



**Nancy K. Kopp**  
State Treasurer

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Chief Deputy Treasurer

**MARYLAND STATE TREASURER'S OFFICE**

**REQUEST FOR PROPOSALS**

**FOR**

**GENERAL BANKING SERVICES**

**FOR**

**THE BOARD OF TRUSTEES OF THE**

**MARYLAND TEACHERS AND STATE EMPLOYEES**

**SUPPLEMENTAL RETIREMENT PLANS**

**RFP #MSRP-05072013**

**DUE DATE: MAY 30, 2013**

Issued: May 7, 2013

**KEY INFORMATION SUMMARY SHEET**

**Maryland State Treasurer's Office  
Request for Proposals For  
General Banking Services  
For  
The Board of Trustees of the Maryland Teachers  
and State Employees Supplemental Retirement Plans**

**RFP #MSRP-05072013**

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

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

**Solicitation Issue Date:** May 7, 2013

**Deadline for Receipt of Questions:** May 15, 2013 by 11:00 a.m. Local Time

**Proposal Due Date and Time:** May 30, 2013 at 2:00 p.m. Local Time

**Oral Presentations:** June 13-14, 2013

**Tentative Contract Award:** June 27, 2013

**Notice:** Prospective offerors (the "Offerors") who received this document from eMaryland Marketplace (<https://emaryland.buyspeed.com/bso>), 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 INFORMATION**

### **1.01 Procurement Method**

The Maryland State Treasurer's Office (the "Office") is the issuer of this RFP for General Banking Services for The Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans ("MSRP"). The Office will award the contract arising out of this RFP (the "Contract") in accordance with the competitive sealed proposals process under COMAR 21.05.03.

### **1.02 Issuing Office and Procurement Officer**

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

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

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

### **1.03 Contract Officer**

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

Richard A. Arthur  
Technology and Operations Office  
Maryland Supplemental Retirement Plans  
6 Saint Paul Street, Suite 200  
Baltimore, Maryland 21202

#### **1.04 Use of eMaryland Marketplace**

eMaryland Marketplace (<https://emaryland.buyspeed.com/bs0>) is a free electronic commerce system administered by the Maryland Department of General Services. The RFP, associated materials, and all other solicitation related material will be provided via eMaryland Marketplace. This means that all such information is immediately available to subscribers of eMaryland Marketplace. All subscribers will receive solicitation notifications as well as solicitation update/change order notifications. Because of the instant access afforded by eMaryland Marketplace, it is recommended that all Offerors interested in doing business with Maryland State agencies subscribe to eMaryland Marketplace. In order to receive a contract award, a vendor must be registered on eMaryland Marketplace.

#### **1.05 Schedule of Events**

<u>Event</u>	<u>Date</u>
Solicitation Issue Date	May 7, 2013
Deadline for Receipt of Questions	May 15, 2013 by 11:00 a.m. Local Time
Proposal Due Date	May 30, 2013 by 2:00 p.m. Local Time
Oral Presentations	June 13-14, 2013
Tentative Date of Contract Award	June 27, 2013

#### **1.06 Questions and Inquiries**

All Offerors should direct their questions and inquiries 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 no later than 11:00 a.m. local time on Wednesday, May 15, 2013.** Oral questions will not be permitted. If the questions or inquiries pertain to a specific section of the RFP, Offerors must reference the relevant page and section number(s).

#### **1.07 Pre-proposal Conference**

A Pre-Proposal Conference will not be held.

#### **1.08 Submission Deadline**

To be considered, Offerors must submit to the Procurement Officer a written original, and 5 copies (total of 6) of the Technical Proposal and the Price Proposal, each in separate sealed envelopes. All submissions shall include the RFP Title and number and the Offeror's name and address. **Proposals must be received by the Procurement Officer at the Issuing Office no later than 2:00 p.m. local time on Thursday, May 30, 2013.** Additionally, Offerors must submit to the Procurement Officer on compact disks one electronic copy of the Technical Proposal and one electronic copy of the Price Proposal. As with the written submission, the electronic copy submission of the Technical Proposal and the Price

Proposal must be provided in separate sealed envelopes. Refer to Section IV. Proposal Format for Two-Volume Submission requirements.

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

### **1.09 False Statements**

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

(a) *In general.* - In connection with a procurement contract a person may not willfully:

- (1) falsify, conceal, or suppress a material fact by any scheme or device;
- (2) make a false or fraudulent statement or representation of a material fact; or
- (3) use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

(b) *Aiding or conspiring with others.* - A person may not aid or conspire with another person to commit an act under subsection (a) of this section.

(c) *Penalty.* - A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding 5 years or both.

### **1.10 Duration of Offer**

Proposals submitted in response to this solicitation are irrevocable for 120 days following the later of the proposal due date or the date the Procurement Officer receives final best and final offers, if any. At the request of the Procurement Officer, the Offeror may agree in writing to extend this period.

## SECTION II. GENERAL INFORMATION

### **2.01 Electronic Distribution**

This RFP is published on *eMaryland Marketplace*, posted on the websites for the National Association of State Treasurers and the Office, and emailed to financial firms known to be interested in receiving RFPs. Potential Offerors wishing to receive copies of the written document should contact the Procurement Officer identified in Section I, 1.02, above.

### **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, the Office will provide amendments to all prospective Offerors that were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. Offerors will be required to acknowledge in writing the receipt of all amendments. In addition, the Office will post amendments to the RFP on the Office's Web Page at [www.treasurer.state.md.us](http://www.treasurer.state.md.us), (select "Procurement" and then "RFP for General Banking Services for MSRP"), and through eMaryland Marketplace at: <https://emaryland.buyspeed.com/bso>. The Office will send amendments made after the due date for proposals only to those Offerors who submitted a timely proposal.

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

### **2.03 Cancellation of the RFP; Rejection of All Proposals**

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

### **2.04 Proposal Acceptance; Discussions**

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

### **2.05 Oral Presentation**

In support of their proposals, Offerors may be required to make an oral presentation, or conduct a demonstration, or both, not more than two calendar weeks after the Office has requested an Offeror to do so. Failure to be prepared to make an oral presentation or conduct a demonstration within this time period may prevent the Offeror's proposal from



receiving further consideration. All written representations will become part of the Offeror's proposal and are binding if the Contract is awarded to the Offeror.

## **2.06 Incurred Expenses**

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

## **2.07 Proposal Form**

Offerors should prepare proposals simply and economically, providing a straightforward, concise description of the Offeror's proposal for meeting the requirements of this procurement. The Office will not accept oral, telegraphic, facsimile, mailgram, or electronically transmitted proposals.

## **2.08 Multiple Proposals**

The Office will not accept multiple or alternative proposals from a single Offeror. In the event an Offeror fails to comply with this requirement, the Office may, in its sole discretion, choose not to consider any portion or all of the Offeror's proposal(s).

## **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. The Office may charge a fee for copies and search and preparation time, in accordance with COMAR 25.01.04.09. The Office may require payment of such fees before releasing the requested information.

## **2.10 Protests**

Any protest or dispute related respectively to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies). Offerors must file in writing any protest regarding this solicitation with the Procurement Officer. If the reason for the protest is apparent before the proposal opening, the Offeror must file the protest before the proposal opening. In all other cases, the Offeror must file the protest within 7 calendar days after the reason for the protest is known or should have been known.

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

The protest must be in writing and must contain (1) the name and address of the protester; (2) the appropriate identification of the solicitation and, if a Contract has been awarded,

the Contract number if it is known; (3) a statement of the reasons for the protest; and (4) any supporting exhibits, evidence, or documents to substantiate any claims unless the documents are not available within the filing time, in which case the date by which the supporting documents are expected to be available is to be noted.

### **2.11 Proposal Opening**

Proposals will not be opened publicly.

### **2.12 Bid/Proposal Affidavit**

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

### **2.13 Living Wage Requirements**

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

Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least \$12.91 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 \$9.70 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation has been deemed to be a Tier 1 contract.

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

### **2.14 Investment Activities in Iran Act**

All proposals submitted by an Offeror must be accompanied by a completed Investment Activities in Iran certification. A copy of this certification is included as Appendix E to this RFP.

Effective January 1, 2013, the Investment Activities in Iran Act (State Finance and Procurement Article, §§17-701 through 17-707, the “IAI Act”) attached as Exhibit 8 requires all companies that seek to do business with the State to certify at the time of bid submission that:

1. They are not identified on a list created by the Maryland Board of Public Works as a person engaging in investment activities in Iran; and
2. They are not engaging in investment activities in Iran, as defined in the IAI Act.

The current IAI Act list maintained by the Board of Public Works can be found at [www.bpw.state.md.us](http://www.bpw.state.md.us).

### **2.15 Contract Affidavit**

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

### **2.16 Representations**

By submitting a proposal in response to this RFP, the Offeror represents that (a) it is not in arrears in the payment of any obligation due and owing the State or any department or unit thereof, including but not limited to the payment of taxes and employee benefits (the “State Obligations”), and (b) it is in compliance with all federal, State and local laws applicable to its activities and obligations under the Contract. Further, if selected for award, the Offeror agrees that these representations will continue in effect during the term of the Contract.

### **2.17 Minority Business Enterprises**

The Office has not established a minority business enterprise subcontractor participation goal for this solicitation, but Offerors are encouraged to work with certified MBE subcontractors. A directory of certified MBEs is maintained by the Maryland State Department of Transportation Office of Minority Business Enterprise, P.O. Box 8755, B.W.I. Airport, Maryland 21240-0755. The phone number is 410-865-1244. The directory is available online at [www.mdot.state.md.us](http://www.mdot.state.md.us). Select the “Minority/Disadvantaged Business Enterprise” label.

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

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

**2.19 No Guarantee of Work**

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

**2.20 Order of Precedence**

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

1. the executed Contract;
2. the RFP; and
3. the Offeror's proposal.

The Office will not accept any modifications to the order of precedence provision of this solicitation. If the Offeror proposes any terms and conditions inconsistent with the requirements of the solicitation, the Offeror must clearly state those terms and conditions in its proposal.

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## **SECTION III. SCOPE OF SERVICES AND REQUIREMENTS**

### **3.01 Background**

The Board of MSRP is an independent State agency operating pursuant to Title 35 of the State Personnel and Pensions Article (Exhibit 1), having oversight authority and control for three voluntary participation employee benefit Plans: the 457 Deferred Compensation Plan (the “457 Plan”); the 403(b) Tax Deferred Annuity Plan (the “403(b) Plan”); and the 401(k) Savings and Investment Plan (the “401(k) Plan”), plus a related 401(a) Match Plan (the “401(a) Plan”) and together with the 457 Plan, the 403(b) Plan and the 401(k) Plan, the “Plans”). Until July 1, 1999, all Plans were entirely funded by employee contributions made through salary reduction agreements. Effective July 1, 1999, Plan participants who were also members of the State Employees “Modified” Pension System (most employees), began receiving a dollar-for-dollar match from the State into the 401(a) Plan, up to a maximum of \$600 per year. The State match contributions have been suspended or reduced from time to time through legislative action. Whether or not contributions occur, the 401(a) Plan has ongoing activity because of investment changes and account disbursements.

The 457 Plan is generally available to all State employees. As of December 31, 2012, there were approximately 29,440 participants and net assets of \$1.3 billion.

The 403(b) Plan is available to employees of State institutions of higher education. As of December 31, 2012, there were approximately 908 participants and net assets of \$70.8 million.

The 401(k) Plan is generally available to all State employees. On December 31, 2012 net assets totaled \$1.2 billion for over 34,500 participants.

The Board exercises its authority and control over the Plans primarily through contractual delegation of administrative responsibility to the Plan administrator, currently Nationwide Retirement Solutions (“NRS”). NRS is a subsidiary of Nationwide Life Insurance Company. NRS operates Plan wide and participant accounting, statement issuance, participant relations and investment activity on behalf of the Board. The Board also maintains an executive director and associated staff of MSRP to fulfill its oversight function and responsibility to educate Plan participants and State employees. The Plan administrator is compensated directly by the Board on a percentage of assets basis, and has no economic interest in (and receives no commissions on) Plan investments. Plan administrator employees operate the Plan bank accounts on a day-to-day basis pursuant to delegation of authority from MSRP.

Each of the Plans described above contains investment options which employees/participants may use to allocate and re-allocate investments on a daily basis. For reasons of timeliness, reallocations of investments are conducted via Federal Wire

Transfer (same day settlement). The current investment options available to participants are available at: [www.msrp.maryland.gov/pubs.htm](http://www.msrp.maryland.gov/pubs.htm).

### **3.02 Summary of Account Operation and Flow of Funds**

The current banking operations for the Plans use a total of six bank accounts as follows:

- Controlled disbursement account for the 457, 401(k), and 401(a) Plans;
- Controlled disbursement account for the 403(b) Plan;
- Depository account for the 457, 401(k), and 401(a) Plans;
- Depository account for the 403(b) Plan;
- Custodial account accommodation for 403(b) Plan mutual fund assets; and
- Depository account used to hold a small reserve for the Board for a limited time; Exists under the sole signatory authority of the Board.

All accounts are State accounts under the control of the Board. Plan accounts are for the benefit of Plan participants. The Board delegates disbursement authority to the Plan administrator as agent of the Board for the controlled disbursement and depository Plan accounts (the first four accounts listed above).

Funds are deposited into the depository accounts via checks (only a few per week), wires, and Automated Clearing House (ACH) transactions. The controlled disbursement account is funded from the depository accounts on a daily basis. In addition, the mutual fund trades are funded from the depository accounts. The Plan administrator has the authority to move money from the depository accounts to our National Securities Clearing Corp. (NSCC) clearing account at another banking institution for mutual fund settlement. Any money remaining in the account is swept into an overnight investment option.

#### **457, 401(a), 401(k) Plans**

Most transactions occur with respect to the depository accounts for the 457, 401(k) and 401(a) Plans. Transactions include wires, ACH transactions, and all electronic receipt and disbursement transactions. The controlled disbursement accounts for the 457, 401(a), 401(k) Plans are used for writing checks, typically to Plan participants that have requested a distribution from their account.

#### **403(b) Plan**

The depository account for the 403(b) Plan handles most transactions for the 403(b) Plan. Transactions include wires, ACH transactions and all electronic receipts and disbursements. The controlled disbursement account is used for writing checks, typically to 403(b) Plan participants that have requested a distribution from their accounts.

IRC §403(b)(7) requires that the shares of regulated investment companies (mutual funds) for a 403(b) Plan be held in a custodial account. Therefore, the MSRP must maintain a custodial account for these securities. However, pursuant to the terms of the Board's

agreement with the Plan administrator, the Plan administrator maintains all custodial and participant records, conducts all participant and Plan record keeping and statement activity, and performs all share transactions with respect to the Plans, including the 403(b) Plan, as part of its Plan record-keeping/administrator function. It is not anticipated that the successful Offeror would assume any active custodial functions with respect to the 403(b) Plan assets. The custodial relationship between the Board, the Plan administrator and the successful Offeror will be governed by a separate Custody Agreement. The form of Custody Agreement with NRS, the current Plan administrator, which the successful Offeror will be expected to execute, is attached to this RFP as Exhibit 2.

This Contract is not contingent on NRS serving as Plan administrator. During the term of this Contract, the Board has the right to terminate NRS' authority over the bank and custodial accounts described in this RFP and appoint a new entity to serve as Plan administrator. If this were to occur, the selected Offeror would be required to enter into a similar relationship with the new Plan administrator pursuant to a new Custody Agreement by and among the Board, the new Plan administrator and the successful Offeror, and, it would similarly be the case that such new Plan administrator would assume custodial responsibilities with respect to the 403(b) Plan assets.

### **Small Reserves Account**

In addition to the Plan accounts described above, there is a depository account for small reserves of less than \$100,000. This account is temporarily required by the Board's staff.

### **3.03 Minimum Qualifications**

As part of its proposal, each Offeror must demonstrate that it meets the requirements described in this section. Failure to do so may result in the rejection of the proposal.

1. The Offeror is a financial institution, as defined in State Finance and Procurement Article, §6-201, Annotated Code of Maryland (Exhibit 3).
2. The Offeror must have a Kroll Bond Rating Agency, Inc. (KBRA) rating, or similar financial strength rating from a nationally recognized statistical rating organization of at least a "C".
3. The Offeror's deposits must be insured by the Federal Deposit Insurance Corporation ("FDIC") up to the maximum amount required by law.
4. The Offeror must have a plan for business continuity and recovery as a result of disaster.
5. The Offeror must provide for the collateralization of all State funds deposited to any bank account that meets the requirements of §§ 6-202 and 6-209 of the State Finance and Procurement Article, (See Exhibits 4 and 5). Except as required or permitted under § 6-202 with respect to surety bonds or letters of credit provided

as collateral, all collateral must be held in the name of the State of Maryland either, (a) with the Federal Reserve Bank of Richmond, (b) with the Federal Reserve Bank of Boston, or (c) at the sole discretion of the Treasurer, on deposit with an independent financial institution acceptable to the Treasurer. The Offeror must agree to conform to all FDIC guidelines on collateral to insure clear title to all collateral held will rest with the Treasurer in the event of default. If an overnight investment program is proposed (above), that requires collateralization, the collateral pledged to secure account deposits may also be used to secure the overnight repurchase agreement.

6. In order to satisfy the legal requirements of IRC §403(b) (7), the Offeror must: (a) have legal authority to serve as a custodian of regulated investment company shares; and (b), have the resources to execute share transactions at the directions of MSRP should the Plan administrator's authority over the account(s) be suspended or terminated until the appointment of a substitute Plan administrator.

### **3.04 General Requirements**

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

1. The Offeror must provide an individual who will be the Board's principal contact for all operational aspects of services under the Contract. This individual must have sufficient authority to solve routine problems and command the resources necessary to address complex problems. The Offeror must agree to meet with the staff of the Board at least quarterly to review contract issues, to inform the staff of new services/technologies, and to plan improvements in service.
2. The Offeror shall maintain its KBRA Rating or similar financial strength rating from a nationally recognized statistical rating organization, such as Kroll Bond Rating Agency, Inc., of at least a "C" for the term of the Contract. Should the Offeror's rating drop below "C", the Maryland State Treasurer (the "Treasurer"), at her discretion, may dismiss the Offeror, require additional collateral of the Offeror, or take other actions as she deems necessary under the circumstances to protect the interests of the State of Maryland.
3. The Offeror shall provide collateral for accounts in accordance with the requirements set forth in §§ 6-202, 6-209, and 6-222 of the State Finance and Procurement Article. (See Exhibits 4, 5 and 6). Except as required or permitted under § 6-202 with respect to surety bonds or letters of credit provided as collateral, the collateral shall be on deposit in the name of the Treasurer, State of Maryland, either, (a) with the Federal Reserve Bank of Richmond, (b) with the Federal Reserve Bank of Boston, or (c) at the sole discretion of the Treasurer, on deposit with an independent financial institution acceptable to the Treasurer. The Offeror must agree to conform to all FDIC guidelines on collateral to insure clear title to all collateral held will rest with the Treasurer in the event of default. If an



overnight investment program is proposed (above), that requires collateralization, the collateral pledged to secure account deposits may also be used to secure the overnight repurchase agreement.

4. The Offeror agrees that the accounts shall at no time be debited for service fees.

### **3.05 Service Capabilities**

In its proposal, each Offeror must describe its ability to provide the following services:

1. The Accounts –The Offeror must create two depository accounts and two control disbursement accounts to perform the requested services under this RFP. One depository account and one control disbursement account will be used for the 457 Plan, the 401(k) Plan, and the 401(a) Plan; and one depository account and one control disbursement account will be used for the 403(b) Plan.

The Offeror must also provide an additional account for temporary reserve as described in section 3.02. This account is not likely to produce any significant activity.

Finally, the 403(b) Plan will require a custodial account for the mutual fund securities held in the 403(b) Plan under a Custody Agreement similar in form and substance to Exhibit 2. It is anticipated that this account will not require active custodial services to be provided by the selected Offeror.

2. Overnight Investments – The Offeror must provide an overnight investment vehicle for all funds remaining in any of the above accounts. Any proposed investment program must be limited to investments authorized by Section 6-222 of the State Finance and Procurement Article (Exhibit 6). Any investment program utilizing repurchase agreements must provide that collateral equal to the daily repurchase agreement amount is held with a third party trustee acceptable to the Office or at the Federal Reserve Bank in a joint custody account.
3. Overdraft Protection – Offerors must provide for overdraft protection for disbursements issued on any of the accounts created. Offerors must not reject valid items, upon proper and customer verification of the presenter, except under instructions from the Board. Offerors shall notify the Board within 24 hours of the presentment of any item which results in an overdraft and the Board will correct the item within 24 hours of such notice.
4. On-Line Information – Offerors must provide on-line data system access to the Plan Administrator. The current Plan administrator, NRS, is located in Columbus, Ohio. These services must, at a minimum, include the ability to monitor account balances, monitor wire receipts, initiate ACH transactions, and place stop payments on checks. The Plan administrator directs most of the daily transactions affecting the accounts and the Offeror will be expected to provide for on-line wire initiation from the Plan

administrator's Columbus, Ohio facilities. The Plan administrator needs the ability to process an ACH transmission file via FTP to the Offeror.

5. Reporting – The Offeror must provide the following monthly reports:
  - a. Monthly bank statements for each bank account within 5 business days after the close of each calendar month. The Offeror will send statements to NRS.
  - b. Monthly account analysis detailing the monthly fees incurred must be provided to the Board by the 25<sup>th</sup> calendar day of the following month.
  - c. Monthly investment report detailing the investments purchased pursuant to the overnight investment activity must be provided to the Board by the 15<sup>th</sup> day of the following month. This report must, at a minimum, show each day's investment purchases, the rate, and interest earned.
  - d. Monthly collateral report identifying collateral required and pledged must be provided to the Board by the 15<sup>th</sup> day of the following month.
  - e. Monthly report providing all the information required for verification of the invoice for services must be provided to the Board by the 15<sup>th</sup> day of the following month.
  - f. Monthly report of mutual fund shares held in connection with 403(b) Plan activity must be provided to the Board by the 15<sup>th</sup> day of the following month. This report must at a minimum include by date of settlement, the mutual fund shares received and the reported value of those shares on the purchase date.
6. Forgery Protection – Offerors must provide for the return of funds to any of the accounts created pursuant to this proposal within 30 days of receipt of a properly executed forgery affidavit from the Board. Should the Offeror determine subsequent to the return of funds that the affidavit is in error, or has been fraudulently completed, then upon presentation of reasonable evidence of this fact to the Board, the Board shall return the funds to the Offeror within 7 days.
7. Custodial Services – The purpose of this aspect of the procurement is not to place record-keeping or management services for the 403(b) Plan accounts upon the selected Offeror since those services are performed by the Plan administrator. The sole purpose of this aspect of the procurement is to ensure compliance with IRC §403(b)(7). The Offeror must perform the custodial services as set forth in a separate Custody Agreement in substantially the form attached as Exhibit 2 with respect to holding mutual fund shares purchased by 403(b) Plan participants. As is explained in Section 3.02 above, the Plan administrator is responsible for maintaining all custodial and participant records, conducting all participant and Plan record keeping and statement activity and performing all share transactions as

part of its Plan administrator function. Although it is not anticipated that the successful Offeror will actively provide custodial services with respect to the 403(b) Plan assets at this time because the custodial function has been delegated to the Plan administrator, as set forth in Section 3.03, paragraph 6 above, an Offeror must (a) have legal authority to serve as a custodian of regulated investment company shares; and (b) have the resources to execute share transactions at the direction of MSRP in the event that the Board suspends or terminates the current Plan administrator's authority over the custodial account until the appointment of a substitute Plan administrator.

8. Payee Positive Pay – The Offeror must provide a payee positive pay arrangement whereby the Board will report to the Offeror issued items daily.
9. Check Imaging – The Offeror must provide image paid checks and provide data on imaging to the Board.
10. The Offeror must maintain disaster recovery and business continuity plans.
11. The Offeror must agree to all terms and conditions set forth in the form of standard contract included as Appendix F to this RFP. Among other things, the Contract provides the following:
  - a. In all cases where there are any inconsistencies between the Contract and the Exhibits (which includes the RFP and the Contractor's technical and price proposals, and may include bank product terms and conditions or agreements), the Contract shall control. Further, if there is any conflict among the Exhibits, the RFP shall control.
  - b. Only the Procurement Officer may, by written order, make changes to the services to be provided under the Contract, which may result in an equitable adjustment to pricing.
  - c. The State will not agree to indemnify the Offeror for any claims or losses arising out of the performance of the Contract. The sole method of resolving any disputes under the Contract shall be in accordance with State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland (Dispute Resolution), and COMAR 21.10 (Administrative and Civil Remedies).
  - d. The governing law shall be the State of Maryland.
  - e. Any modifications to the Contract must be made in writing signed by both parties, not simply by providing written notice. While a bank may change its procedures by providing written notice, the Office must agree in writing to any other changes affecting the Contract.
  - f. The Offeror does not have the right to terminate the Contract prior to its expiration.

To the extent an Offeror proposes to incorporate into the Contract certain other bank product terms and conditions or agreements, the Offeror

acknowledges that the above provisions are not negotiable. Accordingly, if selected for award, any conflicts in the Offeror's proposed terms and conditions or agreements will be revised by the Office to be consistent with these provisions.

### **3.06 Desirable Features**

Check Cashing – Offerors are encouraged to provide in their proposal a service to cash, without fee, any State of Maryland check to an individual drawn on any of the following State accounts: income tax refund, public assistance, payroll, and unemployment benefits. Routine, reasonable identification may be required. The State will provide the specific account numbers, signatories and examples of such checks.

### **3.07 Transition**

Describe how you would transition from the current Contractor, if selected. Provide a comprehensive transition plan that includes a timeline. Indicate any resources or financial assistance that the Offeror will be required to provide in connection with the transition process.

### **3.08 Other Services for Consideration**

Describe any other services beyond those requested in this RFP that the Offeror believes could offer additional benefits to MSRP. Please include any suggested improvements to the payment process that might reduce the Board's overall costs.

### **3.09 Term**

The Office expects the Contract to be awarded pursuant to this RFP to begin July 1, 2013 and continue for a period of five years to June 30, 2018 with two one-year renewal options exercisable at the sole discretion of the Office on behalf of the Board.

### **3.10 Compensation**

1. Fees - The intent of this procurement is to generate the lowest net out-of-pocket costs for the State of Maryland. Only direct fees for services rendered, as identified in the attached Appendix A, Price Proposal Worksheet or subsequent Contract amendment(s), will be allowed.
2. Payment - MSRP will instruct the Plan administrator to make monthly payments to the Contractor for services performed under the Contract according to the fees identified in Appendix A, Price Proposal Worksheet. Any compensating balance calculations must settle on a monthly basis and result in a rolling cumulative earnings credit up to 12 months and/or a credit on an invoice directed to NRS (with a courtesy electronic copy to MSRP).

Payment will be made in arrears upon delivery of an approved invoice to the Plan administrator with a courtesy electronic copy to MSRP. There will be no adjustment for fees for either inflation or workload for the initial term of the Contract or the option period. The Offeror shall at no time debit any account for service fees.

Payments to the Contractor shall be made no later than 30 days after receipt by the Plan administrator of monthly invoices from the Contractor. Each invoice for services rendered must reflect the Contractor's federal tax identification number. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, are prohibited.

By submitting a response to this solicitation, the Offeror agrees to accept any payments from the State by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form may be downloaded from: [www.comp.state.md.us](http://www.comp.state.md.us), select "General Accounting Division," then "Electronic Funds Transfer Program, and then "Form X-10."

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## SECTION IV. PROPOSAL FORMAT

### **4.01 Transmittal Letter**

The Offeror must submit a brief transmittal letter prepared on the Offeror's business stationery to accompany the original and required copies of the two-volume proposal. The transmittal letter must be signed by an individual authorized to bind the Offeror to all statements, contained within the proposal. This transmittal letter should also indicate that, if selected, the Offeror will execute a contract materially the same of the form of Contract included as Appendix F, Collateral Security Agreement materially the same as Appendix H and Federal Home Loan Bank Letters of Credit Depository Agreement materially the same as Appendix I.

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

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

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

The volume containing the technical proposal shall be labeled "Volume I Technical Proposal – RFP for General Banking Services for The Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans, RFP #MSRP-05072013."

The technical proposal shall contain the transmittal letter (Section 4.01 above), the completed Bid/Proposal Affidavit (Appendix B), the Affidavit of Agreement Maryland Living Wage Requirements (Appendix D), and the Investment Activities in Iran Certification (Appendix E).

The technical proposal should be prepared in a clear and concise manner. 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:**

1. Request for General Information
  - a. Name of Offeror;
  - b. Mailing address of office from which the proposal is being submitted.
  - c. Name of individual who will represent the Offeror as the primary contact person on matters relating to the proposal; and
  - d. Telephone, e-mail and facsimile numbers of the individual identified in item c above.

2. Offeror's Qualifications

- a. Each Offeror shall specifically and clearly provide in its proposal information demonstrating that it meets the requirements described in Section 3.03 Minimum Qualifications.
- b. The Offeror shall include one copy of the Offeror's most recent audited financial statements with all attachments, including the unqualified audit opinion, in the original volume of its Technical Proposal. In lieu of a hard copy, Offeror's may elect to provide financial statements and related documents on compact disk as part of the electronic copy of the Technical Proposal, as specified in Section 1.08. Please indicate your election to do so in response to this Item.

3. Offeror's Capabilities

- a. Each Offeror shall specifically and clearly provide in its proposal the acknowledgements and agreements to comply with the requirements described in Section 3.04 General Requirements.
- b. Each Offeror shall specifically and clearly provide in its proposal a discussion of its ability to provide the services described in Section 3.05 Service Capabilities.
- c. If applicable, each Offeror shall include a brief discussion in its proposal of how it proposes to provide any of the additional services indicated in Section 3.06 Desirable Features.
- d. Each Offeror shall provide a discussion of its plan to transition from the current Contractor, if selected for award as stated in Section 3.07 Transition.
- e. Include a brief discussion of any other services Offeror believes could offer additional benefits as indicated in Section 3.08 Other Services for Consideration.

4. Prior Experience:

Describe selected engagements involving services similar to those required that were successfully performed for other organizations within the last three years. For each engagement, identify the name of the organization and their address, and provide a contact name and telephone number. In a chart form Offerors should summarize prior engagements, noting the services performed and the Offeror's employee who supervised the job.

5. Personnel:

List the personnel who are to be assigned to the project if the Offeror is selected for award of the Contract. Indicate the proposed project role or assignment of key personnel and provide their resumes.

6. References: Identify a minimum of three current references, including the name of each organization, the mailing and street address, point of contact, email and telephone number. Include a brief description of the services rendered for each referenced organization. The Procurement Officer or members of the Evaluation Committee may contact other references of their choosing.

7. Community Benefits

Provide information about the Offeror required to be considered under State Finance and Procurement Article, §6-203, Annotated Code of Maryland (See Exhibit 7) by the Treasurer in designating a financial institution for banking services, including, without limitation:

- a. The Offeror's rating on its most recent examination under the Federal Community Reinvestment Act of 1977, P.L. Number 95-128. If the Offeror operates in a state other than Maryland, the Offeror shall provide Maryland-specific information within the assessment area section of its Community Reinvestment Act report.
- b. A statement as to whether, during the previous 5 years, a court in the State of Maryland or in another state has found, in a final adjudication, that the Offeror, its affiliates or an entity acquired by the Offeror has violated any antidiscrimination statute or regulation.
- c. Information demonstrating the extent of the Offeror's assistance to small and minority-owned businesses over the past 5 years through:
  - 1) successfully making loans in Maryland through State or federal lending programs designed to assist small and minority-owned businesses;
  - 2) having an active outreach program to assist small and minority-owned businesses through which the Offeror has made efforts in Maryland; and
  - 3) establishing strategic partnerships in Maryland with entities whose mission is to provide technical assistance to small and minority-owned businesses.



8. Economic Benefit to the State of Maryland

Describe the benefits that will accrue to the Maryland economy as a direct result of the Offeror's performance of the contract resulting from the solicitation. Economic benefits include:

- a. The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers, and joint venture partners. Offerors should be as specific as possible and provide a breakdown of expenditures in this category. Do not provide actual dollars for each category. Include percent of the total budget requested.
- b. The numbers and types of jobs for Maryland residents resulting from the contract. Indicate job classifications, number of employees in each classification, and the aggregate payroll to which the Contractor has committed at both prime, and if applicable, subcontract levels. Do not provide actual dollars for each category. Include percent of the total budget requested.
- c. Tax revenues to be generated for Maryland and its political subdivisions as a result of this Contract. Indicate the tax category (sales tax, payroll taxes, inventory taxes, and estimated personal income taxes for new employee). Provide a forecast of the total tax revenues resulting from the Contract. Do not provide actual dollars for each category. Include percent of the total budget requested.
- d. Subcontract dollars committed to Maryland Small Business and Minority Business Enterprises. Do not provide actual dollars for each category. Include percent of the total budget requested.
- e. In addition to the factors listed above, the Offeror should explain any other economic benefits to the State of Maryland that would result from the Offeror's proposal

9. Standard Operating Agreements (if applicable)

If you intend to incorporate your own operating documents/agreements into the Contract, submit copies of your standard operating agreements associated with the services proposed to be provided. Include all documents that are required to open an account. Be sure to include documents that are referenced within other documents. The State reserves the right to refuse to incorporate any document not included in an Offeror's proposal.

10. Additional Information (Optional)

Include any additional information the Offeror deems relevant to this procurement and the satisfaction of the State's objectives.

11. Company Literature (if applicable):

If you provide company literature or other material in response to any RFP requirement, describe such literature or other material under this heading and include a reference to the applicable sections of the RFP by name and page citation. If you do not provide the requested section and page citations, the remainder of your response for that section may be considered complete without reference to the additional documents.

**4.04 Disclosures**

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

**4.05 Volume II - Price Proposal Requirements**

This volume shall be labeled "Volume II Price Proposal – General Banking Services for the Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans, RFP #MSRP-05072013." It must contain the completed Price Proposal Worksheet as shown in Appendix A. For any additional line items fees not included on Appendix A, include a Supplemental separate worksheet with the line item description, anticipated monthly volume and unit cost. Appendix A and any Worksheet Supplement must be signed by an individual authorized to bind the Offeror to all fees contained in the Price Proposal. The Price Proposal and any Worksheet Supplement are to be sealed in a separate envelope.

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## **SECTION V. EVALUATION AND SELECTION PROCEDURE**

### **5.01 Qualifying Proposals**

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

### **5.02 Evaluation Committee and Evaluation Criteria**

All qualifying proposals (those proposals that are reasonably susceptible to selection for Contract award) received by the submission deadline will be evaluated by an Evaluation Committee appointed by the Treasurer or the Treasurer's designee. The Evaluation Committee will rank the proposals and make a recommendation for award based on (1) technical merit (see Section 5.03), as demonstrated in the technical proposal and oral presentations, if any, and (2) price proposal, both as presented in the best and final offer, if any.

### **5.03 Technical Evaluation**

After the Procurement Officer selects the qualifying proposals (those proposals that are reasonably susceptible to selection for Contract award) the Evaluation Committee will conduct an initial evaluation of the technical merit of each qualifying proposal based on the information provided in the proposal in response to Section 4.03 Volume I - Technical Proposal. The Evaluation Committee's final technical evaluation may include information obtained during oral presentations, if any.

The Proposals will be evaluated on the basis of the following factors listed in the order of relative importance:

1. Offeror's Qualifications and Capabilities
2. Prior Experience
3. Personnel
4. References
5. Community Benefits
6. Economic Benefits to Maryland

#### **5.04 Evaluation of Costs/Fees**

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

#### **5.05 Best and Final Offer**

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

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

Following oral presentations, proposal negotiations, and reference checks, and site visits, if any, the Evaluation Committee will perform its final evaluations and will make a recommendation to the Procurement Officer for award of the Contract to the responsible Offeror 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 and price will be given equal weight in determining the Committee's final ranking. Contract award, if any, is subject to the approval of the Treasurer or Chief Deputy Treasurer upon recommendation of the Procurement Officer.

#### **5.07 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.

## 5.08 **Responsibility**

### 1. General

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

### 2. Discussions

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

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## **APPENDIX A**

### **PRICE PROPOSAL WORKSHEET INSTRUCTIONS**

1. Offerors must submit their fees identified on Appendix A, Price Proposal Worksheet for General Banking Services for the MSRP.
2. Additional fees not included on the Worksheet as Appendix A may be submitted on a Worksheet Supplement as a separate sheet. Describe the line item, anticipated monthly volume and unit cost.
3. An individual who is authorized to bind the Offeror must sign Appendix A and any Worksheet Supplement. The selected Offeror may not charge any fees not included in its proposal.
4. On Appendix A, nothing shall be entered on any Price Proposal Worksheet that alters or proposes conditions or contingencies on the proposed prices.
6. It is imperative that the Price Proposal Worksheet, Appendix A, is completed accurately, as well as any attached separate Worksheet Supplement containing additional fees. Any incorrect entries or inaccurate price by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12.

**APPENDIX A  
PRICE PROPOSAL WORKSHEET  
BANKING SERVICES FOR THE  
MARYLAND TEACHERS AND STATE EMPLOYEES RETIREMENT PLANS  
RFP #MSRP-05072013**

	<u>MONTHLY VOLUME</u>	<u>UNIT COST</u>	<u>TOTAL MONTHLY COST</u>
<b>BALANCE RELATED SERVICES</b>			
COLL OVERDRAFT INTEREST CHARGE	-		
FDIC ASSESSMENT	170,700		
<b>DEPOSITORY SERVICES</b>			
ACCOUNT MAINTENANCE	3		
BANK BY MAIL DEPOSIT	32		
DIRECT DDA STMT PER ACCT	30		
DIRECT STOP PAY INQUIRY	-		
RETURNS-CHARGEBACK	1		
CKS DEPOSITED	30		
STOP PAY AUTOMATED>12 MONTHS	15		
DEBITS POSTED-ELECTRONIC	30		
CREDITS POSTED-ELECTRONIC	163		
<b>GENERAL ACH SERVICES</b>			
ACH RETURN ITEM-NOC	14		
ACH MONTHLY MAINTENANCE (E)	2		
ACH INPUT-PC/DIRECT (E)	20		
ACH BLOCKS AUTH. INSTRUCTIONS	10		
ACH BLOCKS AUTH MAINTENANCE	4		
ACH ORIGINATED ADDENDA	1		

**APPENDIX A (Continued)**  
**PRICE PROPOSAL WORKSHEET**  
**RFP #MSRP-05072013**

ACH STANDARD REPORTS-FAX	23		
CONSUMER ON US CREDITS (E)	275		
CONSUMER OFF US CREDITS (E)	1,683		
ACH CREDIT RECEIVED TIME (E)	107		
ACH DEBIT RECEIVED TIME (E)	32		
<b>CONTROLLED DISBURSEMENTS</b>			
CONTROLLED DISB MAINTENANCE	2		
CONT DISB CKS PD-NOT TRUNCATED	863		
CONT DISB-FUNDING CREDITS	31		
<b>WIRE TRANSFER</b>			
DIRECT WIRE MAINTENANCE FEE	1		
ELEC WIRE OUT-DOMESTIC	18		
ELEC WIRE OUT-BOOK DB	10		
WIRE OUT-DRAWDOWN RESPONSE	2		
INCOMING DOMESTIC WIRE	51		
BOOK CREDIT	5		
<b>ACCOUNT RECONCILIATION</b>			
ARP PARTIAL MAINT-PAPER RPTS	1		
CHECK SORTING MAINTENANCE	2		
ARP ONLINE STMT SHORT TERM	-		
ARP FULL PPAY MAINT PAPER RPT	-		
ARP FULL PPAY INPUT PER ITEM	812		
ARP RECON TRANS DAILY	40		



**APPENDIX A (Continued)**  
**PRICE PROPOSAL WORKSHEET**  
**RFP #MSRP-05072013**

ARP SUB-ACCOUNTING	1		
<b>INFORMATION SERVICES</b>			
DIRECT PREVIOUS DAY MAX ITEM	-		
DIRECT PREVIOUS DAY MAINT	-		
DIRECT CURRENT DAY MAINT	-		
DIRECT PER ACCOUNT	-		
DIRECT PREVIOUS DAY STD ITEM	-		
DIRECT CURRENT DAY STD ITEM	-		
CPO PREM IR MAINTENANCE	1		
CPO PREM PDR ACCOUNT	5		
CPO PREM ITM STORD	2,869		
CPO PREM CDR ITEM	2,566		
MAINTFRAM TRANS-ODR ACCT	-		
MAINFRAME TRAN-PDR ITEM	2		
MAINFRAME TRAN-CDR SELECT ACCT	2		
<b>AUTOMATED SERVICES</b>			
AUTO PUBLIC FUND REPO INVEST	1		
AUTO MULTI-ACCT PUB FUND REPO	2		
<b>IMAGE</b>			
IMAGE ARCHIVE-7 YEARS	888		
IMAGE MAINTENANCE - DIRECT	4		
IMAGE RETRIEVAL BA DIRECT	10		

**APPENDIX A (Continued)**  
**PRICE PROPOSAL WORKSHEET**  
**RFP #MSRP-05072013**

<b>REMOTE DEPOSIT SERVICE</b>				
REMOT DEP-ACCOUNT MAINT		2		
RDSOL - ITEM STORAGE		-		
REMOTE DEP CK IMAG PROCESS		25		
<b>TOTAL ESTIMATED MONTHLY COSTS</b>				
<b>ESTIMATED ANNUAL CHARGES</b>				

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

Firm Name: \_\_\_\_\_

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

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

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

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

A. Authority

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. Certification Regarding Minority Business Enterprises.

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

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

(4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

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

B-2. Certification Regarding Veteran-Owned Small Business Enterprises. The undersigned bidder hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

(1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;

(2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;

(3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or

(6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1)—(5) of this regulation.

### C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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#### D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

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

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

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

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

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

#### E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

#### G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

#### I. CERTIFICATION OF TAX PAYMENT

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

#### J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

#### K. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of

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

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

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

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

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



**APPENDIX C**  
**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.dllr.state.md.us/> and clicking on Living Wage.

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

Contract No. \_\_\_\_\_

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

Address \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

Name of Authorized Representative: \_\_\_\_\_

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

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

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

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

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

\_\_\_\_\_  
Date

**APPENDIX E**  
**Investment Activities in Iran Certification**  
**(To be submitted with Technical Proposal)**

**CERTIFICATION REGARDING INVESTMENTS IN IRAN**

1. The undersigned certifies that, in accordance with State Finance & Procurement Article, §17-705;

(i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement; and

(ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702.

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

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

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

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

**APPENDIX F**

**CONTRACT FOR**

**GENERAL BANKING SERVICES FOR  
THE BOARD OF TRUSTEES OF THE  
MARYLAND TEACHERS AND STATE EMPLOYEES  
SUPPLEMENTAL RETIREMENT PLANS**

**BETWEEN**

**MARYLAND STATE TREASURER'S OFFICE**

**AND**

---

## CONTRACT

**THIS CONTRACT** (the "Contract") is made as of the \_\_\_ day of \_\_\_\_\_, 2013, by and between [NAME AND ADDRESS] (the "Contractor"), and the **MARYLAND STATE TREASURER'S OFFICE**, 80 Calvert Street, Annapolis, Maryland 21401 (the "Office"), on behalf of **THE BOARD OF TRUSTEES** (the "Board") **OF THE MARYLAND TEACHERS AND STATE EMPLOYEES SUPPLEMENTAL RETIREMENT PLANS** (the "MSRP"), offices of the **STATE OF MARYLAND** (the "State").

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

### ARTICLE I - SCOPE OF SERVICES

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

- 1.1. General Services. The Contractor shall provide general banking services as described in this Contract, which includes the following exhibits:

Exhibit	The Office's Request for Proposals for General Banking Services for The Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans, RFP #MSRP-05072013;
Exhibit	Contractor's Proposal dated ____;
Exhibit	Contractor's Price Proposal dated ____;
Exhibit	Contractor's Presentation dated ____;
Exhibit	Collateral Security Agreement dated ____;
Exhibit	Federal Home Loan Bank Letters of Credit Depository Agreement dated ____;
Exhibit	Designation of Depository dated ____;
Exhibit	Bid/Proposal Affidavit, Living Wage Affidavit, Contract Affidavit and Investment Activities in Iran Certification; and
Exhibit	Contractor's "Bank Operating Documents," dated ____.

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

- 1.3 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the

Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under Section 4.5., Disputes. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

## **ARTICLE II - TERM**

- 2.1. The initial term of this Contract shall be for the period beginning July 1, 2013 and ending June 30, 2018.
- 2.2. In addition there shall be two additional one-year renewal option, which may be exercised at the sole discretion of the Office.
- 2.3. After the end of the Contract term, should a new contract be awarded to a contractor other than the incumbent, the Contract shall be deemed to be extended, Contractor shall continue to perform Contract services, and Contractor shall continue to receive the compensation specified in the Contract for such services, until such time as the transition to the new contractor is complete. Contractor shall also assist the Office during any transition period to a new contractor and provide all necessary information and data to any subsequent contractor.
- 2.4. The provisions Sections 4.1 (Indemnification), 4.5 (Disputes), 4.6 (Maryland Law Prevails), 4.21 (Retention of Records/Audit), 4.25 (Ownership of Documents and Materials) and 4.26 (Patents, Copyrights and Trade Secrets) of this Contract shall survive termination of this Contract for any reason.

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

- 3.1. Contractor shall charge only the fees as described on Contractor's Price Proposal attached hereto as Exhibit \_\_ and any Supplement Price Proposal as attached hereto as Exhibit \_\_. These fees shall not be adjusted during the term of this Contract including any renewal option periods.
- 3.2. All invoices for goods and services shall be submitted to:

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



3.3 Invoices must be submitted either:

- (a) For ongoing services, on a monthly basis for goods or services rendered in the preceding month; or
  - (b) For one-time or periodic services, with 30 days of delivery or completion of the goods or services.
3. Except as provided in Article III. B. above, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after receipt by \_\_\_\_\_ Accounts Payable division 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. Indemnification**

The Contractor hereby agrees to indemnify and hold harmless the State (and its agencies, units or instrumentalities) from and against any and all losses, claims, damages, suits, actions, liabilities and/or expenses, including without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.

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

### **4.2. Tax Exemption**

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

### **4.3. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor sell, transfer, or otherwise assign its obligations under this Contract, or any portion thereof, or any of its rights or obligations hereunder, without the prior written approval of the State; provided, however, that the Contractor may subcontract

services under or make an assignment of this Contract to an affiliate of the Contractor that is fully capable of performing such services if the Contractor retains full responsibility for the Contract. Any such subcontract or assignment shall be subject to any terms and conditions that the Office deems necessary to protect the interest of the State. The Office shall not be responsible for the fulfillment of the Contractor's obligations to subcontractors.

#### 4.4. Non-Hiring of Officials and Employees

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

#### 4.5. Disputes

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

#### 4.6. Maryland Law Prevails

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

#### 4.7. Amendments

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

#### 4.8. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, 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 \$12.91 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 \$9.70 per hour. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

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

#### 4.12. Multi-Year Contracts Contingent upon Appropriations

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

#### 4.13. Termination for Default

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

#### 4.14. Termination for Convenience

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

#### 4.15. Delays and Extensions of Time

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

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

#### 4.16. Variations in Estimated Quantities

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

#### 4.17. Suspension of Work

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

#### 4.18. Pre-Existing Regulations

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

#### 4.20. Political Contribution Disclosure

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

throughout the Contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

#### 4.21. Retention of Records/Audit

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

#### 4.22. Compliance with Laws

The Contractor hereby represents and warrants that:

4.22.1. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time, hereafter may be necessary to remain so qualified;

4.22.2. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

4.22.3. It shall comply with all federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and

4.22.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

#### 4.23. Liability for Loss of Data

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

#### 4.24. Cost and Price Certification

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

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

- (2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer.

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

#### 4.25. Ownership of Documents and Materials

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

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

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

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

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



4.27. Confidentiality

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

**ARTICLE V - NOTICES**

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

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

If to The Board: \_\_\_\_\_  
\_\_\_\_\_

If to the Contractor: \_\_\_\_\_  
\_\_\_\_\_

**ARTICLE VI - ADMINISTRATION**

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

**ARTICLE VII - REPRESENTATIONS**

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

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

**ATTEST:**

**[FIRM NAME]**

\_\_\_\_\_

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

**WITNESS:**

**MARYLAND STATE  
TREASURER'S OFFICE**

\_\_\_\_\_

By: \_\_\_\_\_  
Nancy K. Kopp  
State Treasurer

**WITNESS:**

By: \_\_\_\_\_  
Bernadette T. Benik  
Chief Deputy Treasurer

**ACKNOWLEDGED AND ACCEPTED:**  
BOARD OF TRUSTEES OF THE  
MARYLAND TEACHERS AND STATE  
EMPLOYEES SUPPLEMENTAL  
RETIREMENT PLANS

By: \_\_\_\_\_  
Michael T. Halpin  
Executive Director

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

\_\_\_\_\_  
Melanie Mayo West  
Assistant Attorney General

**APPENDIX G  
(To be submitted with the Contract)  
CONTRACT AFFIDAVIT**

**A. AUTHORIZED REPRESENTATIVE**

**I HEREBY AFFIRM THAT:**

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

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

**I FURTHER AFFIRM THAT:**

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

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

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

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

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

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

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

#### F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 2013, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

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

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

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

**APPENDIX H**  
**COLLATERAL SECURITY AGREEMENT**

**THIS COLLATERAL SECURITY AGREEMENT** (the “Agreement”) is made and entered into as of \_\_\_\_\_ by and between the Maryland State Treasurer’s Office, on behalf of The Board Of Trustees Of The Maryland Teachers And State Employees Supplemental Retirement Plans (the “Depositor”), and \_\_\_\_\_ (the “Bank”), [a national banking association, organized under the laws of the United States] or [organized under the laws of Maryland] and authorized by law to do banking business in the State of Maryland.

**Background**

The Depositor, in accordance with Maryland State law, has designated the Bank as a depository for public funds of the Depositor under the General Banking Services for The Board Of Trustees Of The Maryland Teachers And State Employees Supplemental Retirement Plans Contract dated as of \_\_\_\_\_ (the “\_\_\_\_\_”). During the term of this Agreement, the Depositor will designate the officer, or officers, who singly or jointly will be authorized to represent and act on behalf of the Depositor in any and all matters of every kind arising under this Agreement. [This Agreement incorporates the terms of the \_\_\_\_\_ by reference between the Depositor and the Bank for all purposes; however, to the extent that any provision in the \_\_\_\_\_ conflicts with any provision in this Agreement, this Agreement will control.] All funds on deposit with the Bank to the credit of the Depositor are required to be secured by collateral of the kind and character permitted by §6-202 of the State Finance and Procurement Article of the Annotated Code of Maryland, as may be amended from time to time (“SFP §6-202”).

Under §6-209 of the State Finance and Procurement Article of the Annotated Code of Maryland, as may be amended from time to time (“SFP §6-209”), only certain collateral pledged by the Bank is required to be held by a custodian. For purposes of this Agreement, permissible collateral under SFP §6-202 shall be referred to as “Collateral” and any Collateral that is required to be held by a custodian under SFP §6-209 shall be referred to as “Securities Collateral.”

To perfect the security interest of the Depositor in Securities Collateral pledged by the Bank, a Federal Reserve Bank or a third party financial institution, acceptable to the Depositor, will hold the Securities Collateral in a custody account for the benefit of the Depositor. For purposes of this Agreement, such Federal Reserve Bank or third party financial institution shall be referred to as the “Trustee.”

In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, it is agreed as follows:

1. Under the terms of this Agreement, the Bank pledges to the Depositor, and grants to the Depositor a security interest in, the Securities Collateral owned by the Bank and held by the Trustee for the benefit of the Depositor, to secure the deposits held by the Bank for the Depositor as provided in SFP §6-209.
2. The total market value of the Securities Collateral held by the Trustee (which includes accrued interest or income to the extent it is not included in the market price) will be in an amount at least equal to such amount as is required under SFP §6-209, taking into account any other acceptable Collateral properly delivered to the Depositor. The market value of any security held as Securities Collateral will be obtained from a primary dealer. The Bank will provide a monthly collateral report to the Depositor at no charge. The report includes the market value and description of each item of Collateral pledged as of the last business day of the month.
3. The Bank has previously or will immediately deliver to the Trustee Securities Collateral of the kind and character permitted by SFP §6-202 of sufficient amount and market value to provide adequate collateral under SFP §6-209, taking into consideration any other acceptable Collateral properly delivered to the Depositor, for the funds of the Depositor deposited with the Bank. For so long as the depository relationship between the Depositor and the Bank shall exist hereunder, the Securities Collateral or substitute Securities Collateral, as provided for below, in an amount and market value sufficient to provide adequate Collateral, taking into consideration any other acceptable Collateral properly delivered to the Depositor, shall be kept and retained by the Trustee in trust.
4. The Bank shall cause the Trustee to accept the Securities Collateral and hold the same in trust for the purpose stated in this Agreement.
5. Should the Bank fail at any time to pay and satisfy, when due, any check, draft, or voucher lawfully drawn against any deposit, or in case the Bank becomes insolvent or in any manner breaches its contract with the Depositor, Depositor shall give written notice of such failure, insolvency or breach to the Bank, and the Bank shall have ten days to cure such failure, insolvency or breach. In the event the Bank shall fail to cure such failure, insolvency or breach within ten days, it shall be the duty of the Trustee, upon demand of the Depositor (supported by proper evidence of any of the above-listed circumstances), to surrender the Securities Collateral to the Depositor. The Depositor may sell all or any part of the Securities Collateral and out of the proceeds of such sale pay the Depositor all damages and losses sustained by it, together with all expenses of any and every kind incurred by it on account of such failure or insolvency, or sale. Following any sale, the Depositor shall provide an accounting to the Bank for the remainder, if any, of the proceeds or Collateral remaining unsold.



6. Any sale of all or part of the Securities Collateral, made by the Depositor under this Agreement may be either at public or private sale; provided, however, the Depositor shall give to the Bank ten days written notice of the time and place where such sale shall take place, and such sale shall be to the highest bidder for cash. The Depositor and the Bank shall have the right to bid at such sale.
7. If the Bank shall desire to sell or otherwise dispose of all or part of the Securities Collateral deposited with the Trustee, it may substitute other Securities Collateral of at least the same market value. Alternatively, the Bank may substitute other acceptable Collateral properly delivered to the Depositor in an amount equal to the market value of the Securities Collateral to be sold or otherwise disposed of. Such rights of substitution shall remain in full force and may be exercised by the Bank as often as it may desire; provided, however, that the aggregate market value of all Collateral pledged to the Depositor, shall be at least equal to the amount of Collateral required under SFP §6-209. If at any time, the aggregate market value of Securities Collateral deposited with the Trustee, taken together with any other acceptable Collateral properly delivered to the Depositor, is less than the total amount required under SFP §6-209, the Bank shall, upon request of the Depositor, deposit with the Trustee such additional Securities Collateral as may be necessary to cause the market value of such Securities Collateral, taken together with any other acceptable Collateral properly delivered to the Depositor, to equal the total amount of required Collateral. The Bank shall be entitled to income on securities held by the Trustee, and the Trustee may dispose of such income as directed by the Bank without approval of the Depositor.
8. The Bank shall cause the Trustee promptly to forward to the Depositor copies of safekeeping or trust receipts and/or activity reports covering all of the Collateral, including substitute Collateral as provided for herein.
9. If at any time the Securities Collateral in the hands of the Trustee shall have a market value, taking into account any other acceptable Collateral properly delivered to the Depositor, that exceeds the required amount of Securities Collateral, the Depositor shall authorize the withdrawal of a specified amount of Securities Collateral, and the Trustee may deliver this amount of Securities Collateral (and no more) to the Bank. Once the Bank receives the redelivered Securities Collateral, the Trustee shall have no further liability for such Securities Collateral.
10. Each of the Depositor and the Bank shall have the right to terminate this Agreement by advance written notice to the other of its election to do so. This Agreement shall be void from and after the expiration of sixty days

after the receipt of such notice, provided all provisions of this Agreement have been fulfilled.

11. When the depositor-bank relationship ceases to exist between the Depositor and the Bank, and when the Bank has properly paid out all deposits of the Depositor, the Depositor shall give the Trustee written notice to that effect and the Trustee shall, with the approval of the Depositor, redeliver to the Bank all Securities Collateral then in its possession belonging to the Bank.

12. A. Any notice required to be given to the Bank in writing shall be sufficient if delivered to the following address:

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

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

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

Maryland State Treasurer's Office  
Attn: Director of Treasury Management  
80 Calvert Street  
Annapolis, Maryland 21401  
Tel: (410)260-7129 – Fax: (410)974-2076

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

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

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

[Signatures Appear on the Following Page]

Executed by the undersigned duly authorized officers of the parties as of the date of this Agreement.

**ATTEST**

**[FIRM NAME]**

\_\_\_\_\_

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

**WITNESS:**

**MARYLAND STATE TREASURER'S  
OFFICE**

\_\_\_\_\_

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

Nancy K. Kopp  
State Treasurer

**WITNESS:**

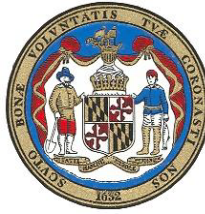
\_\_\_\_\_

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

Bernadette T. Benik  
Chief Deputy Treasurer

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

\_\_\_\_\_  
Melanie Mayo West  
Assistant Attorney General



**Maryland State Treasurer's Office**  
**FEDERAL HOME LOAN BANK LETTERS OF CREDIT DEPOSITARY AGREEMENT**

I. *DATE OF AND PARTIES TO THE AGREEMENT:* This agreement is effective \_\_\_\_\_. The parties to this agreement are the **Beneficiary** Organization, the state or local government unit identified below, and the **Depository**, the financial institution identified below that is authorized to serve as a depository for public funds under applicable law.

II. *AGREEMENT:* The Depository agrees to the following provisions necessary to meet the guidelines issued by the State Treasurer (the "Guidelines") for the use of Federal Home Loan Bank Letters of Credit as collateral by the Depository in accordance with Maryland State Finance and Procurement Article ("SFP") § 6-202:

- A. The letters of credit shall meet the definition of eligible collateral as outlined in SFP § 6-202.
- B. The Depository shall agree that the Beneficiary (identified below), as beneficiary, may, without notice to or consent by the Depository, demand payment under the letters of credit in the event the Beneficiary determines, in his/her sole discretion, that the Depository is insolvent or in default (a "Triggering Event"). For purposes of this Agreement, a "Triggering Event" shall include without limitation the following: (a) the Depository fails or refuses to return any public deposit upon demand or at maturity, (b) an order is issued by a supervisory authority restraining the Depository from making payments of deposit liabilities, or (c) a receiver is appointed for the Depository.
- C. The Depository shall agree that funds received by the Beneficiary due to the occurrence of a Triggering Event shall be deposited in an account designated by the Beneficiary.
- D. The Depository shall arrange for the issue of letters of credit which meet the requirements of SFP § 6-209(b) and delivery to the Beneficiary. All transactions involving letters of credit require the Beneficiary's approval as evidenced by this executed Federal Home Loan Bank Letters of Credit Depository Agreement.
- E. The Depository shall be responsible for all costs necessary in the use or confirmation of letters of credit issued to the Beneficiary and acknowledges that these costs shall not be a charge against the State or any public funds depositor.
- F. The Depository shall be subject to the jurisdiction of the courts of Maryland, or of courts of the United States which are located within

Maryland, for the purpose of any litigation arising out of SFP Title 6 or Article 95, Annotated Code of Maryland, as applicable.

- G. The Depository shall agree that any information, form, or report electronically transmitted to the Beneficiary shall have the same enforceability as a signed writing.
- H. The Depository shall submit proof that authorized individuals executed this Agreement on its behalf and the Depository shall further agree by resolution of its Board of Directors that this Agreement has been formally accepted and constitutes an official record of the Depository.
- I. Upon the Beneficiary's request, the Depository must include the value of the letter of credit on reports to the Beneficiary of collateral pledged to secure the public funds deposit.
- J. In the event the letter of credit or the Depository does not meet one or more of the Guidelines, as may be amended from time to time, the Depository shall, upon the Beneficiary's request, provide alternative eligible collateral under SFP § 6-202 in lieu of the letter of credit.
- K. Any reference in this Agreement to a specific statutory provision shall be deemed to refer to any applicable successor provision.

III. *AUTHORIZED SIGNATURES OF PARTIES*

**[DEPOSITARY BANK]  
through  
(the "Depository")**

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

**[STATE OF MARYLAND, by and  
the Maryland State Treasurer/LOCAL  
GOVERNMENTAL UNIT]  
(the "Beneficiary Organization")**

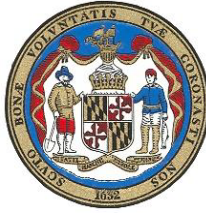
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Name of State Treasurer or Local  
Government Unit Financial Officer  
(the "Beneficiary")**

\_\_\_\_\_

Approved as to form and legal  
sufficiency

\_\_\_\_\_  
Counsel to the Beneficiary



## FEDERAL HOME LOAN BANK MEMBER RESOLUTION

\_\_\_\_\_  
Name of the Qualified Public Depository/Federal Home Loan Bank Member

Printed Legal

\_\_\_\_\_  
Home Office City and State

I, \_\_\_\_\_, \_\_\_\_\_  
Name Title

Certify that I am the official Custodian of Corporate Records for the above named Federal Home Loan Bank member, and that the following is a correct copy of a resolution adopted by the Board of Directors at a meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. This resolution appears in the minutes of said meeting and has not been modified.

### **BE IT resolved that:**

The Board of Directors of this Federal Home Loan Bank Member affirms that the Federal Home Loan Bank Letters of Credit Depository Agreement effective \_\_\_\_\_ has been formally accepted, and constitutes an official record of this institution.

WITNESS my signature under seal \_\_\_\_\_  
Printed Legal Name of Federal Home Loan Bank Member

this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Signature of Official Custodian of Corporate Records\*

\_\_\_\_\_  
Signature and Title of Second Officer or Director\*

\*NOTE: If the official custodian of corporate records is the signing officer on the form, adopted, a second officer or director of the Federal Home Loan Bank Member shall also sign.

**APPENDIX J**  
**DESIGNATION OF DEPOSITORY**

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

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

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

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

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

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

IN WITNESS WHEREOF, I have executed this Designation as of this \_\_\_\_ day of \_\_\_\_\_, 2013.

STATE OF MARYLAND

By: \_\_\_\_\_  
Nancy K. Kopp  
Treasurer



## EXHIBIT 1

### Title 35 State Personnel and Pensions Article Annotated Code of Maryland

#### § 35-101. Definitions

- (a) In general. -- In this title the following words have the meanings indicated.
- (b) Board. -- "Board" means the State Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans.
- (c) Supplemental retirement plans. -- "Supplemental retirement plans" means the deferred compensation, tax sheltered annuity, salary reduction savings plans, and any other plans authorized by this title.

#### § 35-102. Effects of plans

- (a) In general. -- The supplemental retirement plans are in addition to any other retirement, pension, or benefit system established by the State.
- (b) Effect on other benefits. -- A deferral of compensation under any of the supplemental retirement plans does not reduce the amount of any retirement, pension, or other benefit provided by law.

#### § 35-201. Board established

There is a Board of Trustees of the Maryland Teachers and State Employees Supplemental Retirement Plans.

#### § 35-202. Membership

- (a) Composition. --
- (1) The Board consists of nine members appointed by the Governor.
  - (2) Of the nine members:
    - (i) three shall be from any of the following units:
      1. the Department of Budget and Management;
      2. the Department of Education;
      3. the Office of the State Comptroller;
      4. the Office of the State Treasurer;
      5. the State Retirement Agency; or
      6. the Maryland Higher Education Commission;
    - (ii) three shall be individuals who are eligible to participate in one of the supplemental retirement plans, at least one of whom shall be an employee described in § 403(b)(1)(A)(ii) of the Internal Revenue Code; and
    - (iii) three shall be members of the public who are not eligible to participate in any of the supplemental retirement plans, at least one of whom shall have experience with deferred compensation and salary reduction plans.
- (b) Tenure; vacancies. --
- (1) The term of a member is 4 years.
  - (2) The terms of members are staggered as required by the terms provided for members of the Board on October 1, 1994.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) Removal. -- The Governor may remove a member for incompetence or misconduct.

#### **§ 35-203. Chairman**

The Governor shall appoint a chairman from among the members of the Board appointed under § 35-202(a)(2)(i) or (ii) of this subtitle.

#### **§ 35-204. Meetings; expenses; staff**

(a) Meetings. -- The Board shall meet at least quarterly at the times and places it determines.

(b) Reimbursement for expenses. -- Each member of the Board is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) Staff and expenses. --

(1) The Board may employ a staff in accordance with the State budget.

(2) The Board may hire consultants, administrators, and other professionals as necessary to help implement, maintain, and administer the supplemental retirement plans.

(3) (i) Except as provided in subparagraph (ii) of this paragraph or otherwise by law, employees of the Board are subject to the provisions of Division I of this article that govern nontemporary employees.

(ii) Employees of the Board whose labor is predominately intellectual and who hold positions that the Board designates as professional or technical positions involving specialized skill, education, and knowledge are in the executive service, management service, or are special appointments of the skilled service or the professional service in the State Personnel Management System.

(4) (i) Except as provided in paragraph (5) of this subsection, all expenses, including employee costs, incurred to implement, maintain, and administer the supplemental retirement plans shall be paid from the contributions to or the income or assets of the supplemental retirement plans.

(ii) Each supplemental retirement plan shall pay a proportionate share of the expenses specified in subparagraph (i) of this paragraph.

(iii) Administrative expenses to implement, maintain, and administer the supplemental retirement plans shall be as provided in the State budget.

(5) At the request of the Board, and subject to an agreement governing the payment of costs, a unit of State government shall help to implement, maintain, and administer the supplemental retirement plans.

#### **§ 35-205. Duties of the Board**

(a) In general. -- The Board shall:

(1) implement, maintain, and administer the supplemental retirement plans;

(2) submit progress and status reports to participants in the supplemental retirement plans;  
and

(3) submit an annual report to the Governor and, subject to § 2-1246 of the State Government Article, to the General Assembly.

(b) Determining eligibility in cases of doubt. -- In case of doubt as to whether an individual is eligible to participate in any of the supplemental retirement plans, the Board shall determine the individual's eligibility.

**§ 35-301. Fiduciary**

(a) "Fiduciary" defined. -- In this section, "fiduciary" means a person with discretionary authority or control over:

- (1) the management or administration of any of the supplemental retirement plans; or
- (2) the management or disposition of the assets of any of the supplemental retirement plans.

(b) Duties and responsibilities. -- A fiduciary is subject to the duties and responsibilities imposed on fiduciaries by Title 21, Subtitle 2 of this article.

(c) Indemnification and insurance. -- A fiduciary is entitled to indemnification and insurance as provided under § 21-207 of this article.

**§ 35-302. Restrictions on investments**

(a) Supplemental retirement plans. -- Assets of the supplemental retirement plans may be deposited and invested in accordance with the investment elections allowed under the supplemental retirement plans notwithstanding any other law limiting the types of investments that may be made with State funds or imposing conditions on the deposit of State funds.

(b) Use of minority business enterprises for brokerage and management services. --

(1) (i) The Board shall attempt to use to the greatest extent feasible minority business enterprises to provide brokerage and investment management services to the Board consistent with minority business purchasing standards applicable to units of State government under the State Finance and Procurement Article and consistent with the fiduciary duties of the Board.

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

(2) (i) To assist it in achieving the goal described under paragraph (1) of this subsection, the Board 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 title.

(ii) The measures undertaken by the Board shall include the use of a wide variety of media, including the Maryland Teachers and State Employees Supplemental Retirement Plans' Web site, to provide notice to a broad and varied range of potential providers about the brokerage and investment management services opportunities afforded by the Maryland Teachers and State Employees Supplemental Retirement Plans.

(3) In consultation with the Governor's Office of Minority Affairs, the Board shall develop guidelines to assist the Board in identifying and evaluating qualified minority business enterprises in order to help the Maryland Teachers and State Employees Supplemental Retirement Plans achieve the objective for greater use of minority business enterprises for brokerage and investment management services.

(4) On or before September 1 each year, the Board 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 Board in the immediately preceding fiscal year;

(ii) the percentage and dollar value of the assets that are under the control of the Board that are under the investment control of minority business enterprise brokerage and investment management services firms for each allocated asset class; and

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

**§ 35-401. Tax sheltered annuity plan generally**

There is a tax sheltered annuity plan for eligible participants as allowed by § 403(b) of the Internal Revenue Code.

**§ 35-402. Participants in plan**

An individual is eligible to participate in the tax sheltered annuity plan if the individual:

- (1) is eligible for coverage under § 403(b) of the Internal Revenue Code; and
- (2) is an officer or employee of:
  - (i) this State; or
  - (ii) any other governmental entity in this State, including a county board of education.

**§ 35-403. Contributions**

Subject to the conditions that the Board may set and in accordance with a contract between the participant and the employer, a participant may have contributions made to the tax sheltered annuity plan on the participant's behalf by a salary reduction or in place of a salary increase.

**§ 35-404. Effect on other plans**

This section does not prohibit a county board of education from adopting a plan for its employees that qualifies under § 403(b) of the Internal Revenue Code.

**§ 35-501. Salary reduction savings plan generally**

(a) In general. -- There is a salary reduction savings plan for eligible participants as allowed by § 401(k) of the Internal Revenue Code.

(b) Federal approval required. -- The Board shall obtain approval from the Internal Revenue Service for the salary reduction savings plan.

**§ 35-502. Participants in plan**

An individual is eligible to participate in the salary reduction savings plan if the individual is:

- (1) an officer of this State; or
- (2) an employee of this State, including a contractual employee.

**§ 35-601. Deferred compensation plan generally**

There is a deferred compensation plan for eligible participants as allowed by § 457 of the Internal Revenue Code.

**§ 35-602. Participants in plan**

An individual is eligible to participate in the deferred compensation plan if the individual is:

- (1) an officer of this State;
- (2) an employee of this State, including a contractual employee;
- (3) an employee of the Northeast Maryland Waste Disposal Authority; or
- (4) an independent contractor who performs service under § 21-304(c) of the Education Article.

**§ 35-701. Established**

There is a Defined Contribution Plan for eligible participants as allowed by § 401(a) of the Internal Revenue Code.

**§ 35-702. Eligibility**

An individual is eligible to participate in the Defined Contribution Plan if the individual is an eligible employee as defined in § 32-101 of this article.

## EXHIBIT 2

### MARYLAND 403(b) PLAN CUSTODY AGREEMENT

This Agreement is executed this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the State of Maryland (hereinafter called "STATE"); \_\_\_\_\_(hereinafter called "BANK") and Nationwide Retirement Solutions (hereinafter called "NRS").

WHEREAS, the STATE has established a Plan (hereinafter called "PLAN") to qualify under Section 403(b) of the Internal Revenue Code of 1986, as amended (hereinafter called "CODE"), under the authority of Maryland Code State Personnel & Pensions Art. §35-401 of the Maryland Code, which PLAN is administered by the Board of Trustees of Maryland Teachers and State Employees Supplemental Retirement Plans (hereinafter called "BOARD") as provided in Maryland Code State Personnel & Pensions Art. §35-205; and,

WHEREAS, the assets of the Plan are, among other investment options, to be invested in shares ("SHARE (S)") of Regulated Investment Companies ("COMPANIES") pursuant to the provisions of Section 403(b) (7) of the CODE, for the exclusive benefit of PLAN participants, and as provided in the PLAN such assets may not be forfeited, transferred or withdrawn except as permitted under Sections 403(b) (1), 403(b) (7), and 403(b) (11) of the CODE and such relevant CODE provisions as are enacted or amended while this Agreement is in effect; and

WHEREAS, the BOARD, under the authority of State Personnel & Pensions Art. §35-205, has enlisted the services of NRS to administer the PLAN, with duties to keep individual records of participant benefits and to direct the investment of contributions in SHARES of the COMPANIES as those SHARES are made available by the decision of the BOARD, allocating contributions according to participants' expressed directions; and

WHEREAS, the Board has selected BANK to be Custodian for the PLAN, for all fund transfers within the PLAN, and specifically for the participant interests for the 403(b) (7) accounts;

NOW, THEREFORE, in consideration of the promises set forth below, the parties hereto do agree as follows:

1. ALL SHARE transactions occurring within the PLAN, including payroll deposits, asset transfers to, and receipts from, COMPANIES and other investment providers, if available, and distributions of SHARES to participants, shall be processed according to the terms of this Agreement and the separately executed "Custodial Depository Agreement" which establishes a custodial checking account, which shall be entitled "Maryland Teachers and State Employees Supplemental Retirement PLANS ~ 403(b) Plan Custodial Account ("CUSTODIAL ACCOUNT"). Participant rights to amounts within this account are nonforfeitable. Participants may not surrender their interest in the Plan and receive distributions of such interest unless such distribution is permitted under §403(b) of the Internal Revenue Code; but responsibility for authorizing such distribution shall be the obligation of NRS, acting as Administrator of the Plan under direction from the BOARD as provided in Sections 3 and 4 hereof.

2. NRS, as authorized by the BOARD, as Administrator shall direct all transfers to and from the CUSTODIAL ACCOUNT and shall have the sole responsibility for said directions and for maintaining all participant sub-account records for SHARES of the COMPANIES as shall be

made available to participants under the PLAN. The BOARD shall select such COMPANIES to be made available under the PLAN, and shall publish a current list thereof at <http://www.msrp.maryland.gov/pubs.htm>.

3. The BANK shall have the right to rely on NRS' instructions concerning the disposition of funds in the CUSTODIAL ACCOUNT and shall be held harmless for any liability arising thereby, under the specific terms of a separate agreement, except in such cases where the BANK acts upon NRS instructions which have been countermanded by the BOARD through written notice to the BANK.

4. Regulated investment company accounts or SHARE holdings shall be issued in the name of the BANK as custodian for the exclusive benefit of participants in the PLAN to the extent of the interest of each of the SHARES in the COMPANY. Participant rights in such investments shall be recognized as provided in the PLAN; provided, however, that NRS may maintain master accounts with certain mutual fund complexes, in which case the regulated investment company accounts or SHARE holdings shall be issued in the name of the PLAN.

5. The BANK shall be the custodian of all regulated investment company stock and associated cash of the PLAN that is held within the custodial account for the benefit of the PLAN participants.

6. All amounts within the CUSTODIAL ACCOUNT described herein and any earnings thereon shall be devoted exclusively to the PLAN participants and shall not be subject to claims of the employer's creditors.

7. This Agreement is not intended to modify any 403(b) administrative agreement that has been or will be executed between the BOARD and NRS, or to limit the duties and responsibilities of NRS as set forth therein. To this end the CUSTODIAL ACCOUNT shall be held for the exclusive benefit of participants and their beneficiaries, and NRS shall have no right to any account earnings or liability for PLAN expenses. The custodial account shall be administered by the BOARD and NRS in full compliance with all applicable IRS regulations for ownership, investment, transfer, withholding, distribution and accounting of 403(b) accounts. The BOARD shall have the unilateral right to suspend or terminate NRS ability to direct transactions of the CUSTODIAL ACCOUNT, with or without cause, provided that thirty days prior written notice is given to NRS and BANK. This provision does not alter the agreed termination provisions in the said administrative agreement, which provisions will be applied to determine the rights and responsibilities of the parties at the time of the termination. The Board, acting in accordance with its contract responsibilities, and in conjunction with and under the authority of the State Treasurer, shall have the right to terminate this custodial relationship and substitute a new or different relationship with a different custodial bank provided that ninety days prior written notice is given to NRS and BANK.

8. Duplicate monthly statements of the CUSTODIAL ACCOUNT operations should be sent to the addresses set forth in Section 13, below.

9. Outgoing wire transfers from the CUSTODIAN for investment in SHARES may only be made to the entities on the list attached as Exhibit A hereto, which list shall be updated by the BOARD as necessary as provided in this Agreement.

10. NRS shall be responsible for all reconciliations of account statements.

11. The BOARD and NRS agree to execute and deliver such usual and customary account authorizations as may be required by the BANK from time to time.

12. The BOARD authorizes NRS to effect all fund transfers under this Agreement, which transfers may be directed by any one of the NRS signatories listed below. Upon countermand of NRS directions by the BOARD, the BOARD may assume direction of such transfers, through any one of the BOARD signatories listed below. The authorized signatories for the account are:

NRS:

BOARD:

13. Addresses to which notices and/or statements may be sent by ordinary first class mail are:

Executive Director  
Maryland Teachers and State  
Employees Supplemental Retirement Plans  
William Donald Schaefer Tower  
6 St. Paul Street, Suite 200  
Baltimore, Maryland 21202

Nationwide Retirement Solutions  
10 W. Nationwide Blvd  
Columbus, Ohio 43215

### EXHIBIT 3

#### State Finance and Procurement Article

§6-201.

(a) In this subtitle the following words have the meanings indicated.

(b) "Banking institution" means an institution that is incorporated under the laws of the State as a State bank, trust company, or savings bank.

(c) "Collateral" means collateral that is listed under § 6-202 of this subtitle.

(d) "Deposit insurance" means insurance by:

(1) the Federal Deposit Insurance Corporation; or

(2) the Resolution Trust Corporation created under § 21A of the Federal Home Loan Bank Act (12 U.S.C. § 1441a.).

(e) "Financial institution" means:

(1) any banking institution;

(2) any national banking association;

(3) an institution that is incorporated under the laws of any other state as a bank; and

(4) an institution that is incorporated under the laws of this State or of the United States as a savings and loan association.

(f) "National banking association" means an institution that is incorporated under federal law as a bank.

(g) "State money" for purposes of §§ 6-209 and 6-210 of this subtitle includes moneys in a bank account maintained under the control of an employee or official of the clerk of the court or register of wills.



## EXHIBIT 4

### State Finance and Procurement Article

§6-202.

Collateral that may be used under this subtitle shall be:

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

## EXHIBIT 5

### State Finance and Procurement Article

§6-209.

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

## EXHIBIT 6

### 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 for each allocated asset class; and

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

## EXHIBIT 7

### State Finance and Procurement Article

§6-203.

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

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

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

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

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

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

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

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

(i) an affiliate of the financial institution; or

(ii) an entity acquired by the financial institution.

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

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

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

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

**EXHIBIT 8**  
**State Finance and Procurement Article**  
**Title 17. Special Provisions – State and Local Subdivisions**  
**Subtitle 7. Investment Activities in Iran**

**§17-701. Definitions**

- (a) In this subtitle the following words have the meanings indicated.
- (b) “Energy sector of Iran” means activities to develop petroleum or natural gas resources or nuclear power in Iran.
- (c) “Financial institution” has the meaning stated in Section 14 of the Iran Sanctions Act of 1996 (Public Law 104-172).
- (d) “Iran” includes the government of Iran and any agency or instrumentality of Iran.
- (e) “Person” includes:
- (1) a natural person, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group;
  - (2) a governmental entity or instrumentality of a government, including a multilateral development institution, as defined by the federal International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or
  - (3) any parent, successor, subunit, direct or indirect subsidiary of, or any entity under common ownership or control with, an entity described in item (1) or (2) of this subsection.
- (f) “Public body” means:
- (1) the State;
  - (2) a county, municipal corporation, or other political subdivision;
  - (3) a public instrumentality; or
  - (4) any governmental unit authorized to award a contract.

**§17-702. Engagement of Investment activities in Iran**

For purposes of this subtitle, a person engages in investment activities in Iran if:

- (1) the person provides goods or services of \$20,000,000 or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (2) the person is a financial institution that extends \$20,000,000 or more in credit to another person for 45 days or more if the person to whom the credit is extended:
  - (i) will use the credit to provide goods or services in the energy sector of Iran as described in item (1) of this section; and
  - (ii) is, at the time of the extension of credit, identified on a list created under § 17-704 of this subtitle as a person engaging in investment activities in Iran.

**§17-703. Ineligibility to bid on, submit a proposal for, or enter into or renew contract**

A person that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on a list created by the Board under § 17-704 of this subtitle as a person engaging in investment activities in Iran is ineligible to, and may not bid on, submit a proposal for, or enter into or renew a contract with a public body for goods or services.

**§17-704. List of persons engaged in investment activities in Iran**

- (a) (1) On or before December 31, 2012, the Board shall use credible information available to the public to create a list of persons that the Board determines to be engaged in investment activities in Iran as described in § 17-702 of this subtitle.

- (2) The Board shall update the list at least every 180 days.
- (3) Before the Board includes a person on the list, the Board shall provide the person with 90 days' written notice that:
  - (i) the Board intends to include the person on the list; and
  - (ii) inclusion on the list would make the person ineligible to bid on, submit a proposal for, or enter into or renew a contract with a public body for goods or services.
- (4) The notice required under paragraph (3) of this subsection shall specify that if the person ceases engagement in investment activities in Iran as described in § 17-702 of this subtitle, the person may become eligible for a future contract or contract renewal with a public body for goods or services on removal from the list.
  - (b) (1) The Board shall provide a person with an opportunity to comment in writing to the Board that the person is not engaged in investment activities in Iran.
  - (2) If the person demonstrates to the Board that the person is not engaged in investment activities in Iran as described in § 17-702 of this subtitle, the Board may not include the person on the list.
  - (c) The Board shall remove a person from the list if the person demonstrates to the Board that the person no longer is engaged in investment activities in Iran as described in § 17-702 of this subtitle.
  - (d) The Board shall make every reasonable effort to avoid erroneously including a person on the list.
  - (e) The Board shall publish the list on the Internet.

#### **§17-705. Bid or proposal for contract**

- (a) On or after January 1, 2013, a public body shall require a person that submits a bid or proposal to the public body for a contract for goods or services, or otherwise proposes to enter into or renew a contract for goods or services with the public body, to:
  - (1) certify at the time the bid is submitted or the contract is renewed that the person:
    - (i) is not identified on the list created by the Board as a person engaging in investment activities in Iran as described in § 17-702 of this subtitle; and
    - (ii) is not engaging in investment activities in Iran as described in § 17-702 of this subtitle; or
  - (2) if the person is unable to make the certification under item (1) of this subsection, provide the public body, under penalty of perjury, a detailed description of the person's investment activities in Iran.
- (b) A public body shall submit any information provided to the public body under subsection (a)(2) of this section to the Board.

#### **§ 17-706. False certification**

- (a) Notice and opportunity to be heard. --
  - (1) If a public body, using credible information available to the public, determines that a person has submitted a false certification under § 17-705(a)(1) of this subtitle, the public body shall provide written notice to the person and an opportunity for the person to demonstrate in writing that the person is not engaged in investment activities in Iran.
  - (2) If the person fails to demonstrate to the public body within 90 days after the public body provides notice under paragraph (1) of this subsection that the person is not engaged in investment activities in Iran, the public body shall report to the Board and the Attorney General:

(i) the name of the person determined to have submitted a false certification; and

(ii) the information on which the public body made its decision.

(b) Action by Attorney General. --

(1) The Attorney General may institute an action against a person determined to have submitted a false certification under § 17-705(a)(1) of this subtitle.

(2) An action brought under this section shall be brought within 3 years from the date the certification is made.

(c) Penalties. -- If, in an action brought under this section, a court determines that a person submitted a false certification:

(1) the person shall pay all reasonable costs and fees incurred in the civil action, including:

(i) any costs incurred by the public body for the investigation that led to the finding of the false certification; and

(ii) all reasonable costs and fees incurred by the Attorney General in bringing the action;

(2) the court may impose a civil penalty equal to the greater of \$ 1,000,000 or twice the amount of the contract for which the false certification was submitted;

(3) the public body may terminate the contract for which the false certification was submitted; and

(4) the person is ineligible to bid on a contract with a public body for a period of 3 years from the date of the court order.

(d) Protest of award of contract based on false certification. --

(1) Except as provided in paragraph (2) of this subsection, an unsuccessful bidder or any other person may not protest the award of a contract or contract renewal on the basis of a false certification.

(2) Paragraph (1) of this subsection does not prohibit a public body from filing a protest objecting to the award of a contract or contract renewal on the basis of a false certification.

(e) No private right of action. -- This subtitle does not create or authorize a private right of action.

### **§ 17-707. Preemption**

This subtitle preempts any law, ordinance, rule, or regulation of any local governing body involving procurement contracts for goods or services with a person engaged in investment activities in Iran.