

STATE OF MARYLAND
MARYLAND STATE TREASURER'S OFFICE

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

REQUEST FOR PROPOSALS
FOR
FINANCIAL ADVISOR TO THE
MARYLAND DEPARTMENT OF TRANSPORTATION

RFP #FA-MDOT-04042011

Due Date: May 10, 2011

Issued: April 4, 2011

KEY INFORMATION SUMMARY SHEET

**Maryland State Treasurer's Office
Request for Proposals
For
Financial Advisor to the
Maryland Department of Transportation
RFP #FA-MDOT-04042011**

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

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

Solicitation Issue Date: April 4, 2011

Deadline for Receipt of Questions: April 20, 2011 by 2:00 p.m. local time

Proposal Due Date and Time: May 10, 2011 by 2:00 p.m. local time

Oral Presentation, if any May 25-26, 2011

Tentative Contract Award: June 10, 2011

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

TABLE OF CONTENTS

	Page
I. Procurement Objective	
1.01 Summary Statement	1
1.02 Issuing Office and Procurement Officer	1
1.03 Procurement Method	1
1.04 Contract Officer	1
1.05 Use of “e-Maryland Marketplace”	2
1.06 Schedule of Events	2
1.07 Pre-proposal Conference	2
1.08 Questions and Inquiries	2
1.09 Submission Deadline	2
1.10 False Statements	3
1.11 Duration of Offer	3
1.12 Electronic Distribution	3
 II. General Information	
2.01 Purpose	4
2.02 Revisions to the RFP	4
2.03 Cancellation of the RFP; Rejection of All Proposals	4
2.04 Proposal Acceptance; Discussions	4
2.05 Oral Presentation	4
2.06 Incurred Expenses	5
2.07 Proposal Form	5
2.08 Multiple Proposals	5
2.09 Access to Public Records Act Notice	5
2.10 Protests	5
2.11 Proposal Opening	6
2.12 Bid/Proposal Affidavit	6
2.13 Contract Affidavit	6
2.14 Living Wage Requirements	6
2.15 Acceptance of Terms and Conditions	7
2.16 Minority Business Enterprises	7
2.17 No Guarantee of Work	7
2.18 Order of Precedence	7
 III. Scope of Services and Requirements	
3.01 Background	8
3.02 Minimum Requirements	8
3.03 Services	9
3.04 Exclusion	11
3.05 Independence	11
3.06 Term	11
3.07 Compensation	12

IV. Proposal Format

4.01	Transmittal Letter	13
4.02	Two-Volume Submission	13
4.03	Volume I - Technical Proposal	13
4.04	Disclosures	17
4.05	Volume II - Pricing Proposal	17

V. Evaluation and Selection Procedure

5.01	Qualifying Proposals	18
5.02	Evaluation and Selection Committee	18
5.03	Technical Evaluation	18
5.04	Evaluation Criteria	18
5.05	Price Evaluation	18
5.06	Responsibility	19
5.07	Best and Final Offer	19
5.08	Final Evaluation and Recommendation for Award	20
5.09	Debriefing of Unsuccessful Offerors	20

Appendices

A.	Price Proposal	21
B.	Bid/Proposal Affidavit (complete and submit with offer)	24
C.	Contract Affidavit (complete and submit after Contract award)	31
D.	Living Wage Requirements for Service Contracts	32
E.	Living Wage Affidavit of Agreement	34
F.	Form of Standard Contract	36
G.	Minority Business Enterprise Forms	49

SECTION I. PROCUREMENT OBJECTIVE

1.01 Summary Statement

The State Treasurer's Office (the "Office") on behalf of the Maryland Department of Transportation ("MDOT"), is requesting proposals from responsible firms to act as Financial Advisor. The successful Offeror will assist MDOT in the development of the agency's financial strategies to meet its capital investment needs at an acceptable cost; assist in the technical aspects of designing financial arrangements and instruments, to include the sale of Consolidated Transportation Bonds, County Transportation Revenue Bonds, other innovative debt financings such as Certificates of Participation and Grant Anticipation Revenue Vehicles, and represent MDOT's interest in financial markets.

1.02 Issuing Office and Procurement Officer

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

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

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

1.03 Procurement Method

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

1.04 Contract Officer

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

June Hornick, Debt Manager
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076
Tel: (410)865-1039
Email: jhornick@mdot.state.md.us

1.05 Use of “eMaryland Marketplace”

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

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

1.06 Schedule of Events

<u>Event</u>	<u>Date</u>
Notice in “eMaryland Marketplace”	April 4, 2011
RFP Release Date	April 4, 2011
Deadline for Receipt of Questions	April 20, 2011
Proposal Due Date	May 10, 2011 by 2:00 p.m. local time
Oral Presentations, if any	May 25-26, 2011
Tentative Date of Contract Award	June 10, 2011

1.07 Pre-proposal Conference

A pre-proposal conference will not be held.

1.08 Questions and Inquiries

All questions and inquiries should be directed to the Procurement Officer identified in Section I., 1.02 above. Questions must be submitted in writing by mail or via email and received by the Issuing Office no later than 2:00 p.m. on Wednesday, April 20, 2011. Oral questions will not be permitted. If the questions or inquiries pertain to a specific section of the RFP, the page and section number(s) must be referenced.

1.09 Submission Deadline

To be considered, a written original and 5 copies (total of 6) of the Technical Proposal and the Price Proposal, each submitted separately in sealed envelopes, shall indicate the RFP Title and number and the Offeror’s name and address. Each proposal must arrive at the Issuing Office no later than 2:00 p.m. local time on Tuesday, May 10, 2011. Additionally, one electronic copy of the Technical Proposal and one electronic copy of the Price Proposal must be submitted to the Procurement Officer on compact disks. As with the written submission, the electronic copy submission of the Technical Proposal must be provided on one disk and the Price Proposal submitted on another disk, in separate sealed envelopes. Refer to Section IV Proposal Format for Two-Volume Submission.

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

1.10 False Statements

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

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

1.11 Duration of Offer

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

1.12 Electronic Distribution

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

SECTION II. GENERAL INFORMATION

2.01 Purpose

The overall purpose of this RFP is to provide information to Offerors interested in preparing and submitting proposals to meet the State's requirements for Financial Advisor to the Maryland Department of Transportation as described in Section III. The Office, in its sole discretion, may award two separate contracts to provide the services described in Section III.

2.02 Revisions to the RFP

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

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

2.03 Cancellation of the RFP; Rejection of All Proposals

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

2.04 Proposal Acceptance; Discussions

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

2.05 Oral Presentation

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

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

2.06 Incurred Expenses

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

2.07 Proposal Form

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

2.08 Multiple Proposals

Neither multiple nor alternate proposals will be accepted.

2.09 Access to Public Records Act Notice

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

2.10 Protests

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

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

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

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

available within the filing time, in which case the date by which the supporting documents are expected to be available is to be noted.

2.11 Proposal Opening

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

2.12 Bid/Proposal Affidavit

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

2.13 Contract Affidavit

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

2.14 Living Wage Requirements

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

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

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

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

2.15 Acceptance of Terms and Conditions

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

2.16 Minority Business Enterprises

A minority business enterprise subcontractor participation goal of 5% has been established for this solicitation. Offerors should indicate in their proposals which services under Section 3.02 will be performed by minority firms, and complete the appropriate MBE participation forms in Appendix G.

A directory of certified MBEs is maintained by the Maryland State Department of Transportation Office of Minority Business Enterprise, P.O. Box 8755, B.W.I. Airport, Maryland 21240-0755. The phone number is 410-865-1244. The directory is available online at www.mdot.state.md.us. Select the “Minority/Disadvantaged Business Enterprise” label.

2.17 No Guarantee of Work

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

2.18 Order of Precedence

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

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

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

SECTION III. SCOPE OF SERVICES AND REQUIREMENTS

3.01 Background

MDOT was created in 1970 (Chapter 526, Acts of 1970) and is responsible for various transportation facilities and activities throughout the State of Maryland. MDOT administers the construction and maintenance of the state highway system, the operation and maintenance of the bus system in the Baltimore area, the development and operation of rail rapid transit and light rail transit systems in the Baltimore area, the operation of Baltimore/Washington International Thurgood Marshall Airport and Glenn L. Martin General Aviation Airport, and the operations of state-owned port facilities. MDOT also administers the licensing and regulation of motor vehicle drivers, dealers, manufacturers, and conducts the school bus inspection and highway safety programs. MDOT provides financial assistance to the Maryland portions of the Washington D.C. area bus and rail rapid transit systems. In addition, MDOT has contracts with CSX and Amtrak railroad companies to operate certain commuter rail services.

The Transportation Trust Fund (“TTF”), administered by MDOT and held separate from the State’s general fund, is the largest of the State special funds. The TTF consolidates into one single fund all fiscal resources dedicated to transportation, including excise taxes on motor fuel and motor vehicle taxes, a portion of the corporate income tax, wharfage and airport landing fees, rentals and transit fare box revenues. All expenditures of MDOT are made from the TTF. In addition, Consolidated Transportation Bonds and Certificates of Participation are serviced from the TTF, and the particular taxes and other designated revenues are both dedicated to the payment of such indebtedness and constitute the sole sources to which bond holders may legally look for payment.

The firm selected to serve as Financial Advisor to MDOT will assist in the issuance of approximately four or more Consolidated Transportation Bond Issues totaling approximately \$1 billion. In addition, on occasion, MDOT has issued County Transportation Revenue Bonds on behalf of participating counties. MDOT may issue other debt instruments such as Certificates of Participation (“COPs”) and Grant Anticipation Revenue Vehicles (“GARVEEs”). COPs were issued by MDOT in 2004 to finance the purchasing of 50 shuttle buses for use at Baltimore/Washington International Thurgood Marshall Airport, and again in June 2006 to finance a warehouse for Maryland Port Administration. The last County Transportation Revenue Bond issue occurred in 2009.

3.02 Minimum Requirements

To be considered for this Contract, the Offeror’s team/firm must meet the following minimum requirements and submit evidence satisfying these requirements in the proposal submission:

1. Currently serve, or have served within the last three years, as Financial Advisor to a state, county, municipal, or special authority with an outstanding debt of at least \$500 million;

2. Have a minimum of 5 years experience with the municipal bond market, specifically with respect to revenue bonds for highways, transit, ports, or airports;
3. Have a minimum of 5 years experience as Financial Advisor in advising transportation agencies and/or transportation authorities, including public – private initiatives;
4. Have served as Financial Advisor for the following types and sizes of debt issues:
 - Transportation revenue bond issue of at least \$50 million;
 - Certificates of Participation issue of at least \$25 million; and
 - Advance refunding issue of at least \$50 million.

3.03 Services

Offerors submitting proposals in response to this solicitation will be expected to professionally perform the following functions:

1. Advise MDOT on matters relating to the municipal bond market conditions and outlook, peer organization trends, innovations and outlook, including but not limited to, new issues, refundings, new products, market trends, investor preferences, and perform analysis related to such matters;
2. Review and analyze alternatives for cost effective financing of MDOT’s capital program and projects;
3. Advise and assist MDOT on actions that would help to improve interest rates and ratings for bond sales;
4. Analyze each proposed financing, including funding alternatives to improve marketability, and recommend the best method of marketing consistent with current economic and market conditions.
5. At MDOT’s request, review and report on the feasibility of using new or innovative financing techniques, approaches, or the use of non-traditional debt instruments (e.g.: leasing transactions; revolving loan funds; public-private partnerships; State Infrastructure Banks; debt backed by airline passenger facility charge or rental car facility charge revenues; credit enhancement mechanisms; and any financing methods that may be employed under the Safe, Accountable, Flexible and Efficient Transportation Equity Act and succeeding federal laws; including but not limited to, GARVEE Bonds and Transportation Infrastructure Finance and Innovation Act (“TIFIA”) Loans);
6. Advise MDOT on bidding conditions and proposed sale dates so as not to compete with other issuers and to avoid periods of market volatility;

7. Assist in the preparation and review of documents for debt issues, including the Preliminary Official Statements, Notices of Sale, Bid Forms and Final Official Statements;
8. Advise on the appropriate terms and conditions of sale, including but not limited to maturity schedules and other requirements such as discount, par, premium, net increases, cost, true interest rate, parity provisions, reserve requirements, sinking fund payments, and redemption provisions;
9. Assist in the evaluation of bids received for bonds and recommendations of the winning bidder;
10. Conduct pre-sale market analysis using estimated costs of issue;
11. Conduct post-sale market analysis using actual costs of issuance and compare against pre-sale estimates and report on the differences. Compare MDOT transaction with MMD and other similar transactions in the market at the same time;
12. Advise MDOT on rating agency matters, including evaluation of departmental or state changes, changes in rating agency criteria that could affect the existing rating and requirements (debt service coverage ratios). Assist in the preparation of presentations to rating agencies to ensure that MDOT's current credit ratings are retained or improved;
13. Advise MDOT on regulatory constraints imposed by Congress and the U.S. Treasury including but not limited to IRS, SEC and MSRB rules and policies;
14. Provide advice and assistance, including arbitrage rebate calculations, if required, on arbitrage and arbitrage rebate issues;
15. Review and report on MDOT's annual six-year fiscal projections as they relate to the Consolidated Transportation Program;
16. Review and advise MDOT on its various transportation revenue sources;
17. Advise MDOT on the relative merits of competitive versus negotiated bidding processes on bond sales, as appropriate;
18. Assist with the development of requests for proposals and analysis of responses for negotiated financing transactions;
19. Advise MDOT on investments, reinvestment of funds, and other investment advisory functions;
20. Provide newsletters and other informational material routinely provided to clients;

21. Advise and assist in drafting legislation necessary to improve debt issuance and management; and
22. Review all MDOT disclosure and suggest improvements to comply with all regulatory requirements and best practices.
23. Advise on any other matters concerning the issuance of debt instruments by MDOT.

MDOT may elect not to use the services of the selected financial advisor on any particular transaction or it may issue more than one contract for any of these requirements.

3.04 Exclusion

The Maryland Transportation Authority (“MDTA”), of which the Secretary of Transportation is Chairman, is responsible for the administration of various toll revenue facilities, which consists of bridges over the Susquehanna, Patapsco and Potomac Rivers and the Chesapeake Bay, two tunnels under the Baltimore harbor, and the John F. Kennedy Memorial Highway. The MDTA also developed a 262-acre containerized cargo marine terminal, the Seagirt Marine Terminal and an intermodal container transfer rail yard. The MDTA financial transactions are accounted for in a separate special revenue fund.

While MDOT has, and may in the future, enter into agreements with the MDTA for the MDTA to finance MDOT projects, this RFP does not provide for financial advisory services to the MDTA.

3.05 Independence

During the term of the contract plus two years, the selected contractor, as well as its parent, its subsidiaries, and its affiliates (if any), may not be an underwriter or member of an underwriting syndicate for MDOT financing transactions, or provide legislative consultant services, with respect to the scope of this Contract. Any such affiliation made known to the MDOT and/or the Office during the above period shall cause the Office to initiate action to terminate this Contract.

3.06 Term

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

3.07 Compensation

The compensation of advisory services will be based on two (2) hourly rates. The primary rate shall be an hourly rate for all professionals (the Senior Level Professional Rate) except in those cases where it is clear that the services are to be performed by associate level professionals (Associate Level Professional Rate), in which case a lower associate level rate will be used. The rates will include all expenses other than direct out-of-pocket travel expenses, express mail charges, long distance telephone charges, computer charges, printing and copier costs incurred at the direction of MDOT or the Office. Travel expenses will be reimbursed in accordance with the State's standard travel regulations.

Hourly rates will remain in effect through the initial three (3) year contract term. Thereafter, the charges may be adjusted each year for the subsequent one-year optional renewal periods. The percentage increase in any change at the annual optional anniversary date may not exceed the change in the consumer price index (Consumer Price Index for all Urban Consumers) during the immediately preceding calendar year. Notice of a proposed adjustment in charges shall be given to MDOT and the Office not less than sixty (60) days preceding the effective date of the adjustment, which notice shall set forth the formula used to calculate such increase.

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

SECTION IV. PROPOSAL FORMAT

4.01 Transmittal Letter

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

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

4.02 Two-Volume Submission

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

4.03 Volume I - Technical Proposal

This volume shall be labeled "Volume I – Financial Advisor to the Maryland Department of Transportation, RFP #FA-MDOT-04042011 - Technical." This volume must be organized as described below and contain sufficient information to enable the evaluators to evaluate the proposal. This proposal shall contain the transmittal letter (Section IV., 4.01), the completed Bid/Proposal Affidavit (Appendix B) and the Affidavit of Agreement Maryland Living Wage Requirements-Service Contracts (Appendix E).

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

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

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

2. Firm's Qualifications

Provide evidence to document that the firm satisfactorily meets each of the minimum requirements as listed in Section 3.02 of this RFP. Offerors who do not meet the minimum qualifications will have their proposal removed from further consideration and their financial proposal will be returned unopened.

3. Firm's Capabilities

The Offeror shall:

- A. Describe the firm, including when organized, corporate structure, and type of ownership.
- B. By location, number of professional employees engaged full-time in providing services for transportation authorities or departments on matters related to the issuance of tax-exempt securities and number of support staff.
- C. The firm's total annual revenues derived from financial advisory services to tax-exempt issuers other than health care providers.
- D. Describe how your firm will keep abreast of and respond to state and national regulatory changes as they effect MDOT and keep clients informed of such changes and their impact.

4. Firm's Financial Advisory Experience

- A. Provide a representative list of tax-exempt transportation related bond issuers for which your firm served as Financial Advisor in the last 5 years. Provide a tabular presentation of this data to include the following:
 - Name of issuer;
 - Amount of issue;
 - Date of issue;
 - Type of issue;
 - Purpose/Use of proceeds;
 - Method of sale;
 - Personnel assigned;
 - Nature of your services;
 - Whether or not the deal was an advance refunding; and
 - Discuss innovative or complex features of the financings.
- B. Select two issuers, other than MDOT and MDTA, and discuss how the experience gained from working on these relates to the services to be provided to MDOT. As in item 4.03.4A, the preference here is for

transportation, innovative and complex financing experience. Be sure to indicate any unusual or exceptional problems, conditions, or situations that your firm faced and resolved.

- C. List no more than five (5) Maryland state agencies, Maryland local governments, or Maryland local agency issuers, for which your firm served as Financial Advisor in the last 5 years. Include the following:
- Name of issuer;
 - Amount of issue;
 - Method of sale;
 - Purpose of bonds;
 - Date of Assignment;
 - Length of assignment;
 - Personnel assigned;
 - Role of personnel; and
 - Nature of your services.
- D. Describe your experience in advising governmental units on rating agency strategies and presentations.
- E. Describe your experience with Maryland laws concerning public finance, including bond sales, lease financing, and refunding bonds.
- F. Describe your firm's in-depth expertise and understanding of the Internal Revenue Code as it pertains to municipal debt.
- G. Summarize your firm's knowledge and experience with computer-aided analysis.

5. Proposed Personnel

- A. Indicate the manner in which you would organize your firm's resources to provide the appropriate assistance to MDOT by including the following:
1. Identify the individual who will be the senior advisor.
 2. Indicate the number of year's of experience, including transportation, this individual has in providing senior-level financial advisory services to tax-exempt issuers.
 3. Indicate the number of years of experience this individual has with your firm.
 4. Define this individual's position with the firm.
 5. Describe this person's availability i.e., what is the nature of this person's responsibility with other clients?
 6. Indicate if this individual participated with any of the issuers listed in 4.03.4. If yes, what role did this individual play?

- B. Identify other professional staff that will be assigned to this project, their availability, roles and responsibilities, and participation with any of the issuers listed in 4.03.4.
- C. For each task listed in Section 3.03 provide the name of the individual expected to be the principal consultant, and the names or classes of other individuals expected to work on this task.
- D. Provide resumes for the individuals listed in A and B above.

MDOT reserves the right to approve the specific members of the Financial Advisor's team to be assigned to each bond sale and any substitutions of personnel noted in A and B.

6. References

Provide at least three, but no more than five client references. The list should include references related to projects on which the individual(s) in 5A above, have played a lead role and for which the services provided are similar to the services expected to be provided to MDOT. Furnish the name, title, agency, telephone number, and fax number for each reference. The Office reserves the right to contact any previous client whether or not listed as a reference.

7. Economic Benefits to the State of Maryland

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

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

taxes, inventory taxes, and estimated personal income taxes for new employee). Provide a forecast of the total tax revenues resulting from the Contract. Do not provide actual dollars for each category. Include percent of the total budget requested.

- D. Subcontract dollars committed to Maryland Small Business and Minority Business Enterprises. Do not provide actual dollars for each category. Include percent of the total budget requested.
- E. In addition to the factors listed above, the Offeror should explain any other economic benefits to the State of Maryland that would result from the Offeror's proposal.

8. Rationale for Appointment

This section of the proposal should be used by each Offeror to present their case for appointment as Financial Advisor. The section may include any material the Offeror may choose to submit.

4.04 Disclosures

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

4.05 Volume II - Price Proposal

This volume should be sealed and labeled "Volume II – Financial Advisor to the Maryland Department of Transportation, RFP #FA-MDOT-04042011 – Price Proposal". The price proposal should include two (2) proposed hourly rates, i.e. the Senior Level Professional Rate and the Associate Level Professional Rate as described in Section III, 3.07. The rates will include all expenses other than direct out of pocket travel expenses, express mail charges, long distance telephone charges, computer charges, printing and copier costs incurred at the direction of MDOT. The "Total Contract Offer Price" represents the dollar amount that will be used to rank Offeror's financial proposals in the order of the lowest to highest cost to the State.

SECTION V. EVALUATION AND SELECTION PROCEDURE

5.01 Qualifying Proposals

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

5.02 Evaluation and Selection Committee

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

5.03 Technical Evaluation

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

5.04 Evaluation Criteria

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

1. Firm’s Financial Advisory Experience;
2. Proposed Personnel;
3. Firm’s Capabilities;
4. Economic Benefits to Maryland; and
5. Rationale for Appointment.

5.05 Price Evaluation

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

5.06 Responsibility

1. General

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

2. Discussions

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

5.07 Best and Final Offer

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

5.08 Final Evaluation and Recommendation for Award

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

5.09 Debriefing of Unsuccessful Offerors

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

APPENDIX A

PRICE PROPOSAL FORM INSTRUCTIONS

1. Offerors must submit their price proposals on Appendix A-Price Proposal form for Financial Advisor Services in accordance with these instructions and as specified on the form. The Price Proposal (Appendix A) must be separately sealed and labeled as directed in Section 4.05.
2. The Price Proposal (Appendix A) is to be completed and signed by an individual who is authorized to bind the firm to all unit prices offered.
3. All data and information included on the Price Proposal (Appendix A) is for price evaluation purposes. The State reserves the right, at its sole discretion, to purchase more or less, or not to purchase any services for which offers are solicited under this RFP.
4. On the Price Proposal (Appendix A) Offerors are required to record the proposed Labor Rate in Column B and a Total Price in Column C, which is derived by multiplying Column B by Column A - Model Labor Hours. The Total Model Labor Price is then entered in the box on the Price Proposal (Appendix A) in numbers, and written in words on the line provided.
5. On the Price Proposal (Appendix A):
 - A. Prices must be recorded with dollars and cents, e.g., \$24.15. Fractional prices are not acceptable (e.g., \$24.15333).
 - B. The State will pay for the proposed rates per this RFP and may not be contingent on any other factor or condition in any manner.
 - C. Nothing shall be entered that alters or proposes conditions or contingencies on the proposed prices.
6. It is imperative that the prices recorded on the Price Proposal form (Appendix A) has been recorded correctly in order to accurately calculate the Offeror's financial proposal. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03E and 21.05.02.12.
7. **Key Staff Requirement:** On certain projects the STO will require that certain proposed key staff personnel must be assigned to the project. In this instance, said key staff personnel will be identified at the time of project assignment. If one or more of the aforementioned personnel becomes unavailable for continuation of the work assignment, the Contractor shall replace said individual(s) with personnel of substantially equal ability and qualifications. However, any changes to designated key staff personnel will require the prior written approval of MDOT and the Office. If accepted by MDOT and the Office, the changes shall be effected without additional cost to MDOT and the Office and without formal modification of the Agreement.

**APPENDIX A
PRICE PROPOSAL**

**RFP FOR FINANCIAL ADVISOR TO THE MARYLAND DEPARTMENT OF TRANSPORTATION,
RFP # FA-MDOT-04042011**

Firm Name: _____
 Address: _____

The Labor Rates (hourly rates) submitted by the Offeror via this Price Proposal shall be firm for the full three year term of the Contract and subject to adjustment only in renewal period(s), should the Office exercise its unilateral option(s) under conditions specified within the RFP. The Offeror shall submit all-inclusive (i.e., “fully loaded”) hourly rates via this Price Proposal, to include transportation, telephone expense, mailing costs, overhead, general administration, profit and fringe benefits as well as all ancillary expenses which are reasonable and incidental to providing full service as described herein.

TOTAL LABOR RATES. Record the “fully loaded” Labor Rates in Column B. Multiply the Labor Rates by the Labor Hours in Column A and record the result in the Total Price Column C. Sum the Total Price column and record in the Total Labor Price field, and enter in words on the line provided. The Labor Hours reflect a cost model prepared by the State for evaluation purposes and it does not necessarily reflect the required hours for this project.			
	A	B	C
Labor Category	Labor Hours	Labor Rate	Total Labor Price
1 Senior Level Professional	700	\$	\$
2 Associate Level Professional	400	\$	\$
TOTAL ANNUAL OFFER PRICE:			\$

APPENDIX A (continued)

**RFP FOR FINANCIAL ADVISOR TO THE MARYLAND DEPARTMENT OF TRANSPORTATION,
RFP # MDOTFA-04042011**

Firm Name: _____

TOTAL ANNUAL OFFER PRICE \$_____ X 3 YEARS EQUALS

TOTAL CONTRACT OFFER PRICE: \$_____.

Note: See Section 4.05, Volume II – Price Proposal: The “Total Contract Offer Price” represents the dollar amount that will be used to rank Offeror’s financial proposal in the order of the lowest to highest cost to the State.

TOTAL CONTRACT OFFER PRICE:

_____ **DOLLARS AND ___/100**

(write out price in words)

By submitting a Technical Proposal and this Price Proposal, the undersigned hereby declares to have carefully examined all documents described within this RFP. The undersigned further proposes and agrees to furnish all services necessary for the performance of the above referenced Contract for Office in accordance with the RFP issued by Office

(Authorized Signature)

(Printed Name)

(Title)

Office Telephone: _____

Office Fax No.: _____

Email: _____

FEIN: _____

APPENDIX B

BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. Certification Regarding Minority Business Enterprises.

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

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

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

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

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

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

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

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

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

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

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

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

_____.

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

_____.

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

_____.

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

K. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name: _____

Address: _____

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

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

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

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

Date: _____

By: _____
(Authorized Representative and Affiant)

APPENDIX C

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

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

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

By: _____
(Authorized Representative and Affiant)

APPENDIX D
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 E
Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

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

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

If the Contract is a Living Wage Contract

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

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

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

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

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

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

APPENDIX F

CONTRACT FOR

BETWEEN

MARYLAND STATE TREASURER'S OFFICE

ON BEHALF OF THE

MARYLAND DEPARTMENT OF TRANSPORTATION

And

CONTRACT

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

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

ARTICLE I - SCOPE OF SERVICES

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

- 1.1. General Services. The Contractor shall provide Financial Advisor Services to the Maryland Department of Transportation as described in this Contract, which includes the following exhibits:

Exhibit A: The Office Request for Proposals ("RFP") for Financial Advisor Services to the Maryland Department of Transportation, RFP #FA-MDOT-04042011;

Exhibit B: Contractor's Proposal dated _____;

Exhibit C: Contractor's Price Proposal dated _____;

Exhibit D: Bid/Proposal Affidavit, Contract Affidavit and Living Wage Affidavit.

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

ARTICLE III - CONSIDERATION, PAYMENT AND PERFORMANCE

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

June Hornick
Debt Manager
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076
 - 3.3.2. Invoices must be submitted either:
 - (a) For ongoing services, on a monthly basis for goods or services rendered in the preceding month; or

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

3.3.3. Except as provided in Section 3.3.2 above, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after receipt by the MDOT 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. Liability

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

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

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

4.2. Tax Exemption

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

4.3. Subcontracting; Assignment

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

4.4. Non-Hiring of Officials and Employees

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

4.5. Disputes

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

4.6. Maryland Law Prevails

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

4.7. Amendments

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

4.8. Nondiscrimination in Employment

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

4.9. Commercial Nondiscrimination Clause

4.9.1. As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of

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

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

4.10. Contingent Fee Prohibition

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

4.11 Living Wage Requirements

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

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

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

4.12. Multi-Year Contracts Contingent Upon Appropriations

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

4.13. Termination for Default

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

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

4.14. Termination for Convenience

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

4.15. Delays and Extensions of Time

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

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

4.16. Variations in Estimated Quantities

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

4.17. Suspension of Work

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

4.18. Pre-Existing Regulations

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

4.19. Financial Disclosure

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

4.20. Political Contribution Disclosure

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

4.21. Retention of Records/Audit

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

4.22. Compliance with Laws

The Contractor hereby represents and warrants that:

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

4.23. Liability for Loss of Data

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

4.24. Cost and Price Certification

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

4.25. Ownership of Documents and Materials

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

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

4.26. Patents, Copyrights and Trade Secrets

- 4.26.1. If the Contractor furnishes any design, device, material, process or other item, which is covered by a patent, or copyright or which is proprietary to or a trade secret of another, Contractor shall obtain the necessary permission or license to use such item.
- 4.26.2. Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by Contractor infringes any patent, trademark, copyright, or trade secret. Contractor also will pay all damages and costs that by final judgment may be assessed against the State due to such infringement and all attorney fees and litigation expenses reasonably incurred by the State to defend against such a claim or suit. The obligations of this paragraph are in addition to those stated in paragraph 4.26.3. below.
- 4.26.3. If any product(s) furnished by Contractor become, or in Contractor's opinion are likely to become, the subject of a claim of infringement, Contractor will, at its option: (1) procure for the State the right to continue using the applicable item; (2) replace the product with a non-infringing product substantially complying with the item's specifications; or (3) modify the item so it becomes non-infringing and performs in a substantially similar manner to the original item.

4.27. Confidentiality

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

ARTICLE V - NOTICES

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

If to the Office:

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

Copy to:

June Hornick
Debt Manager
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076

If to the Contractor:

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

June Hornick
Debt Manager
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076

ARTICLE VI - ADMINISTRATION

6.1. The work to be accomplished under this Contract shall be performed under the direction of the Contract Officer, June Hornick, Debt Manager, Maryland Department of Transportation. 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: _____

Bernadette T. Benik
Chief Deputy Treasurer

**ACKNOWLEDGED AND ACCEPTED:
MARYLAND DEPARTMENT OF
TRANSPORTATION**

By: _____

June Hornick
Debt Manager

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

Counsel to the Treasurer

APPENDIX G
MINORITY BUSINESS ENTERPRISE PARTICIPATION

PURPOSE

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

MBE GOALS AND SUB GOALS

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

OR

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

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

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

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

SOLICITATION AND CONTRACT FORMATION

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

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

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

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

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

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

CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

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

ATTACHMENTS

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

MDOT Certified MBE Utilization and Fair Solicitation Affidavit

(submit with bid or offer)

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

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

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

OR

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

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

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

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

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

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

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

List Information For Each Certified MBE Subcontractor On This Project

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

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

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

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

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

Percentage of Total Contract	

Continue on a separate page, if needed.

SUMMARY

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

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____
Title: _____
Date: _____

Outreach Efforts Compliance Statement

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

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

1. Bidder/Offeror identified opportunities to subcontract in these specific work categories.
2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit MDOT certified MBEs for these subcontract opportunities.
3. Bidder/Offeror made the following attempts to contact personally the solicited MDOT certified MBEs.
4. Select ONE of the following:
 - a. This project does not involve bonding requirements.
 - OR**
 - b. Bidder/Offeror assisted MDOT certified MBEs to fulfill or seek waiver of bonding requirements (*describe efforts*).
5. Select ONE of the following:
 - a. Bidder/Offeror did/did not attend the pre-bid/proposal conference.
 - OR**
 - b. No pre-bid/proposal conference was held.

Bidder/Offeror Printed Name

By: _____

Signature

Address: _____

Subcontractor Project Participation Certification

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

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

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

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

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

PRIME CONTRACTOR SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____
 Name, Title
 Date

By: _____
 Name, Title
 Date