENTERPRISE PARTICIPATION**

**Prime Contractor Unpaid MBE Invoice Report**  
**To be Completed Monthly by Prime Contractor**

Report  
Month/Year \_\_\_\_\_

**Report due by 15th of following month.**

Contract # \_\_\_\_\_  
Contracting Unit \_\_\_\_\_  
Contract Begin Date \_\_\_\_\_  
Contract End Date \_\_\_\_\_  
Services Provided \_\_\_\_\_

Prime Contractor Name _____		Contact Person _____	
Address _____			
City _____	State _____	Zip _____	
Phone _____	Fax _____		

Subcontractor Name _____		Contact Person _____	
Address _____			
City _____	State _____	Zip _____	
Phone _____	Fax _____		
Subcontractor Services Provided _____			
<b>List any unpaid invoices over 30 days old received from this vendor and reason for non-payment.</b>			
1. _____			
2. _____			
3. _____			
<b>Total Amount Unpaid \$</b> _____			

**\*\*If more than one MBE subcontractor is used for this contract, please use separate report forms.**

**Signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Return one (1) copy to:**  
State Treasurer's Office  
Attn: Procurement Officer  
Louis L. Goldstein Treasury Bldg.  
80 Calvert Street, Room 109  
Annapolis, MD 21401

**Attachment 7**  
**MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT**  
**MINORITY BUSINESS ENTERPRISE PARTICIPATION**  
**Subcontractor Payment Report**

**To be Completed Monthly by MBE Subcontractor**

Contract # \_\_\_\_\_  
 Contracting Unit \_\_\_\_\_  
 Contract Begin Date \_\_\_\_\_  
 Contract End Date \_\_\_\_\_  
 Services Provided \_\_\_\_\_  
 Report Month/Year \_\_\_\_\_

**Report due by 15th of following month.**

MBE Subcontractor Name _____ MDOT Certification # _____	
Contact Person _____	
Address _____	
City _____	State _____ Zip _____
Phone _____	Fax _____
Subcontractor Services Provided _____	
<p><b>List all payments received from Prime Contractor.</b></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b>Total Dollars Paid \$</b> _____</p>	<p><b>List dates and amounts of any outstanding invoices in the preceding 30 days.</b></p> <p>1. _____</p> <p>2. _____</p> <p>3. _____</p> <p><b>Total Dollars Unpaid \$</b> _____</p>

Prime Contractor Name _____	Contact Person _____
Address _____	
City _____	State _____ Zip _____
Phone _____	Fax _____

**Signature** \_\_\_\_\_ **Date** \_\_\_\_\_

**Return one (1) copy to:**

**State Treasurer's Office**  
 Attn: Procurement Officer  
 Louis L. Goldstein Treasury Bldg.  
 80 Calvert Street, Room 109  
 Annapolis, MD 21401

**APPENDIX G**

**CONTRACT FOR  
FINANCIAL ADVISORY SERVICES  
BETWEEN**

**MARYLAND STATE TREASURER'S OFFICE**

**and**

---

## CONTRACT

**THIS CONTRACT** (the "Contract") is made as of the 23 day of January, 2012, 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 Financial Advisory Services as described in this Contract, which includes the following exhibits:
  1. Exhibit A: The Office Request for Proposals ("RFP") for Financial Advisory Services, RFP #FA-11212011;
  2. Exhibit C: Contractor's Proposal dated \_\_\_\_\_;
  3. Exhibit D: Contractor's Price Proposal dated \_\_\_\_\_;
  4. Exhibit E: Bid/Proposal Affidavit and Contract Affidavit.  
[If applicable, Questions and Answers in reference to the RFP, Contractor's Oral Presentation, and Contractor's Best and Final Offer]
- 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 A [as amended], 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 January 23, 2012 and ending December 31, 2014.
- 2.2. In addition there shall be one additional one-year renewal option, 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 that the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) 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 of 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 Debt Management. All matters relating to the administration of this Contract shall be referred to the Procurement Officer for determination.

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**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:**

**[FIRM 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:

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