

STATE OF MARYLAND

OFFICE OF THE STATE TREASURER

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

REQUEST FOR PROPOSALS

FOR

INVESTMENT ADVISOR AND BIDDING AGENT SERVICES

RFP # IABA-12102010

Due Date: January 21, 2011

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

Issued: December 10, 2010

KEY INFORMATION SUMMARY SHEET

**Maryland State Treasurer's Office
Requests for Proposals
for
Investment Advisor and Bidding Agent Services**

RFP #IABA-12102010

Procurement Officer: Anne Jewell
Tel.: (410)260-7903
Fax: (410)974-3530
Email: procurement@treasurer.state.md.us

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

Solicitation Issue Date: December 10, 2010

Deadline for Receipt of Questions: December 28, 2010 at 2:00 p.m. Eastern Time

Proposal Due Date and Time: January 21, 2011 at 2:00 p.m. Eastern Time

Oral Presentations: February 3 and 4, 2011

Anticipated Award Date: February 8, 2011

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

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SECTION I. PROCUREMENT OBJECTIVE

1.01 Summary Statement

The Maryland State Treasurer's Office (the "Office") is requesting proposals from qualified firms interested in providing Investment Advisor and Bidding Agent services to the Office for (a) sinking fund investments for existing Qualified School Construction Bonds ("QSCBs"), Qualified Zone Academy Bonds ("QZABs") and future sales of QZABs and (b) refunding escrow account investments in connection with general obligation refunding bonds. The Investment Advisor will also be responsible for compliance and recordkeeping for all sinking funds and refunding escrows.

1.02 Issuing Office and Procurement Officer

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

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

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

1.03 Procurement Method

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

1.04 Contract Officer

The Contract Officer monitors the activities of the escrow services and provides technical guidance. The State Treasurer's Office Contract Officer is:

Mary Christine Jackman, Director of Investments
Maryland State Treasurer's Office
Louis L. Goldstein Treasury Building
80 Calvert Street
Annapolis, Maryland 21401

Tel: (410)260-7129
Email: mcjackman@treasurer.state.md.us

1.05 Use of “e-Maryland Marketplace”

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

This means that all such information is immediately available to subscribers of eMaryland Marketplace. Because of the instant access afforded by eMaryland Marketplace, it is recommended that all Offerors interested in doing business with Maryland State agencies subscribe to eMaryland Marketplace.

1.06 Schedule of Events

<u>Event</u>	<u>Date</u>
Notice in “eMaryland Marketplace”	December 10, 2010
RFP Release Date	December 10, 2010
Deadline for Receipt of Questions	December 28, 2010
Proposal Due Date/Proposal Opening Date	January 21, 2011
Oral Presentations	February 3 and 4, 2011
Tentative Date of Award	February 8, 2011

1.07 Pre-proposal Conference

A pre-proposal conference will not be held.

1.08 Questions and Inquiries

All questions and inquiries should be directed to the Procurement Officer identified in Section I, 1.02 above. Questions must be submitted in writing by mail or via email and received by the Issuing Office on or before 2:00 p.m. ET on Tuesday, December 28, 2010. Oral questions will not be permitted. If the questions or inquiries pertain to a specific section of the RFP, the page and section number(s) must be referenced.

1.09 Submission Deadline

To be considered, a written original and 5 copies (total of 6) of the Technical Proposal and the Price Proposal, each submitted separately in sealed envelopes, shall indicate the RFP Title and number and the Offeror’s name and address. Each proposal must arrive at the Issuing Office no later than 2:00 p.m. ET on Friday, January 21, 2011. Additionally, one electronic copy of the Technical Proposal and an electronic copy of the Price Proposal is requested on compact disks to be submitted to the Procurement Officer. As with the written submission, the electronic copy submission of the Technical Proposal must be provided on one disk and the Price Proposal must be submitted on another disk, in separate sealed envelopes. Refer to Section IV Proposal Format for Two-Volume Submission.

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

1.10 False Statements

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

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

1.11 Duration of Offer

Proposals submitted in response to this solicitation are irrevocable for 90 days following the later of the proposal due date or the date of the final best and final offers, if any, are received. This period may be extended at the Procurement Officer's request only with an Offeror's written agreement.

1.12 Electronic Distribution

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

SECTION II. GENERAL INFORMATION

2.01 Purpose

The overall purpose of this RFP is to provide information to firms interested in preparing and submitting proposals to respond to the Office's solicitation for an Investment Advisor and Bidding Agent services. These services are needed for (a) sinking fund investments for existing QSCBs, QZABs and future sales of QZABs and (b) refunding escrow account investments in connection with general obligation refunding bonds. The Office, in its sole discretion, may award two separate contracts to provide the described services.

2.02 Revisions to the RFP

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

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

2.03 Cancellation of the RFP; Rejection of All Proposals

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

2.04 Proposal Acceptance; Discussions

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

2.05 Oral Presentation

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

2.06 Incurred Expenses

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

2.07 Proposal Form

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

2.08 Multiple Proposals

Neither multiple nor alternate proposals will be accepted.

2.09 Access to Public Records Act Notice

An Offeror should give specific attention to the identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland. A fee may be charged for copies and search and preparation time, in accordance with COMAR 25.01.04.09. The Office may require payment of such fees before releasing the requested information.

2.10 Protests

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

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

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

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

2.11 Proposal Opening

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

2.12 Bid/Proposal Affidavit

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

2.13 Contract Affidavit

All Offerors are advised that if a contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Appendix C to this RFP. This Affidavit need not be submitted with an Offeror's proposal.

2.14 Acceptance of Terms and Conditions

By submitting a proposal in response to this RFP, the Offeror: (i) accepts all of the terms and conditions set forth in this RFP; and (ii) represents that it is not in arrears in the payment of any obligation due and owing the State or any department or unit thereof, including but not limited to the payment of taxes and employee benefits (the "State Obligations"). If selected for award, the Offeror agrees: (a) that it will comply with all federal, State and local laws applicable to its activities and obligations; and (b) that it shall not become in arrears under any State Obligation during the term of the contract; and (c) to all terms and conditions set forth in the form of contract included as Appendix D to this RFP.

2.15 Minority Business Enterprises

A minority business enterprise subcontractor participation goal of 10% has been established for this solicitation. Offerors should indicate in their proposals which services under Section 3.02 will be performed by minority firms, and complete the appropriate MBE participation forms in Appendix E.

This RFP is designed to encourage the participation of socially and economically disadvantaged individuals (members of a group as defined in Section 14-301 (i)(1) of the State Finance and Procurement Article of the Annotated Code of Maryland (the "Procurement Article") and minority business enterprises as defined in Section 14-301 (f) of the Procurement Article. The Office encourages minority business enterprises to respond to this RFP. Offerors are encouraged to submit Proposals that reflect significant participation by socially and economically disadvantaged individuals and/or minority business enterprises on the Offeror's team.

A current directory of MBEs is available through the Maryland State Department of Transportation Office of Minority Business Enterprise, P.O. Box 8755, B.W.I. Airport, Maryland 21240-0755. The phone number is 410-865-1244. The directory is also available at <http://www.mdot.state.md.us>. Select the "Minority/Disadvantaged Business Enterprise" label. The most current and up-to-date information on MBEs is available via the web site.

2.16 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland. Additional information regarding the State's wage requirement is contained in this solicitation (see Appendix F., entitled Living Wage Requirements for Service Contracts). If the bidder fails to complete and submit the required documentation under State law, the State may determine a bidder to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.28 per hour, if State contract services valued at 50% or more of the total value of the contract are performed in the Tier 1 Area. If State contract services valued at 50% or more of the total value are performed in the Tier 2 Area, a bidder shall pay each covered employee at least \$9.23 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

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

2.17 No Guarantee of Work

No Contractor is guaranteed any minimum amount of work or compensation. The Office can make no assurances that the State will authorize bond sales.

2.18 Order of Precedence

The relationship between the parties will be embodied in the following documents listed in their order of precedence:

1. the Contract;
2. the RFP;
3. the Contractor's Proposal.

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

SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

3.01 Background

Qualified School Construction Bonds and Qualified Zone Academy Bonds

The State issued \$50,320,000 and \$45,175,000 of QSCBs in 2009 and 2010 respectively and \$4,543,000 of QZABs in 2010. The State also anticipates the issuance of QZABs of \$15,902,000 before December 31, 2011, and \$15,324,000 before December 31, 2012. For these QSCBs and QZABs, the State anticipates that it will make up to fifteen (15) approximately equal annual deposits into a sinking fund for each series commencing on or prior to each anniversary date of the issuance of the QSCBs and QZABs, not including interest reinvestment. The Investment Advisor will calculate the amount of such annual deposits based on projected investment earnings such that upon maturity of each of the QSCBs and QZABs, the amount of the deposits in their respective sinking funds, including investment earnings, will equal the principal due at the 15 year single maturity of each of the QSCBs and QZABs. The sinking fund shall provide for the payment of principal only.

The State has a Financial Advisor under contract. The Financial Advisor provides advisory services to the Office on a broad range of issues in the area of public finance, including, but not limited to, the structuring of new bond issues, refundings, and other structuring options to achieve the lowest rates while maintaining the State's credit ratings; attends bond sales; completes post bond sale analyses, and reports results of sale compared to similar transactions in the market. The State's existing Financial Advisor contract does not include investment advisory services. The Financial Advisor has assisted the State in calculating the SLGS requirements for prior refunding escrow accounts.

Refunding Bonds

As of June 30, 2010, approximately \$6.5 billion in Maryland General Obligation Bonds was outstanding, of which approximately \$5.1 billion may be eligible for refunding. The State's bonds are limited to a maximum maturity of 15 years and generally have provisions for optional redemption after 10 years. (A few bond series have optional redemption provisions after 8 years.) The State's General Obligation Bonds require the payment of semi-annual debt service. Principal is paid annually and interest is paid semi-annually.

Generally, the State conducts general obligation bond sales twice a year, in late winter (February) and in the summer (July). These semi-annual sales may include refundings when market conditions are favorable and adequate savings can be achieved. However, if sufficient savings are projected, current and advance refundings may occur at any time.

Within the last three years, the State has issued the following refunding bonds:

2010 First Series B - \$195,315,000

These bonds refunded 10 different series of bonds which had 6 different call dates.

2009 Third Series C - \$602,765,000

These bonds refunded 7 different series of bonds which had 6 different call dates.

2009 First Series B - \$ 65,800,000

These bonds refunded 4 different series of bonds which had 3 different call dates.

Bond proceeds for each of these series were invested in State and Local Government Series Securities (SLGS) and deposited in refunding escrow accounts to defease the refunded bonds.

Official Statements for these refunding bonds are available on the Treasurer's website at www.treasurer.state.md.us

3.02 Minimum Qualifications

- A. Offerors must be registered with the Securities and Exchange Commission and/or FINRA and/or the Securities Division of the Office of the Attorney General of Maryland, as required by law. The Contractor must hold and maintain at all times all licenses and registrations required by applicable Federal and State laws for firms providing investment advisor and bidding agent services.
- B. Offerors must carry fidelity bond coverage, errors and omissions, employee dishonesty, fiduciary liability insurance, or other fiduciary coverage your firm carries

3.03 General Requirements

- A. The Offeror shall summarize and provide documentation showing fidelity bond coverage, errors and omissions, employee dishonesty, fiduciary liability insurance, or other fiduciary coverage your firm carries.
- B. The Offeror shall include a plan for business continuity and recovery as a result of disaster. A major disaster is defined as a loss of the facility or business processing due to a catastrophic event, which causes vital business processes to stop for an extended period of time (more than 24 hours).
- C. The financial statements of the Offeror must be audited annually by an independent certified public accounting firm and an unqualified opinion must be issued by the auditor in connection with the audit. The Offeror shall include one copy of the Offeror's last three annual audited financial statements only with the original volume of the technical proposal.

3.04 Specific Service Requirements

The Office is seeking the services of one or two qualified firms to provide Investment Advisor and Bidding Agent services for the Office for (a) sinking fund investments for existing QSCBs, QZABS and future sales of QZABS, and (b) refunding escrow account investments in connection with general obligation refunding bonds. The Office seeks to achieve a maximum investment return within relevant yield restrictions. **The investments must comply with Section 6-222 of the State Finance and Procurement Article, Annotated Code of Maryland (See Appendix**

H). The investments must be designed to preserve principal and provide the required funds on the specified maturity dates.

The Investment Advisor must have at least 3 years of experience in structuring investment solutions that will comply with all Federal, State and local laws, including IRS Regulations, as well as any relevant bond covenants. The Investment Advisor must be able to perform Bidding Agent duties if applicable in addition to providing all required recordkeeping, documentation and proof of compliance with applicable laws, rules and regulations. This is to be accomplished while working cooperatively with the Office, Legal Counsel, Financial Advisor, and all other involved parties. The Investment Advisor must work simultaneously and closely with the Financial Advisor on refundings at the time of pricing so that the escrow account investment maturities and income correspond to the debt service on the refunded bonds.

The Investment Advisor shall:

- A. Provide advice and recommendations, relating to but not limited to the following:
 - 1. Sinking fund structuring; and
 - 2. Escrow account structuring.
- B. If required, serve as Bidding Agent for the Office with regard to competitive procurement of investments, including but not limited to:
 - 1. Preparation of bidding specifications, including documentation of agreement terms, where applicable;
 - 2. Solicitation of bids;
 - 3. Review and evaluation of responses;
 - 4. Acceptance and award of bids on behalf of the Office in consultation with, or as directed by the Office;
 - 5. Creation of bidding agent certificates, and coordination of the distribution and execution of the various closing documents and legal opinions regarding the investments and any related agreements;
 - 6. Demonstration, at the time responses were required to be submitted by the terms of the bid solicitation, the total cost of the escrow securities was not greater than the cost of the most efficient portfolio comprised exclusively of SLGS (for comparison purposes the most efficient SLGS portfolio must be attached as an Exhibit to the final certification package);
 - 7. Assurance that (a) the Investment Advisor will receive no compensation from any of the providers in connection with the purchase of the escrow securities, and (b)

the Investment Advisor fee, paid by the Issuer, will NOT be taken into consideration for the purpose of determining the yield of the escrow securities, that is, such amount did not depress the yield of the escrow securities;

8. Ensuring that all providers were given an equal opportunity to provide offers, so that, for example, no provider was given the opportunity to review other offers before offering;
 9. Affirming that the Investment Advisor did not offer securities; and
 10. Providing a final certification package as to compliance with the above-listed services.
- C. The Investment Advisor will be responsible for all documentation and recordkeeping required by federal, state and local laws including IRS regulations. Furthermore, the Investment Advisor will be responsible for all documentation or reports that may reasonably be required by Bond Counsel.

3.05 Compensation

The Office shall pay the Contractor fees as specified in the Price Proposal, Appendix A. Payments to the Contractor shall be paid as part of the Cost of Issuance of the bonds. No charges will be allowed for copying, telephone expense, internet connections, travel and/or any other type of computer charges or other costs in performing any services under the Contract.

Contractors are restricted from engaging in activities on behalf of the Office that produce a direct or indirect financial gain for the Contractor, other than the agreed-upon compensation, without the Office's written informed consent.

In the event that a bond issue is cancelled, postponed, or fails to take place for any reason, no payment will be made to the Contractor, notwithstanding the provisions of Section 4.14 of the Contract.

3.06 Term

The initial term of the Contract shall be for a period beginning at date of award and ending December 31, 2012. The Contract will also contain an option to renew for two additional one-year periods. Exercise of the renewal options will be solely at the discretion of the Treasurer.

The Office reserves the right to choose not to use the services of the Investment Advisor and Bidding Agent for any bond issue at its discretion.

SECTION IV. PROPOSAL FORMAT

4.01 Transmittal Letter

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

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

4.02 Two-Volume Submission

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

4.03 Volume I – Technical Proposal Requirements

This volume shall be labeled "Volume I – RFP for Investment Advisor and Bidding Agent Services- Technical". This volume must be organized as described below and contain sufficient information to enable the evaluators to evaluate the proposal. Any Offeror submitting a proposal in response to this RFP must comply with the Minimum Qualifications, and all services set forth in Section III.

This proposal shall contain the transmittal letter (Section IV, 4.01), the completed Bid/Proposal Affidavit (Appendix B), applicable MBE forms (Appendix E) and the Affidavit of Agreement, Maryland Living Wage Requirements-Service Contracts (Appendix G).

The Technical Proposal should be prepared in a clear and concise manner and address all requirements and services set for the in this solicitation. 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 shall provide all required information in the following subsections:

A. Request for General Information

Provide your firm's identifying information including:

1. Name and address of the firm with whom the Contract will be entered into and any trade names associated with that entity;
2. The firm's Federal Employer Identification Number; and

3. The name, telephone number and e-mail address of the representative of the firm who is authorized to discuss the firm's proposal.

B. Demonstrate compliance with the Minimum Qualifications as described in Section III, 3.02.

Confirm and demonstrate that licenses are current and in good standing with the following:

Securities and Exchange Commission and/or FINRA, and/or Securities Division of the Office of the Attorney General of Maryland, as required by law.

C. Firm's Qualifications

Demonstrate compliance with the General Requirements as described in Section III, 3.03.

1. Summarize and provide documentation showing fidelity bond coverage, errors and omissions, employee dishonesty, fiduciary liability insurance, or other fiduciary coverage your firm carries.
2. Include a plan for business continuity and recovery as a result of disaster. A major disaster is defined as a loss of the facility or business processing due to a catastrophic event, which causes vital business processes to stop for an extended period of time (more than 24 hours).
3. Provide the financial statements audited by an independent certified public accounting firm with an unqualified opinion. Include one copy of the Offeror's last three annual audited financial statements only with the original volume of the technical proposal.

D. Firm's Structure

Briefly describe the history, ownership and overall business structure of your firm. Describe your firm's ongoing commitment to providing investment advisor and bidding agent services.

E. Firm's Experience

1. Investment Advisor and Bidding Agent Experience
 - (a) List transactions for which your firm has served as the investment advisor and bidding agent for escrow accounts invested in open market securities and SLGS since January 2008. Provide the transaction dates and amounts, and issuer names;

- (b) List transactions for which your firm has served as the investment advisor and bidding agent for sinking fund investments since January 2008. Provide the transaction dates and amounts, and issuer names; and
- (c) Provide a detailed description of the Offeror's strategy and methods for (a) escrow account structuring (use examples of previous successful structurings where the Offeror was able to structure and procure a portfolio in minutes as the refunding bonds were being priced); and (b) sinking fund structuring (give examples of successful structurings where the Offeror was able to increase savings). Describe the impact of market volatility on your approach.

2. Bidding Agent Procedures

- (a) Describe your firm's process for bidding and awarding, on a client's behalf, investment agreements and open market securities for sinking funds and escrow accounts;
 - (b) Describe the procedures you use to ensure that the bidding process is competitive and complies with applicable laws and regulations, and describe any reports you would provide to the Office; and
 - (c) Describe what can be expected on the date of the bond sale. Provide a timeline of events. Describe the level of sophistication of your firm's electronic processes and how these processes will interface with the State's Financial Advisor.
3. Provide sample reports for a refunding escrow account and sinking fund which demonstrate compliance with all laws, rules and regulations.

F. MBE Participation Goal

Provide information on how you expect to meet the MBE participation goal of 10% in this Contract.

G. Personnel and References

Identify the principal(s) and key personnel who will be assigned to provide services to the Office. Include each individual's resume and state what role and percentage of the Scope of Services will be performed by each person assigned. The Office expects that personnel will be assigned to the project as described in this Section. If one or more of the aforementioned personnel become unavailable for continuation of the work assignment, the Contractor shall replace said individual(s) with personnel of substantially equal ability and qualifications. However, any changes to designated personnel will require the prior written approval of the Office. If accepted by the Office, the changes shall be effected without additional cost to the Office and without formal modification of the Contract.

Provide references from 5 issuers who most closely resemble the State of Maryland, for whom your firm has provided escrow account and/or sinking fund structuring and bidding services since January 2008. Include the name of issuer, name of issuer's principal representative with which your firm worked, telephone number and size of escrow account and/or sinking fund. The Office may check references from any of your firm's clients.

H. Economic Benefits to the State of Maryland

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

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.
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.
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. 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.
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.

4.04 Disclosures

Disclose any relationships with persons or entities that may create a conflict of interest, or the appearance of a conflict of interest. Include any activities of affiliated or parent organization, brokerage activities, or investment banking activities. Include any other pertinent activities, actions, or relationships not specifically outlined in this section.

Currently, the Office's financial team consists of PFM as the financial advisor, Bank of New York as the trustee and paying agent for the 2009 QSCBs, and Citibank, N.A. is the escrow agent for refunding escrows. Kutak Rock, LLP and Ballard Spahr Andrews & Ingersoll, LLP are under contract to the Maryland Attorney General for bond counsel services. Should your firm be selected, the Office may require further disclosure of any client relationships that may give rise to a conflict of interest.

Disclose specific details of any criminal or regulatory investigations, legal proceedings (criminal or civil), or regulatory or disciplinary actions by any state or federal regulatory agency, involving the firm or members of the firm, or any convictions, judgments or settlements resulting from such proceedings or actions, with the past five years.

4.05 Volume II - Price Proposal

This volume shall be labeled "RFP for Investment Advisor and Bidding Agent Services - Price Proposal," and sealed separately. Offerors proposing to perform these services must complete and submit the "Price Proposal Form," included as Appendix A to the RFP. Appendix A must be signed by an individual authorized to bind the selected Offeror to all fees contained in the proposal. Price proposals will be evaluated as described in Section V, 5.05 of this RFP.

SECTION V. EVALUATION AND SELECTION PROCEDURE

5.01 Qualifying Proposals

The Procurement Officer first will review each technical proposal received by the submission deadline for compliance with the Minimum Qualifications set forth in Section III, 3.02 Minimum Qualifications, and completeness of response to the requirements set forth in Section IV, Proposal Format. Each Offeror submitting a proposal must assume full responsibility for meeting the Minimum Qualifications and procedural requirements established for this procurement.

5.02 Evaluation and Selection Committee

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

5.03 Technical Evaluation

After the Procurement Officer selects the qualifying proposals (those proposals that are reasonably susceptible to selection for Contract award) the Committee will conduct an initial evaluation of the technical merit of each qualifying technical proposal. This evaluation will be made on the basis of the evaluation criteria set forth in subsection 5.04, below and may include information obtained during oral presentations, if any.

5.04 Evaluation Criteria

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

1. Firm’s Qualifications;
2. Firm’s Experience;
3. Assigned Personnel and References;
4. Sinking Fund Structuring and Escrow Account Structuring; and
5. Economic Benefits to the State of Maryland;

5.05 Price Evaluation

Following the completion of the initial technical evaluation, the Committee will conduct an evaluation of each price proposal (Appendix A) and will establish two separate financial rankings:

- (a) The financial ranking for Investment Advisor and Bidding Agent services for sinking funds will be evaluated using the Offeror’s total All Inclusive Fee.

- (b) The financial ranking for Investment Advisor and Bidding Agent services for refundings will be evaluated by applying the Offeror’s fee schedule to a model to be determined by the Office in its sole discretion.

5.06 Responsibility

1. General

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

2. Discussions

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

5.07 Best and Final Offer

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

5.08 Final Evaluation and Recommendation for Award

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

5.09 Debriefing of Unsuccessful Offerors

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

**APPENDIX A
PRICE PROPOSAL FORM**

PRICE PROPOSAL FOR INVESTMENT ADVISOR AND BIDDING AGENT SERVICES
RFP # IABA-12092010

A. Provide an all-inclusive fee (investment advisory services and bidding agent services as required) for the sinking funds for the following issues by completing the following table:

Issue	Principal Amount at Maturity	All-Inclusive Fee
Qualified School Construction Bonds of 2009	\$50,320,000	
State and Local Facilities Loan of 2010, Second Series D, Qualified School Construction Bonds	\$45,175,000	
Taxable Qualified Zone Academy Bonds of 2010	\$4,543,000	
Taxable Qualified Zone Academy Bonds of 2011	\$15,902,000	
Taxable Qualified Zone Academy Bonds of 2012	\$15,324,000	
Total Amount	\$131,264,000	

\$ _____ is the Total Fee for Providing Investment Advisory Services for all sinking funds described above.

B. Provide an all-inclusive fee for each issue of refunding bonds consisting of:

1. Fixed Fee per Refunding \$ _____

Plus

2. Percentage of Computational Base _____%

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 fees.

(Firm Name)

(Address)

(City, State, Zip)

By: _____
Signature of Authorized Official

Name and Title of Authorized Official

APPENDIX B

BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. Certification Regarding Minority Business Enterprises.

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

_____.

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

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

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

_____.

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

_____.

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and

Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

K. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.

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

(4) I acknowledge and agree that:

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

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

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

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name: _____

Address: _____

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting

from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

Date: _____

By: _____
(Authorized Representative and Affiant)

APPENDIX C

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

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

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

By: _____
(Authorized Representative and Affiant)

APPENDIX D

(FORM OF)

CONTRACT FOR

INVESTMENT ADVISOR AND BIDDING AGENT SERVICES

BETWEEN

MARYLAND STATE TREASURER'S OFFICE

and

CONTRACT

THIS CONTRACT (the "Contract") is made as of the ____ day of _____, 2011 by and between [Name and Address] (the "Contractor"), and the **MARYLAND STATE TREASURER'S OFFICE**, 80 Calvert Street, Annapolis, Maryland 21401 (the "Office"), an office of the **STATE OF MARYLAND** (the "State").

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

ARTICLE I - SCOPE OF SERVICES

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

- 1.1. General Services. The Contractor shall provide Investment Advisor and Bidding Agent Services for [Sinking Fund Investments] [Refunding Escrow Account Investments] as described in this Contract, which includes the following exhibits:
 1. Exhibit A: Relevant portions of the Office Request for Proposals, RFP # IABA-12092010 for Investment Advisor and Bidding Agent Services related to [Sinking Fund Investments] [Refunding Escrow Account Investments];
 2. Exhibit B: Contractor's Technical Proposal dated _____;
 3. Exhibit C: Contractor's Price Proposal dated _____; and
 4. Exhibit D: Bid/Proposal Affidavit and Contract Affidavit.
- 1.2. If there are any inconsistencies between this Contract and the Exhibits of this Contract shall control. If there is any conflict among the Exhibits, Exhibit A shall control.
- 1.3. The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 4.5., Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

ARTICLE II - TERM

- 2.1 The initial term of this Contract shall be for a period of beginning _____ and ending December 31, 2012. The Office reserves the right to choose not to use the services of the investment advisor and bidding agent for any bond issue at its discretion.
- 2.2 In addition there shall be two additional one-year renewal options, which may be exercised at the sole discretion of the Treasurer of the State.
- 2.3 The provisions of Sections 4.1, 4.5, 4.21, 4.23, 4.26 and 4.27 of this Contract shall survive termination of this Contract for any reason.

ARTICLE III - CONSIDERATION, PAYMENT AND PERFORMANCE

- 3.1. The fees for this Contract will be in accordance with the "Price Proposal" submitted by the Contractor and attached hereto as Exhibit C. Payment to the Contractor shall be made at or after the closing as part of the cost of issuance in the amount approved by the Contract Officer. In the event that the refunding is cancelled, refunded bonds are not sold, or closing does not occur, no payment will be made to the Contractor, notwithstanding the provisions of Section 4.14 of this Contract
- 3.2. No charges will be allowed for copying, telephone expense, travel, Internet connections and/or any other type of computer or other charges or costs in performing any services under the Contract.
- 3.3. 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 therefor shall be promptly provided to the Contractor, who shall be afforded an opportunity to cure any performance deficiencies.
- 3.4.
 1. All invoices for services shall be submitted to the Contract Officer:

Mary Christine Jackman
Director of Investments
Maryland State Treasurer's Office
Louis L. Goldstein Treasury Building
80 Calvert Street
Annapolis, Maryland 21401
 2. Invoices must be submitted prior to or within 30 days after closing of each refunding.

3. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after receipt by the Office of a proper invoice from the Contractor. Each invoice for services rendered must reflect the Contractor's federal tax identification number, which is _____, and shall clearly indicate the specific type of service provided. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited.

ARTICLE IV – GENERAL CONDITIONS

4.1. Liability

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

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

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

4.2. Tax Exemption

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

4.3. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor sell, transfer, or otherwise assign its obligations under this Contract, or any portion thereof, or any of its rights or obligations hereunder, without the prior written approval of the State; provided, however, that the Contractor may subcontract services under or make an assignment of this Contract to an affiliate of the Contractor that is fully capable of performing such services if the Contractor retains full responsibility for the Contract. Any such subcontract or assignment shall be subject to any terms and conditions that the Office deems necessary to protect the interest of the State. The Office shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors.

4.4. Non-Hiring of Officials and Employees

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

4.5. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2 of the State Finance and Procurement Article of the Annotated Code of Maryland (Dispute Resolution), and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.

4.6. Maryland Law Prevails

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

4.7. Amendments

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

4.8. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

4.9. Commercial Nondiscrimination Clause

4.9.1. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual

orientation, disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- 4.9.2. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

4.10. Contingent Fee Prohibition

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

4.11 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland.

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

or more of the total Contract value are performed in the Tier 2 Area, an Offeror shall pay each covered employee at least \$9.23 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

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

4.12. Multi-Year Contracts Contingent Upon Appropriations

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

4.13. Termination for Default

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

4.14. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all

reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

4.15. Delays and Extensions of Time

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

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a Contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

4.16. Variations in Estimated Quantities

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

4.17. Suspension of Work

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

4.18. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

4.19. Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more,

shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

4.20. Political Contribution Disclosure

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

4.21. Retention of Records/Audit

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or his designee, at all reasonable times.

4.22. Compliance with Laws

The Contractor hereby represents and warrants that:

- 4.22.1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, hereafter may be necessary to remain so qualified;
- 4.22.2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 4.22.3. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- 4.22.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

4.23. Liability for Loss of Data

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

4.24. Cost and Price Certification

4.24.1. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- (1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or
- (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

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

4.25. Ownership of Documents and Materials

The Contractor agrees that all documents and materials including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, designs, graphics, mechanical, artwork, and computations prepared by or for it under the terms of this Contract shall at anytime during the performance of the services be made available to the State upon request by the State and shall become and remain the exclusive property of the State upon termination or completion of the services. The State shall have the right to use same without restriction or limitation and without compensation to the Contractor other than that provided by this Contract. The State shall be the owner for purposes or copyright, patent or trademark registration.

4.26. Patents, Copyrights and Trade Secrets

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

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

suit. The obligations of this paragraph are in addition to those stated in paragraph 4.26.3. below.

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

4.27. Confidentiality

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

ARTICLE V - NOTICES

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

If to the Office:

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

If to the Contractor:

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

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

ARTICLE VI - ADMINISTRATION

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

ARTICLE VII - REPRESENTATIONS

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

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

ATTEST:

[FIRM NAME]

By: _____

WITNESS:

**MARYLAND STATE TREASURER'S
OFFICE**

By: _____

Bernadette T. Benik
Chief Deputy Treasurer

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

Counsel to the Treasurer

APPENDIX E

MINORITY BUSINESS ENTERPRISE PARTICIPATION

PURPOSE

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

MBE GOALS AND SUB GOALS

An MBE subcontract participation goal of 10% percent of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by certified minority business enterprises.

OR

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

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

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

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

SOLICITATION AND CONTRACT FORMATION

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

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

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

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

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

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

CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

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

ATTACHMENTS

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

MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with bid or offer)

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

In conjunction with the bid or offer submitted in response to Solicitation No. IA-11012010, I affirm the following:

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

OR

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

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

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

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

3. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total contract amount allocated to each MBE for this project. I hereby affirm that the MBE firms are only providing those products and services for which they are MDOT certified.

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Project Number:	
List Information For Each Certified MBE Subcontractor On This Project	
Minority Firm Name	MBE Certification Number
Certification Category For Dually Certified MBE Subcontractors (<i>Check Only One Certification Category</i>)	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category For Dually Certified MBE Subcontractors (<i>Check Only One Certification Category</i>)	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors (<i>Check Only One Certification Category</i>)	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors (<i>Check Only One Certification Category</i>)	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors (<i>Check Only One Certification Category</i>)	
<input type="checkbox"/> African American Owned	<input type="checkbox"/> Woman-Owned
Percentage of Total Contract	

Continue on a separate page, if needed.

SUMMARY

Total African-American MBE Participation:	_____ %
Total Woman-Owned MBE Participation:	_____ %
Total Other Participation	_____ %
Total All MBE Participation:	_____ %

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

Bidder/Offeror Name

(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____

Title: _____

Date: _____

Subcontractor Project Participation Certification

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

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

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

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

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

PRIME CONTRACTOR SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____
 Name, Title
 Date _____

By: _____
 Name, Title
 Date _____

APPENDIX F

Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Title 18, State Finance and Procurement Article, Annotated Code of Maryland and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (A) has a State contract for services valued at less than \$100,000, or
 - (B) employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A Subcontractor who:
 - (A) performs work on a State contract for services valued at less than \$100,000,
 - (B) employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (C) performs work for a contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (A) services with a Public Service Company;
 - (B) services with a nonprofit organization;
 - (C) services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (D) services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.

- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent contractor or assign work to employees to avoid the imposition of any of the requirements of Title 18, State Finance and Procurement, Annotated Code of Maryland.
- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in §18-103(c), State Finance and Procurement Article, Annotated Code of Maryland, shall not lower an employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under §18-103(a), State Finance and Procurement, Annotated Code of Maryland, by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in §3-413, Labor and Employment Article, Annotated Code of Maryland.
- I. Under Title 18, State and Finance Procurement Article, Annotated Code of Maryland, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dlir.state.md.us/> and clicking on Living Wage.

APPENDIX G

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

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

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

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

If the Contract is a Living Wage Contract

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

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

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

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

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

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

APPENDIX H
State Finance and Procurement Article

§6-222.

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

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

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

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

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

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

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

(7) money market mutual funds that:

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

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

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

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

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

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

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

(2) the net income earned;

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

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

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

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

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

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

(4) with due regard for minimizing risk while maximizing return;

(5) using competitive purchasing practices except when impractical;

(6) in accordance with a written investment policy;

(7) so that the securities and collateral may continue to be priced on a market to market basis; and

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

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

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

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

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

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

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

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

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

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