



*Maryland*  
STATE  
TREASURER  
Investing for Maryland's future.

**Nancy K. Kopp**  
State Treasurer

**Bernadette T. Benik**  
Chief Deputy Treasurer

**MARYLAND STATE TREASURER'S OFFICE**

**REQUEST FOR PROPOSALS**

**FOR**

**FINANCIAL ADVISOR SERVICES**

**RFP #FA-08272020**

**DUE DATE: OCTOBER 2, 2020**

**BY 2:00 PM LOCAL TIME**

Issued: August 27, 2020

## KEY INFORMATION SUMMARY SHEET

**Maryland State Treasurer's Office  
Request for Proposals  
For  
Financial Advisor Services  
RFP #FA-08272020**

**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: Anne Jewell, Procurement Officer  
Louis L. Goldstein Treasury Building  
80 Calvert Street, Room 109  
Annapolis, Maryland 21401

**Solicitation Issue Date:** August 27, 2020

**Deadline for Receipt of Questions:** September 11, 2020

**Proposal Due Date and Time:** October 2, 2020 by 2:00 p.m. Eastern Time

**Oral Presentations:** November 5-6, 2020

**Tentative Contract Award:** November 30, 2020

**Notice:** A prospective Offeror who received this document from a source other than the Issuing Office or eMaryland Marketplace Advantage ("eMMA"), should immediately contact the Issuing Office and provide their name and email address in order that amendments to the RFP or other communications can be sent to them. Prospective Offerors should also register on eMMA at: (<https://procurement.maryland.gov>). Any prospective Offeror who fails to register on eMMA assumes complete responsibility in the event that they do not receive amendments to the solicitation prior to the closing date.

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## SECTION I. PROCUREMENT INFORMATION

### 1.1 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"), the General Assembly 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 1, 2021 through June 30, 2022, with two one-year renewal options.

### 1.2 Procurement Method

The Office will conduct this solicitation in accordance with the competitive sealed proposals process under COMAR 21.05.03 and will award one contract arising out of this RFP (the "Contract").

### 1.3 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 procurement is the Procurement Officer. The Procurement Officer may designate others to act on her behalf. The Office may change the Procurement Officer or the limits of her authority at its discretion.

### 1.4 Contract Officer

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

Christian Lund, Director of Debt Management  
Maryland State Treasurer's Office  
Tel: (410)260-7920 - E-Mail: [clund@treasurer.state.md.us](mailto:clund@treasurer.state.md.us)

## **1.5 Use of eMaryland Marketplace Advantage (eMMA)**

eMMA is a free electronic commerce system administered by the Maryland Department of General Services. The RFP, associated materials, and all other solicitation-related material will be provided via eMMA. Because of the instant access afforded by eMMA, it is recommended that all Offerors interested in doing business with Maryland State agencies subscribe to eMMA. Go to: <https://procurement.maryland.gov>, click on “Login and Register for eMMA” under Quick Links to begin the process and then follow the prompts. In order to receive a contract award, a vendor must be registered on eMMA.

## **1.6 Schedule of Events**

<u>Event</u>	<u>Date</u>
Solicitation Issue Date	August 27, 2020
Deadline for Receipt of Questions	September 11, 2020
Proposal Due Date	October 2, 2020
Oral Presentations	November 5-6, 2020
Tentative Date of Contract Award	November 30, 2020

## **1.7 Pre-proposal Conference**

A pre-proposal conference will not be held.

## **1.8 Questions and Inquiries**

All Offerors should direct their questions and inquiries to the Procurement Officer identified in Section 1.3 above. **Questions must be submitted in writing by mail or via email and received by the Issuing Office no later than 11:00 a.m. local time on Friday, September 11, 2020.** Oral questions will not be permitted. If the questions or inquiries pertain to a specific section of the RFP, Offerors must reference the relevant page and section number(s).

## **1.9 Submission Requirements and Deadline**

**Proposals must be received by the Procurement Officer at the Issuing Office no later than 2:00 PM local time on Friday, October 2, 2020.** To be considered for award, an Offeror may submit their proposals by mail or hand-delivery as directed in Section 1.9.1. Offerors electing to submit proposals by electronic submission are directed to Section 1.9.2 below.

### **1.9.1. Mail or Hand-Delivery Submission Requirements**

Offerors must submit to the Procurement Officer a package containing one (1) written original, and five (5) copies (total of 6) of the Technical Proposal and the Price Proposal, each in separate sealed envelopes. All submissions shall indicate the RFP Title and number and the Offeror’s name and address. If an Offeror intends to submit proposals by hand-delivery on any date other than the proposal due date of October 2, 2020 by 2:00 PM Local Time, the Offeror must contact the Procurement Officer to schedule a delivery date and time for acceptance of their proposals.

OR

**Electronic Transmission Submission Requirements**

Offerors must submit their Technical Proposal and Price Proposal by email to the Procurement Officer at: [procurement@treasurer.state.md.us](mailto:procurement@treasurer.state.md.us) by the deadline date and time. The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address. As with the written submission, the electronic copy submission of the Technical Proposal and the Price Proposal must be submitted in separate files. The Price Proposal file is to be password protected. Offerors will be notified by the Procurement Officer when to submit their password for opening of the Price Proposal. The Office will not consider proposals submitted by facsimile.

- 1.9.2. The Office will not grant requests for extension of the submission date or time. Offerors mailing proposals should allow sufficient mail and internal delivery time to ensure timely receipt of the proposals by the Procurement Officer at the Issuing Office. Except as permitted under COMAR 21.05.02.10, the Office will not consider proposals or unsolicited amendments to proposals arriving in the Issuing Office or received by the Procurement Officer after the closing date and time, regardless of the method of their transmission.

**1.10 False Statements**

Offerors are advised that State Finance and Procurement Article, §11-205.1, 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 the Procurement Officer receives final best and final offers, if any. At the request of the Procurement Officer, the Offeror may agree in writing to extend this period.

## SECTION II. GENERAL INFORMATION

### 2.1 **Electronic Distribution**

This RFP is published on *eMaryland Marketplace Advantage*, posted on the websites for the National Association of State Treasurers, the Office, and emailed to financial advisory firms known to be interested in receiving RFPs. Potential Offerors wishing to receive copies of the written document should contact the Procurement Officer identified in Section 1.3, above.

### 2.2 **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, the Office will provide amendments to all prospective Offerors that were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. Acknowledgement of the receipt of all amendments to this RFP issued before the proposal due date shall be included in the Transmittal letter accompanying the Offeror's Technical Proposal. In addition, the Office will post amendments to the RFP on the Office's Web Page at [www.treasurer.state.md.us](http://www.treasurer.state.md.us), (select "Procurement" and then "RFP for Financial Advisor Services"), and through eMaryland Marketplace Advantage at: <https://procurement.maryland.gov>. The Office will send amendments made after the due date for proposals 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.

### 2.3 **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.

### 2.4 **Proposal Acceptance; Discussions**

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



## **2.5 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.

## **2.6 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.

## **2.7 Proposal Form**

Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's proposal for meeting the requirements of this procurement.

## **2.8 Multiple Proposals**

The Office will not accept multiple or alternative proposals.

## **2.9 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, General Provisions Article, Title 4, Annotated Code of Maryland. The Office may charge a fee 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). Offerors must file in writing any protest regarding this solicitation with the Procurement Officer. If the reason for the protest is apparent before the proposal opening, the Offeror must file the protest before the proposal opening. In all other cases, the Offeror must file the protest 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.

### **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 Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to State Finance and Procurement Article, Title 18, Annotated Code of Maryland. Additional information regarding the State's Living Wage requirement is contained in this solicitation (see Appendix C entitled Living Wage Requirements for Service Contracts). If the Offeror fails to complete and submit the Affidavit of Agreement (see Appendix D), 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 \$14.24 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 \$10.70 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation has been deemed to be a Tier 1 contract. **All proposals must be accompanied by a completed Living Wage Affidavit of Agreement. A copy of this Affidavit is included as Appendix D to this RFP.**

## **2.14 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 G to this RFP. This Affidavit need not be submitted with an Offeror's proposal. For purposes of completing Section "B" of this Affidavit, (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside the State of Maryland is considered a "foreign" business.

## **2.15 Representations**

By submitting a proposal in response to this RFP, the Offeror represents that (a) 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"), and (b) it is in compliance with all federal, State and local laws applicable to its activities and obligations under the Contract. Further, if selected for award, the Offeror agrees that these representations will continue in effect during the term of the Contract.

## **2.16 Minority Business Enterprises**

The Office has established a 25% minority business enterprise (MBE) subcontractor participation goal of the non-fiduciary services that are described in Section 3.5.2 for this solicitation. See Appendix F for instructions on completing the required MBE forms. A directory of certified MBEs is maintained by the Maryland State Department of Transportation Office of Minority Business Enterprise. The directory is available online at [www.mdot.state.md.us](http://www.mdot.state.md.us). Select the "MBE" label and then "Directory of Certified Firms."

The Contract requires the Offeror to make good faith efforts to comply with the Minority Business Enterprise Program and Contract provisions. The Offeror is advised that liquidated damages as outlined in Section 4.11 of the form of Contract will apply in the event the Contractor fails to comply in good faith with these provisions.

## **2.17 Veteran-Owned Small Business Enterprise**

The Office has not established a veteran-owned small business enterprise ("VSBE") subcontractor participation goal for this solicitation, but Offerors are encouraged to work with certified VSBE subcontractors. A VSBE must be verified by the Center for Veterans Enterprise of the United States Department of Veterans Affairs. The VSBE list is at: <http://www.vetbiz.gov>.

## **2.18 No Guarantee of Work**

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

## **2.19 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 executed Contract;
2. the RFP; and
3. the Offeror's proposal.

The Office will not accept any modifications to the order of precedence provision of this solicitation.

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## SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

### 3.1 Background

In Maryland, general obligation bonds, certificates of participation, energy performance contract leases 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, 2020, the outstanding total of general obligation bonds is projected to total \$9.8 billion. The State's general obligation bonds have been consistently rated AAA by all three rating agencies (since 1961 for S&P, 1970 for Moody's, and 1993 for Fitch).

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 arbitrage 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 three issues of tax credit bonds – the 2009 and 2010 Qualified School Construction Bonds and 2010 Qualified Zone Academy 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. The majority of the State's issuance is of tax-exempt bonds, though the State typically issues a smaller amount of taxable bonds each year as well. General obligation bonds have a maximum maturity of 15 years and have historically been 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 State does not generally issue short-term notes. However, statute does authorize the Office to issue up to \$100.0 million in Tax Anticipation Notes, which must then be repaid within 180 days. The State Constitution requires that all revenues used to securitize the Tax Anticipation Notes must be “so certain as to be readily estimable as to the time of receipt of the revenues and as to the amount of the revenues.”

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 \$20.0 million in Equipment leases (generally 3 to 10 year terms for office equipment, computers, etc). In addition, the Office expects to finance \$35.0 million in Energy Performance Contracts (up to 15 year terms for energy improvements) in fiscal year 2021. The Office has plans to develop a master lease for equipment and energy leases in the future.

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 Purple Line and proposed installation of managed toll lanes on I-495 and I-270 in the D.C. suburbs, resulting in a greater need for the Office to analyze the financial impacts of such partnerships.

The Treasurer chairs 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.

Though the primary purpose of this contract is to serve the needs of the Office, several other State agencies and instrumentalities are authorized to issue debt and, subject to the

approval by the Treasurer or the Treasurer's designee, may request financial advisory services under the terms of this contract from time to time.

### **3.2 Objectives**

The objective of this procurement is to select a pool of Financial Advisors, each of which will provide:

- 3.2.1. Advisory services related to the sale, issuance and refunding of bonds and other forms of debt. The Office will determine, in the Office's sole discretion, which Contractor will serve as financial advisor for each issuance of debt; and
- 3.2.2. Advisory services 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.
- 3.2.3. Diverse and varied experience as senior financial advisor to issuers in different areas of public finance, so that upon written request of the Office, contracted firms may provide the above advisory services to any State agency or instrumentality. The Office will determine, in the Office's sole discretion, which Contractor is best suited to advise the State agency or instrumentality.

The Office reserves the right to remove firms from the pool at any time based on factors including, but not limited to, performance, change in staff or firm organization and/or any change in ownership status.

### **3.3 Minimum Qualifications**

To be considered for this Contract, the Offeror's proposed team must have, since March 31, 2019:

- Served as senior financial advisor to a state, or local entity with a total outstanding debt of at least \$1.0 billion; and
- Served as senior financial advisor on bond issuances from a state or local entity totaling at least \$1.0 billion in the aggregate; and
- Served as senior financial advisor on an issuance of general obligation bonds.

Offeror must also be registered as a municipal advisor with the U.S. Securities and Exchange Commission and MSRB. Senior level professionals must have at least 5 years' experience providing financial advice to public finance clients. The Offeror's response must include information evidencing its compliance with this requirement in its Technical Proposal as set forth in Section 4.3 of this RFP.

### **3.4 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.

### **3.5 Services to be Provided**

The Financial Advisor must work cooperatively and efficiently with the Office, Office of the Attorney General, Investment Advisor, Bond Counsel, Verification Agent, Escrow Agent, Remarketing Agent, Underwriters and liquidity providers. The Financial Advisor is expected to familiarize itself with the State's existing debt portfolio and applicable State and Federal laws and regulations without cost.

3.5.1. Upon request of the Office, the Contractor(s) will provide the following financial advisory services:

- 3.5.1.1. Advise the Office on general market conditions and outlook for bonds, capital leases, and other debt obligations including, but not limited to, new issues, refundings, new products, derivatives, market trends, and investor preferences, and perform analyses related to such matters;
- 3.5.1.2. Advise the Office on the structuring of debt, including tax-exempt and taxable new money sales, fixed and variable rate debt, derivatives and swaps, credit enhancements, serial and term bonds, maturity schedules, refundings, use of competitive versus negotiated method of sale and/or use of retail order periods, bank loans or other direct placements, and any other options to achieve the State's goals while maintaining the State's credit ratings and minimizing the cost of borrowing;
- 3.5.1.3. Prepare cash flows both prior to and after the issuance of securities as requested by the Office;
- 3.5.1.4. Analyze various financing proposals that are presented by investment bankers;
- 3.5.1.5. Advise the Office on the use and/or issuance of lines of credit, bank loans, short-term notes, Federal Reserve facilities, or any other forms of financing;
- 3.5.1.6. Participate in the preparation and review of material for the Preliminary and Final Official Statements, other offering documents, and closing documents;



- 3.5.1.7. Advise the Office on rating agency matters such as changes in criteria that could affect the State or its agencies and development of 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;
- 3.5.1.8. Advise the Office on all issues relating to the marketability of State bonds and perform analysis related to the marketing of the bonds;
- 3.5.1.9. 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;
- 3.5.1.10. Attend bond sales, assist in the evaluation of bids for both competitive and negotiated sales, and recommend acceptance of bids;
- 3.5.1.11. 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;
- 3.5.1.12. Assist the Office in any matters regarding capital leases, including bidding, structuring, and sale alternatives;
- 3.5.1.13. As directed, assist the Office in any response to, negotiations with, and inquiries or audits from the U.S. Treasury and other regulatory agencies; including, but not limited to, IRS, SEC, MSRB, etc.;
- 3.5.1.14. Assist the Office in the procurement and selection of agents and services necessary or desirable for the sale and issuance of State bonds, including but not limited to verification agents, , remarketing agents, dealers, tender agents, insurers, liquidity providers, counterparties, trustee services, electronic bidding and posting services and advertising and review the performance of any of these entities;
- 3.5.1.15. Provide guidance on new developments, best practices, and peer organization trends in public finance;

- 3.5.1.16. Upon the written request of the Office, provide the financial advisor services listed above to the Board and to other State agencies engaged in bond sales or other public finance transactions.
- 3.5.2. Upon request of the Office, the approved Contractor or subcontractor(s) will provide the following services:
  - 3.5.2.1. Provide the Office with any training, newsletter and other informational material routinely provided to clients;
  - 3.5.2.2. Assist the Office with respect to continuing disclosure requirements and best practices and other post-sale compliance matters;
  - 3.5.2.3. Assist the Office on other matters as required including, but not limited to, new or innovative financing techniques, approaches, or the use of non-traditional debt instruments (e.g.: leasing transactions, securitization of revenue streams, loan funds, public-private partnerships, State Infrastructure Banks, credit enhancement mechanisms, and any other financing method that may be employed under federal and state law);
  - 3.5.2.4. Assist the Office on revising and updating debt, swap and disclosure policies and procedures.
  - 3.5.2.5. Assist the Office on written Post-Issuance Compliance policies and procedures;
  - 3.5.2.6. Provide guidance on proposed and enacted statutory and regulatory changes affecting the State imposed by Congress, the U.S. Treasury and other regulatory agencies; including, but not limited to, IRS, SEC, MSRB, etc.;
  - 3.5.2.7. Provide assistance, training, and training materials to the Office staff in order to enhance Office capacity for a variety of bond-related activities;
  - 3.5.2.8. Assist with the modification or development of supplemental bond indentures, bond covenants, target coverage ratios, etc.;
  - 3.5.2.9. Upon request, review and report on state fiscal and revenue projections; perform financial modeling and cash flow analyses; and create financial forecasts;
  - 3.5.2.10. As directed, review secondary market activity and report the activity to the Office;

- 3.5.2.11. Provide investment advice including but not limited to sinking fund structuring and escrow account structuring; providing bidding agent services including preparation, solicitation, evaluation, and, in consultation or as directed by the Office, award of bids; and maintaining all required documentation and recordkeeping for purposes of compliance with federal, state, and local laws, and IRS regulations;
- 3.5.2.12. Upon request, advise on the handling of bond proceeds, including the accounting, calculation of interest rates for arbitrage considerations and the methodology for the calculation of rebates.
- 3.5.2.13. Upon request, provide advice on the development of new programs and initiatives by the Office or other State agencies;
- 3.5.2.14. Provide advice on and assist in the drafting of any proposed State legislation pertaining to debt;
- 3.5.2.15. Perform other tasks consistent with the purpose of this Contract which, in the view of the Office, do not require a fiduciary relationship between Offeror or subcontractor and the Office as may be specified by the Office including any other service necessary, customary, or incidental to the sale or the issuance of debt and the financing of capital debt.
- 3.5.2.16. Upon the written request of the Office, provide the services listed above to the Board and to other State agencies engaged in bond sales or other public finance transactions.

All services will be performed only upon request of the Office. Any services requested to be performed to the Board or other State agencies is subject to the written approval of the Treasurer or the Treasurer's designee, Work plans and budgets for any studies or special analyses must be approved in advance by the Office.

### **3.6 Independence**

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

- 3.6.1. Serve as an underwriter or member of an underwriting syndicate for the financing transactions upon which the selected Offeror has advised the Office.
- 3.6.2. Make political contributions or give gifts or gratuities in violation of rules promulgated or proposed by the Municipal Securities Rulemaking Board.

3.6.3. 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.

### **3.7 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.

### **3.8 Term**

The term of the Contract will be from January 1, 2021 through June 30, 2022, with two one-year renewal options, exercisable at the sole discretion of the Treasurer or the Treasurer's designee. The Contract extends to settlement of any financing transactions in process at the conclusion of the Contract.

### **3.9 Compensation**

Financial advisor services shall be compensated at two different hourly rates. The primary rate shall be an hourly rate for senior 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 (transportation only) 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). Meals will not be covered as part of travel expenses. 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 Contractor 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: <https://www.marylandtaxes.gov/forms/state-accounting/static-files/GADX10Form20150615.pdf>.

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.

### **3.10 Staffing Requirements.**

The Office expects that personnel will be assigned to the project as described in Section 4.3.5 and in 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 meeting the minimum qualifications set forth in Section 3.3. 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. If the proposed replacement personnel are not accepted by the Office, additional replacement personnel must be proposed until accepted by the State. No work for the State may be performed by replacement personnel prior to being accepted by the Office.

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## **SECTION IV. PROPOSAL FORMAT**

### **4.1 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 E.

### **4.2 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.

### **4.3 Volume I - Technical Proposal**

The Technical Proposal volume shall be labeled "Maryland State Treasurer's Office Request for Proposals for Financial Advisor - Technical." This volume shall contain the transmittal letter (Section 4.1), the completed Bid/Proposal Affidavit (Appendix B), and the Affidavit of Agreement, Maryland Living Wage Requirements-Service Contracts (Appendix D).

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:

#### **4.3.1. General Information**

4.3.1.1. Name of firm;

4.3.1.2. Mailing address of the office from which the proposal is being submitted;

4.3.1.3. Name of individual who will represent the firm as the primary contact person on matters relating to the proposal; and

4.3.1.4. Telephone and e-mail address of the individual identified in 4.3.1.3.

#### 4.3.2. Minimum Qualifications

Indicate how the Offeror's proposed team meets the Minimum Qualifications cited in Section 3.3.

#### 4.3.3. Firm Capabilities

4.3.3.1. Describe your firm, including when organized, corporate structure, and type of ownership;

4.3.3.2. Describe, by location, the 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

4.3.3.3. State the approximate portion of firm's revenues derived from financial advisor services to tax-exempt entities other than health care and housing issuers.

#### 4.3.4. Financing Experience

4.3.4.1. Proposed Team's Financial Advisor Experience - Tax-Exempt General Obligation Bond Issuers.

A) Provide a representative list of tax-exempt general obligation bond issuers for which your proposed team has served as a senior financial advisor since July 1, 2015.

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

B) 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.

4.3.4.2. Proposed Team's Financial Advisor Experience – Revenue Bond Issuers.

- A) Provide a list of revenue bond issuers for which your proposed team has served as a primary financial advisor since July 1, 2015.
- (i) Name of issuer;
  - (ii) Amount of issue;
  - (iii) Credit rating of issuer at the time of issuance;
  - (iv) Date of issue;
  - (v) Type of issue, e.g., fixed, variable, taxable;
  - (vi) Type of securitization, e.g. water and sewer, toll or other transportation revenues, gaming and/or lottery proceeds, etc.;
  - (vii) Use of derivative products;
  - (viii) Purpose/use of proceeds;
  - (ix) Method of sale;
  - (x) Personnel assigned and role performed;
  - (xi) Whether or not a current or advance refunding; and
  - (xii) Nature of your services.
- B) Select one issue of each type of securitization 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.

4.3.4.3. Proposed Team's Financial Advisor Experience – Retail Sale. Provide representative lists since July 1, 2015:

- (i) Name of issuer;
- (ii) Amount of issue;
- (iii) Date of issue;
- (iv) Description of financing;
- (v) Personnel assigned and role performed; and
- (vi) Nature of services.

4.3.4.4. Proposed Team's Financial Advisor Experience – Capital Lease Financing.

- A) Provide a representative list of governmental units engaged in capital lease financing (including COPs) for which your firm's proposed team has served as a primary financial advisor since July 1, 2015, 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.

B) Select one entity 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.

#### 4.3.4.5. Proposed Team's Financial Advisor Experience - Public/Private Partnerships.

A) Provide a representative list of public entities engaged in public/private partnerships ("P3") for which your firm's proposed team has served as a primary financial advisor since July 1, 2015, indicating:

- (i) Name of public entity;
- (ii) Amount of P3 financing;
- (iii) Date of P3 financing;
- (iv) Description of P3 financing (type; use of proceeds; method);
- (v) Personnel assigned and role performed; and
- (vi) Nature of your services.

B) Select one transportation entity and one non-transportation entity 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.

#### 4.3.5. Proposed Professional Level and Associate Level Personnel

4.3.5.1. Indicate the manner in which you would organize the proposed team'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 advisor services to issuers similar to Maryland in rating and annual issuance of general obligation bonds?
- (iv) How many years' experience does this individual have in providing financial advisor services to issuers of tax-exempt revenue bonds?
- (v) How many years' experience does this individual have in

providing financial advisor services to issuers of taxable and tax credit bonds?

- (vi) How many years' experience does this individual have in providing financial advisor services related to the use of a retail order period?
- (vii) Define this individual's position with the firm.
- (viii) What is this person's availability i.e., what is the nature of this person's responsibility for other clients? What is the percentage of the scope of services to be performed by this individual?
- (ix) Did this individual participate with any of the issuers listed in 4.3.4.1, 4.3.4.2, 4.3.4.3 and 4.3.4.5? If yes, what role did this individual play?

4.3.5.2. Identify other professional level and associate level staff that will be assigned to this Contract, the percentage of the scope of services to be performed by each person assigned, their roles and responsibilities, their participation with any of the issuers listed on 4.3.4.1, 4.3.4.2, 4.3.4.3 and 4.3.4.5, years of experience and the relevant aspects of their background.

4.3.5.3. 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.

4.3.5.4. Provide information on how you expect to assign the services listed in Section 3.4 to the firm's personnel assigned to this Contract, and to any MBE firms which will be participating in this Contract.

4.3.5.5. Provide resumes for the individuals listed in 4.3.5.1 and 4.3.5.2 above and any appropriate individuals listed in 4.3.5.3.

#### 4.3.6. 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.

#### 4.3.7. Client References

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

4.3.7.1. On which the principal advisor proposed in 4.3.5.1 (i) above played a lead role; and

4.3.7.2. For which the services provided are similar to the services expected to be provided to the Office or other State of Maryland agencies and instrumentalities.

4.3.7.3. Furnish name, title, agency, telephone number and e-mail address 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.

#### 4.3.8. 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:

4.3.8.1. 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.

4.3.8.2. 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.

4.3.8.3. 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.

4.3.8.4. 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.

4.3.8.5. 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.

#### 4.4 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.

#### **4.5 Volume II - Price Proposal**

This volume shall be labeled "Maryland State Treasurer's Office Request for Proposals for Financial Advisor - 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 Advisor 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 PROCEDURES

### 5.1 Qualifying Proposals

The Procurement Officer first will review each proposal for completeness of response to requirements contained in Section IV, Proposal Format. Failure to respond to the appropriate questions or in the manner required may disqualify an Offeror's proposal from consideration by the Evaluation Committee.

### 5.2 Evaluation Committee and Evaluation Criteria

An Evaluation Committee appointed by the Treasurer or the Treasurer's designee will evaluate all qualifying proposals (those proposals that are reasonably susceptible to selection for Contract award) received by the submission deadline. The Evaluation Committee will rank the proposals and make a recommendation for award based on (1) technical merit (see Section 5.3 below), as demonstrated in the technical proposal and oral presentations, if any, and (2) price proposal, both as presented in the best and final offer, if any. Technical merit will be given more weight than price in determining the Evaluation Committee's final ranking.

### 5.3 Technical Evaluation

After the Procurement Officer identifies the qualifying proposals, the Evaluation Committee will conduct an initial evaluation of the technical merit of each qualifying proposal based on the information provided in the proposal in response to Section 4.3 Volume I – Financial Advisor Services - Technical Proposal above. The Evaluation Committee's final technical evaluation may include information obtained during oral presentations, if any.

For the technical evaluation, the Evaluation Committee will take into consideration the following factors listed in the order of relative importance (greatest first):

1. Financing Experience;
2. Personnel;
3. Firm Capabilities;
4. Rationale for Appointment
5. Economic Benefits to Maryland.

#### **5.4 Evaluation of Costs/Fees**

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

#### **5.5 Best and Final Offer**

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

#### **5.6 Final Evaluation and Recommendation for Award**

Following oral presentations, reference checks, and submissions of best and final offers, if any, the Evaluation Committee will perform its final evaluations and will make a recommendation to the Procurement Officer for award of the Contract to the responsible Offeror or Offerors whose proposal is determined to be the most advantageous to the State based on the results of the final technical and financial evaluations. Contract award, if any, is subject to the approval of the Treasurer or the Treasurer's designee upon the recommendation of the Procurement Officer.

#### **5.7 Debriefing of Unsuccessful Offerors**

The Office will conduct a debriefing for an unsuccessful Offeror provided the Procurement Officer receives a written request within a reasonable period of time after sending notice of award. The Office shall honor the requests for debriefings at the earliest feasible time after the request has been received. The Office shall hold debriefings shall be held in accordance with COMAR 21.05.03.06.

#### **5.8 Responsibility**

##### **5.8.1. General**

5.8.1.1. 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."

5.8.1.2.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.

5.8.1.3.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.

## 5.8.2. 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.

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## **APPENDIX A**

### **PRICE PROPOSAL FORM INSTRUCTIONS**

1. Offerors must submit their price proposals on the Price Proposal Form, as Appendix A in accordance with these instructions and as specified on the form. Appendix A must be separately sealed as directed in Section 1.9 Submission Requirements and Deadline and Section 4.5. Volume II - Price Proposal.
2. The price proposal submitted needs to be completed and signed by an individual who is authorized to bind the financial institution to all statements and fees contained in the price proposal.
3. 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.
4. 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**

**RFP FOR FINANCIAL ADVISOR SERVICES, , RFP #FA-08272020**

PROPOSAL:

\_\_\_\_\_

(Firm Name)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(City, State, Zip)

The Offeror shall submit labor rates for the personnel identified in the technical proposal in sections 4.3.5.1, 4.3.5.2, and 4.3.5.3. The Offeror should assume that the Office will require 400 hours for the financial services outlined in Section 3.5.1 per fiscal year. The Offeror should assume that the Office will require 50 hours for the services outlined in Section 3.5.2.

	<u>Sec. 3.5.1</u>	<u>Sec. 3.5.2</u>
(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 Price Proposal as Appendix A.

Authorized Official: By: \_\_\_\_\_

(Signature)

Typed Name: \_\_\_\_\_

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

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

**APPENDIX B**  
**(To be submitted with Technical Proposal)**  
**BID/PROPOSAL AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/proposal on this project, the Bidder/Offeror has considered all Bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test, disability, or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal. As part of its Bid/proposal, the Bidder/Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror 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/Offeror 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/Offeror 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/proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority bid/proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/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/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/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal.

**B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.**

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

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1) -(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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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/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/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
  - (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
  - (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
  - (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
  - (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure act; and
    - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) 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 does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
  - (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
- 
- 

**G. SUBCONTRACT 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/proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/proposal price of the Bidder/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/proposal 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, State Department of Assessments and Taxation, and 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. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
  - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
  - (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

\_\_\_\_\_

\_\_\_\_\_

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

I FURTHER AFFIRM THAT:

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

**M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL**

I FURTHER AFFIRM THAT:

In preparing its bid/proposal on this project, the Bidder/Offeror has considered all bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence

or incorporation in Israel and its territories. The Bidder/Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for bid/proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the bid/proposal.

**N. I FURTHER AFFIRM THAT:**

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

**O. ACKNOWLEDGEMENT**

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

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

By: \_\_\_\_\_  
*Signature of Authorized Representative and Affiant*

Printed Name: \_\_\_\_\_  
*Printed Name of Authorized Representative and Affiant*

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

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



**APPENDIX C**  
**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: <https://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

**APPENDIX D**  
**(To be submitted with Technical Proposal)**  
**Affidavit of Agreement**  
**Maryland Living Wage Requirements-Service Contracts**

Contract No. FA-08272020

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

Address \_\_\_\_\_

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

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

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

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

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

- A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

**Attachment D (continued)**  
**Affidavit of Agreement**  
**Maryland Living Wage Requirements-Service Contracts**

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

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

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

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

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

\_\_\_\_\_  
Date

**APPENDIX E**

**CONTRACT  
FOR  
FINANCIAL ADVISOR SERVICES  
BETWEEN  
MARYLAND STATE TREASURER'S OFFICE  
AND**

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**CONTRACT**

**THIS CONTRACT** (the “Contract”) is made as of the \_\_\_ day of \_\_\_\_\_, 2020, by and between [NAME AND ADDRESS] (the “Contractor”), and the **MARYLAND STATE TREASURER’S OFFICE**, 80 Calvert Street, Annapolis, Maryland 21401 (the “Office”), offices 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 services as described in this Contract, which includes the following exhibits:

- Exhibit RFP for Financial Advisor Services, RFP #FA-08272020, dated August 27, 2020;
- Exhibit Office’s Questions and Answers dated \_\_\_\_;
- Exhibit Contractor’s Technical Proposal dated \_\_\_\_;
- Exhibit Contractor’s Price Proposal dated \_\_\_\_;
- Exhibit Contractor’s Presentation dated \_\_\_\_;
- Exhibit Bid/Proposal Affidavit, Living Wage Affidavit, and
- Exhibit Contract Affidavit as dated.

1.2. If there are any inconsistencies between this Contract and the Exhibits, the terms of this Contract shall control. If there is any conflict among the Exhibits, Exhibit A, shall control.

1.3 The Procurement Officer unilaterally may, at any time, make changes in the work within the general scope of the Contract by written order designated or indicated to be a change order. 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 1, 2021 and ending June 30, 2022.
- 2.2. There shall be two additional one-year renewal options, which may be exercised at the sole discretion of the Treasurer or the Treasurer's designee.
- 2.3. After the end of the Contract term, should a new contract be awarded to a contractor other than the incumbent, the Contract shall be deemed to be extended, Contractor shall continue to perform Contract services, and Contractor shall continue to receive the compensation specified in the Contract for such services, until such time as the transition to the new contractor is complete. Contractor shall cooperate and 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 (Liability), 4.5 (Disputes), 4.6 (Maryland Law Prevails), 4.21 (Retention of Records/Audit), 4.25 (Ownership of Documents and Materials), and 4.26 (Patents, Copyrights and Trade Secrets) of this Contract shall survive termination of this Contract for any reason.

## **ARTICLE III - CONSIDERATION, PAYMENT AND PERFORMANCE**

- 3.1. The Office shall be responsible for paying the fees set forth in the attached Contractor's Price Proposal [Best and Final] in Exhibit \_\_, which shall not be adjusted during the term of the Contract including any renewal option periods
- 3.2. Payments to the Contractor may be withheld, without interest or penalty, when in the sole discretion of the 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. 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, Room 109  
Annapolis, Maryland 21401

3.4 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.

3.5 Except as provided in Section 3.2 above, payments to the Contractor pursuant to this Contract will 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 shall be liable for and hereby agrees to indemnify and hold harmless the State (and its agencies, units or instrumentalities) from and against any and all losses, claims, damages, suits, actions, liabilities and/or expenses, including without limitation, attorneys' fees and disbursements of any character (collectively, "Losses") that arise from, are in connection with or are attributable to the Contractor's and/or its subcontractor's performance or nonperformance under this Contract.

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 shall be liable for and 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 its responsibilities 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, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

#### 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 \$14.24 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 \$10.70 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

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

#### 4.12 Liquidated Damages for Non-Compliance

The Contract requires the Contractor to make good faith efforts to comply with the Minority Business Enterprise ("MBE") Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision and that liquidated damages represent a fair, reasonable, and appropriate estimation of damages.

Upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or Contract provisions

and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. The Contractor expressly agrees that the State may withhold payment on any invoices as an offset against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$15.00 per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$52.00 per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a Contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- d. Failure to meet the Contractor's total MBE participation goal and sub-goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- e. Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of this Contract: \$56.00 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the Contract or by law.”

#### 4.13. 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.

#### 4.14. 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.

#### 4.15. 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).

#### 4.16. 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.

#### 4.17. 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.

#### 4.18. 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.

#### 4.19. Pre-Existing Regulations

In accordance with the provisions of §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.

#### 4.20. Financial Disclosure

The Contractor shall comply with the provisions of State Finance and Procurement Article §13-221, Annotated Code of Maryland. That section requires a business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

#### 4.21. Political Contribution Disclosure

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

#### 4.22. 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.

#### 4.23. Compliance with Laws

The Contractor hereby represents and warrants that:

- 4.23.1. 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;
- 4.23.2. 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;
- 4.23.3. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- 4.23.4. 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.

#### 4.24. 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.

#### 4.25. Cost and Price Certification

- 4.25.1. 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.
- 4.25.2. 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.

#### 4.26. 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 any time 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.

#### 4.27. Patents, Copyrights and Trade Secrets

4.27.1. 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.

4.27.2. 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 4.27.3. below.

4.27.3. 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.

#### 4.28. Confidentiality

To the extent permitted by Maryland law, including the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided 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:	Christian Lund Director of Debt Management Maryland State Treasurer’s Office Louis L. Goldstein Treasury Building 80 Calvert Street, Room 109 Annapolis, Maryland 21401 Tel: (410)260-7920
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If to the Contractor:	[Name and Address]
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5.2. All invoices and all correspondence and inquiries relating to invoices or payments shall be addressed to the Agency identified above in Section 5.1.

**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:**

**[CONTRACTOR'S LEGAL NAME]**

\_\_\_\_\_

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

[Signatory]

[Title]

**WITNESS:**

**MARYLAND STATE TREASURER'S OFFICE**

\_\_\_\_\_

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

Bernadette T. Benik  
Chief Deputy Treasurer

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

\_\_\_\_\_

David P. Chaisson  
Assistant Attorney General

**APPENDIX F**  
**MBE APPEDIX F-1A**

**PART 1 - INSTRUCTIONS**

*PLEASE READ BEFORE COMPLETING THIS DOCUMENT*

**This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit: <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be

counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term “Graduated” follows the Code in the MDOT MBE Directory.

5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is selfperforming and include information regarding the work it will self-perform.

- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime’s ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime’s ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime’s ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor’s Office of Small Minority & Women Business Affairs’ website for the MBE Prime Regulations Q&A for illustrative examples.  
[http://www.goMDsmallbiz.maryland.gov/Documents/MBE Toolkit/MBEPrimeRegulation QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulationQA.pdf).

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

*Example for illustrative purposes of applying the 60% rule:*

*Overall contract value: \$2,000,000*

*Total value of supplies: \$100,000*

*Calculate Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%*

***Apply 60% Rule - Total percentage of Supplies/Products 5% x 60% = 3%***

***3% would be counted towards achieving the MBE Participation Goal and Subgoal, if any, for the MBE supplier in this example.***

- ✓ Manufacturer: A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ Broker: With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire

amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.

- ✓ **Furnish and Install and other Services:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS code(s) to furnish and install materials necessary for successful contract completion may be counted in full. Includes the participation of other MBE service providers in the proper NAICS code(s) may be counted in full.

9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

*Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.*

10. CAUTION: The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).
11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

## Overall Goal

**Total MBE Participation:**

**25%  
(Non-Fiduciary services)**

**PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

In connection with the bid/proposal submitted in response to Solicitation No. FA-08262020, I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE)

**I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 25%.**

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

OR

After making good faith outreach efforts prior to making this submission, 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 I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

***Additional MBE Documentation***

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following 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) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)

- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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.

***Information Provided to MBE firms***

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



### PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

**SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)**

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p> <input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification         </p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE <b>overall participation goal</b> (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the <b>subgoal</b>, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p> <input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)  <input type="checkbox"/> Manufacturer (count 100%)  <input type="checkbox"/> Broker (count reasonable fee/commission only)  <input type="checkbox"/> Furnish and Install and other Services (count 100%)         </p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products / services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p><b>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or</b></p>
---	---

	<p><b>regular dealer (60% Rule).</b> Total percentage of Supplies/Products ___% x 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE Prime firm is being used as broker</b> (count reasonable fee/commission only) ___%</p> <p>Description of the Work to be performed with MBE prime's own forces:          _____          _____</p>
--	---

**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b>          Total percentage of Supplies/Products ___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only) ___%</p> <p>Description of the Work to be Performed:          _____          _____</p>
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<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) __%</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products __% X 60% = __%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only) __%</p> <p>Description of the Work to be Performed: _____ _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers) __%</p>

	<p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b>  Total percentage of Supplies/Products ___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only)</b>  ___ %</p> <p>Description of the Work to be Performed:  _____  _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers) ___%</b></p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)).</b>  Total percentage of Supplies/Products ___% X 60% = ___%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker ___ %</b></p> <p>Description of the Work to be Performed:  _____  _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

**PART 4 - SIGNATURE PAGE**

**To complete Affidavit committing to MBE(s) or requesting waiver,  
Bidder/Offeror must sign below:**

*I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.*

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

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## ***D-1B WAIVER GUIDANCE***

### **GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the Offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

#### **I. Definitions**

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** - The “Good Faith Efforts” requirement means that when requesting a waiver, the Offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether the Offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the Offeror has made. The efforts employed by the Offeror should be those that one could reasonably expect the Offeror to take if the Offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the Offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the Offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the Offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the Proposal items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the Offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the Offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to firms certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State’s MBE Program.

## **II. Types of Actions Agency will Consider**

The Offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the Offeror’s Good Faith Efforts when the Offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **A. Identify Proposal Items as Work for MBE Firms**

1. Identified Items of Work in Procurements
  - (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
  - (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.
2. Identified Items of Work by Offerors
  - (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
  - (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

### **B. Identify MBE Firms to Solicit**

1. MBE Firms Identified in Procurements
  - (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
  - (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

2. MBE Firms Identified by Offerors

- (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
- (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

**C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:
  - (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
  - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
  - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.
3. "Electronic Means" includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
  - (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
  - (b) in writing *via* a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:
  - (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and



- (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

**D. Negotiate with Interested MBE Firms**

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
  - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
  - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
  - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.
2. The Offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.
3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for the Offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether an MBE Firm's quote is excessive or unreasonable include, without limitation, the following:
  - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
  - (d) number of MBE firms that the Offeror solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.

6. The “average of the other subcontractors’ quotes received” by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
7. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm’s capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
  - (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
  - (b) The MBE Firm’s standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

#### **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the Offeror made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. Necessary equipment, supplies, materials, or related assistance or services.

### **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other Proposals or offers and subcontract Proposals or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether the Offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other Offerors in meeting the contract. For example, when the apparent successful Offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful Offeror could have met the goal. If the apparent successful Offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other Offerors, this, when viewed in

conjunction with other factors, could be evidence of the apparent successful Offeror having made Good Faith Efforts.

#### **IV. Documenting Good Faith Efforts**

At a minimum, the Offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 Business Days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

##### **A. Items of Work (Complete Good Faith Efforts Documentation Attachment D-1C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

##### **B. Outreach/Solicitation/Negotiation**

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a).  
**(Complete Outreach Efforts Compliance Statement - D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
  - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
  - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

##### **C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)**

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

***D-1B - Exhibit A MBE Subcontractor Unavailability Certificate***

It is hereby certified that the firm of

\_\_\_\_\_ (Name of Minority firm)

located at

\_\_\_\_\_ (Number) (Street)

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

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_

in \_\_\_\_\_ County by

\_\_\_\_\_ (Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the work/service or unable to prepare a

\_\_\_\_\_ Proposal for this project for the following reason(s):

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

\*\*\*\*\*

\_\_\_\_\_  
(Signature of Minority Firm's MBE Representative) (Title) (Date)

\_\_\_\_\_  
(MDOT Certification #) (Telephone #)

\*\*\*\*\*

To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

---

(Signature of Prime Contractor)

(Title)

(Date)

D-1C GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

Parts 1, 2, and 3 must be included with this certificate along with all documents supporting your waiver request.

I affirm that I have reviewed **Attachment D-1B**, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this **Attachment D-1C** Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

Company: \_\_\_\_\_  
Company Name (please print or type)

By: \_\_\_\_\_  
Signature of Authorized Representative

Printed Name: \_\_\_\_\_

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

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

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

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

**PART 1 – IDENTIFIED ITEMS OF WORK OFFEROR MADE AVAILABLE TO MBE FIRMS**

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the Offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the Offeror’s responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the Offeror selects additional items of work to make available to MBE

Firms, those additional items should also be included below.

<b>Identified Items of Work</b>	<b>Was this work listed in the procurement?</b>	<b>Does Offeror normally selfperform this work?</b>	<b>Was this work made available to MBE Firms? If no, explain why not.</b>
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No



**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No
	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

Please check if Additional Sheets are attached.

**PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the Offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (**Attachment D-1B - Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 4 must be completed.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification _____ <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: _____ <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used NonMBE <input type="checkbox"/> Selfperforming
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification _____ <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: Spoke with: _____ <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used NonMBE <input type="checkbox"/> Selfperforming

Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

**PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT NUMBER:</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

This form must be completed if Part 1 indicates that an MBE quote was rejected because the Offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

<b>Describe Identified Items of Work Not Being Performed by MBE (Include spec/ section number from Proposal)</b>	<b>Self-performing or Using Non-MBE (Provide name)</b>	<b>Amount of Non-MBE Quote</b>	<b>Name of Other Firms who Provided Quotes &amp; Whether MBE or Non-MBE</b>	<b>Amount Quoted</b>	<b>Indicate Reason Why MBE Quote Rejected &amp; Briefly Explain</b>
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

Please check if Additional Sheets are attached.

**D- 2 OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

- 1. Offeror identified subcontracting opportunities in these specific work categories:

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- 2. Attached to this form are copies of written solicitations (with Proposal instructions) used to solicit certified MBE firms for these subcontract opportunities.
- 3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

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- 4. **Please Check One:**

- This project does not involve bonding requirements.
- Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS):

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- 5. **Please Check One:**

Offeror did attend the pre-Proposal conference.

\_\_\_\_\_ No pre -Proposal meeting/conference was held.

\_\_\_\_\_ Offeror did not attend the pre-Proposal conference.

\_\_\_\_\_

PLEASE PRINT OR TYPE

Company: \_\_\_\_\_  
Company Name (please print or type)

By: \_\_\_\_\_  
Signature of Authorized Representative

Printed Name: \_\_\_\_\_

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

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

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

**D-3A CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION**

**INSTRUCTIONS:**

**PRIME CONTRACTOR:** After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment D-1A) allowing sufficient time for the MBE to respond within the required timeframe.

**CERTIFIED MBE SUBCONTRACTOR:** Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State's intent to award the Contract. Provide a copy to the Prime Contractor.

***IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.***

<b>SECTION A</b>
------------------

Provided that (Prime Contractor) \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation Number \_\_\_\_\_, (Prime Contractor) \_\_\_\_\_ intends to enter into a subcontract with (Certified MBE Subcontractor) \_\_\_\_\_ with MDOT Certification Number \_\_\_\_\_ committing to participation by (Certified MBE Subcontractor) \_\_\_\_\_ of at least \$ \_\_\_\_\_ which equals \_\_\_\_\_ % of the Total Contract Value for the following products/services:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

The Contractor and certified MBE each acknowledge that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. The

Contractor and certified MBE each solemnly affirms under the penalties of perjury that: (i) the information provided in this Certified MBE Subcontractor Participation Certification is true to the best of its knowledge, information and belief, and (ii) 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 MBE in a Bid/Proposal and:

fail to request, receive, or otherwise obtain authorization from the MBE to identify the MBE in its Bid/Proposal;

- (1) fail to notify the MBE before execution of the Contract of its inclusion of the Bid/Proposal;
- (2) fail to use the MBE in the performance of the Contract; or
- (3) pay the MBE solely for the use of its name in the Bid/Proposal.

**PAGE 2 - CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION**

<p><b>SECTION B - Prime Contractor</b></p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>Prime Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Street Address, City, State, Zip Code: _____ _____</p> <p>Phone: _____</p> <p>Date: _____</p>
--

<p><b>SECTION C - Certified MBE Subcontractor</b></p> <p>Signature of Representative: _____</p> <p>Printed Name and Title: _____</p> <p>MBE Firm's Name: _____</p> <p>Federal Identification Number: _____</p> <p>Street Address, City, State, Zip Code: _____ _____</p> <p>Phone: _____</p> <p>Date: _____</p>
---

**SECTION D**

***This completed form is due to the Procurement Officer on or before:***

\_\_\_\_\_

Solicitation #: \_\_\_\_\_ Solicitation Title: \_\_\_\_\_

Agency/Dept.: \_\_\_\_\_ Procurement Officer: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_ Street

Address, City, State, Zip Code:

\_\_\_\_\_

**D-3B**



## MBE PRIME PROJECT PARTICIPATION CERTIFICATION

Please complete and submit this form to attest to each specific item of work that your MBE firm has listed on the MBE Participation Schedule (Attachment D-1A) for purposes of meeting the MBE participation goals. This form must be submitted within 10 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award. Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$\_\_\_\_\_ which equals to \_\_% of the Total Contract Amount for performing the following goods and services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

### MBE Prime Contractor

Company: \_\_\_\_\_  
*Company Name (please print or type)*

FEIN: \_\_\_\_\_  
*Federal Identification Number*

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

Phone: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

By: \_\_\_\_\_  
*Signature of Authorized Representative*

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

## D-4A Prime Contractor Paid/Unpaid Invoice Report

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract Amount:
	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
Services Provided:	

Prime Contractor:		Contact Person:	
Address:			
City:		State:	ZIP:
Phone:	FAX:	E-mail:	
MBE Subcontractor Name:		Contact Person:	
Phone:	FAX:	E-mail:	
Subcontractor Services Provided:			
<b>List all payments made to MBE subcontractor named above during this reporting period:</b>		<b>List dates and amounts of any outstanding invoices:</b>	
	<b>Invoice #</b>	<b>Amount</b>	
	<b>Invoice #</b>	<b>Amount</b>	
1.			1.
2.			2.
3.			3.
4.			4.
<b>Total Dollars Paid: \$</b>		<b>Total Dollars Unpaid: \$</b>	

- If more than one MBE subcontractor is used for this contract, you must use separate **Attachment D-4A** forms. Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in **Attachment D-4B**.

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

---

Contract Monitor Name

---

Contracting  
Unit

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Address

---

City, State  
Zip

---

Email

---

Phone Number

---

Signature (Required)

---

---

Date

---

## D-4B MBE Prime Contractor Report

MBE Prime Contractor:	Contract #:	
Certification Number:	Contracting Unit:	
Report #:	Contract Amount:	
Reporting Period (Month/Year):	Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals:	
<b>MBE Prime Contractor: Report is due to the MBE Liaison by the 10th of the month following the month the services were provided. Note: Please number reports in sequence</b>		Project Begin Date:
		Project End Date:

Contact Person:		
Address:		
City:	State:	ZIP:
Phone:	FAX:	E-mail:

Invoice Number	Value of the Work	NAICS Code	Description of Specific Products and/or Services

**Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

\_\_\_\_\_

Contract Monitor Name

\_\_\_\_\_

\_\_\_\_\_

Contracting Unit

\_\_\_\_\_

\_\_\_\_\_

Phone Number

\_\_\_\_\_

\_\_\_\_\_

Address

\_\_\_\_\_

City, State Zip

Email

\_\_\_\_\_

Signature (Required)

Date

**D-5 - MBE Subcontractor Paid/Unpaid Invoice Report**

Report #:	Contract #:
Reporting Period (Month/Year):	Contracting Unit:
<b>Report is due by the 10th of the month following the month the services were performed.</b>	MBE Subcontract Amt:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:					
MDOT Certification #:					
Contact Person:					
Address:					
City:			State:		ZIP:
Phone:		FAX:		E-mail:	
<b>Subcontractor Services Provided:</b>					
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>			<b>List dates and amounts of any unpaid invoices over 30 days old.</b>		
	<b>Invoice Amount</b>	<b>Date</b>		<b>Invoice Amount</b>	<b>Date</b>
1.			1.		
2.			2.		
3.			3.		
4.			4.		
<b>Total Dollars Paid: \$</b>			<b>Total Dollars Unpaid: \$</b>		
Prime Contractor:			Contract Person:		

**Return one copy of this form to the following addresses (electronic copy with signature and date is preferred):**

\_\_\_\_\_

Contract Monitor Name

\_\_\_\_\_

Contracting Unit

\_\_\_\_\_

Address

\_\_\_\_\_

City, State Zip

---

Email

---

Phone Number

---

---

Signature (Required)

---

Date

**APPENDIX G**  
**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 items):

- (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 the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

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), of this regulation;

(h) Notify its employees in the statement required by §E(2)(b), of this regulation, 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), of this regulation, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, 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), of this regulation.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, 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 \_\_\_\_\_, 2020, 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.

By: \_\_\_\_\_  
*Signature of Authorized Representative and Affiant*

Printed Name: \_\_\_\_\_  
*Printed Name of Authorized Representative and Affiant*

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

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