

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council Of Howard County, Maryland

2009 Legislative Session

Legislative Day No. 3

Bill No. 15 -2009

Introduced by: The Chairperson at the request of the County Executive

AN ACT pursuant to Section 612 of the Howard County Charter, approving a multi-year agreement between Howard County, Maryland and Energy Systems Group where Energy Systems Group will develop and implement a comprehensive energy efficiency guaranteed savings program at certain County facilities that shall include the construction and installation of certain equipment, and certain management tasks and the program will result in certain cost savings which may be used to finance the construction and installation of certain equipment.

Introduced and read first time _____, 2009. Ordered posted and hearing scheduled.

By order _____
Stephen M. LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2009.

By order _____
Stephen M. LeGendre, Administrator

This Bill was read the third time on _____, 2009 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Stephen M. LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2009 at ____ a.m./p.m.

By order _____
Stephen M. LeGendre, Administrator

Approved/Vetoed by the County Executive _____, 2009

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Howard County, Maryland (the “County”) has determined where energy
2 cost savings maybe realized in County facilities and the County desires to install, construct,
3 maintain and manage certain energy conservation measures; and
4

5 **WHEREAS**, Energy Systems Group, a limited liability company, (“ESG”) is engaged in
6 the business of providing energy audits, performing the design, construction and installation of
7 equipment, and managing certain performance measures that will result in energy cost savings;
8 and
9

10 **WHEREAS**, the energy cost savings may, in-turn, be used to finance the purchase,
11 design and construction of certain cost saving equipment; and
12

13 **WHEREAS**, the State of Maryland issued a Request for Proposals for Indefinite Delivery
14 Contract, dated August 21, 2006, (the “State RFP”), a copy of which is attached as Exhibit A;
15 and
16

17 **WHEREAS**, ESG submitted a proposal and the State of Maryland selected ESG to
18 perform services under the State RFP; and
19

20 **WHEREAS**, the County now wishes to “piggyback”, in accordance with Section
21 4.115(a) of the Howard County Code, on the State RFP based on the proposal submitted by ESG
22 to Howard County, a copy of which is attached as Exhibit B; and
23

24 **WHEREAS**, the County wishes to enter into a Energy Performance Contract (“the
25 Contract”), the form of which is attached as Exhibit C, with ESG where ESG will provide certain
26 design, construction and installation of equipment, and management services that will lead to
27 guaranteed energy cost savings; and
28

29 **WHEREAS**, the County and ESG wish to enter into the Contract for a term that will

1 extend beyond the current fiscal year and the Contract requires the County to maintain certain
2 equipment; and

3
4 **WHEREAS**, the Contract requires the payment by the County of funds from an
5 appropriation in a later fiscal year and therefore requires County Council approval as a multi-year
6 agreement pursuant to Section 612 of the Howard County Charter.

7
8 **NOW, THEREFORE,**

9
10 ***Section 1. Be It Enacted*** by the County Council of Howard County, Maryland that in
11 *accordance with Section 612 of the Howard County Charter, it approves the terms of a Contract*
12 *between Howard County and Energy System Groups, which shall be in substantially the same*
13 *form as Exhibit C attached to this Act.*

14
15 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland that
16 *the County Executive is hereby authorized to execute and deliver the Contract for such term in*
17 *the name of and on behalf of the County.*

18
19 ***Section 3. And Be It Further Enacted*** by the County Council of Howard County, Maryland that
20 *this Act shall be effective immediately upon its enactment.*

STATE OF MARYLAND
DEPARTMENT OF GENERAL SERVICES
REQUEST FOR PROPOSAL (RFP)

FOR

INDEFINITE DELIVERY CONTRACT (IDC)

TO PROVIDE PROJECT MANAGEMENT, ENERGY AUDIT, ENGINEERING, CONSTRUCTION,
FINANCING, MAINTENANCE SERVICES AND MEASUREMENT & VERIFICATION TO DEVELOP
AND IMPLEMENT COMPREHENSIVE ENERGY EFFICIENCY AND GUARANTEED SAVINGS
PROGRAMS AT STATE FACILITIES

I.D. NO. DGS-06-EPC-IDC-5.0

Date: August 21, 2006

SOLICITATION NO. DGSS0221073

STATE OF MARYLAND

DEPARTMENT OF GENERAL SERVICES

Steve Cassard, Secretary
State Office Building
301 West Preston Street
Baltimore, Maryland 21201

BOARD OF PUBLIC WORKS

Robert L. Ehrlich, Jr., Governor
William Donald Schaefer, Comptroller
Nancy K. Kopp, Treasurer

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- APPENDIX 3: Contract Affidavit
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- APPENDIX 5: Pre-Proposal Conference Response Form
- APPENDIX 6: Performance Evaluation Sheet

SECTION I – PROCUREMENT OBJECTIVE

1. SUMMARY STATEMENT

- A. The primary purpose of this solicitation is to select a qualified list of Energy Service Companies (ESCOs) who have the capability to develop and implement comprehensive energy efficiency and guaranteed savings programs to assist various State agencies in achieving mandated reductions in energy consumption. The State plans to enter into indefinite delivery contracts (IDC's) pursuant to Title 12, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland. Under this approach, Phase I of each identified project, will be competitively bid between all pre-qualified ESCOs, to conduct a detailed energy audit, technical study and preliminary design to identify cost effective solutions to achieve a minimum of twenty percent (20%) reduction from the baseline in annual energy usage and a maximum project payback period of 15 years, while maintaining or enhancing existing comfort levels. Note: The 20% annual energy reduction from the baseline may be revised at the State's/Agency's discretion if the project can be accomplished within a 15-year payback period. Phase II project must be calculated on a 13-year term to allow for the fluctuation in interest rate during the construction phase.

Upon the State's approval of the recommendations of a Phase II proposal, including a determination of fair and reasonable price for capital and yearly maintenance costs, the ESCO will implement the comprehensive energy efficiency and guaranteed savings program, provide the funds necessary to cover all of the costs associated with the program and provide a guarantee of the level of energy and energy related operational cost avoidance to be achieved throughout the payback period.

- B. The State of Maryland is issuing this Request For Proposals (RFP) to establish a list of qualified ESCOs to compete on projects to:
- 1) Provide all necessary studies and analysis in the form of a detailed energy audit and engineering feasibility study (Phase I);
 - 2) Provide comprehensive energy efficiency and guaranteed savings program (Phase II) at a cost determined to be fair and reasonable by the State.
 - 3) Develop and implement a plan to reduce energy and energy related maintenance costs;
 - 4) After the conclusion of feasibility study, but before the start of design/construction phase, (Phase II), the ESCO shall provide acceptable performance measurements in accordance with International Performance Measurement and Verification Protocol, IPMVP 2001; see section V, Performance Measure and Verification.
 - 5) Furnish the design and installation of Energy Conservation Measures

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(ECMs) that are consistent with State facility master plans and future building renovation plans as specified and provided by the Using Agency. ECM's may include, but are not limited to, the replacement or repair of existing HVAC controls, HVAC equipment, chillers, boilers, and auxiliary equipment, computerized Energy Management Systems, and retrofit of existing lighting with optimum designed energy efficient lamps and electronic ballasts (Phase II);

- 6) Provide training for the facility operations and maintenance staff (Phase II);
 - 7) Provide maintenance and service of everything installed under this contract for the duration of the contract period at a cost determined to be fair and reasonable by the State (Phase II); and
 - 8) Provide monitoring of energy use and costs, and an acceptable guarantee that the total program costs shall be one hundred percent (100%) covered by the program energy and energy related operating and maintenance savings (Phase II).
- C. The State intends to solicit quotations from all qualified ESCOs selected under this IDC for Phase I for each project. Once a Phase I contract is awarded, the successful ESCO will complete the Feasibility Study/Development of Guaranteed Savings program (Phase I) within 180 calendar days following the Notice to Proceed. Upon approval of the Feasibility Study/Guaranteed Savings Program by the State and the Board of Public Works, the successful ESCO will have up to 365 calendar days to complete the design and construction of work, unless otherwise approved by the procurement officer. The offeror performing an acceptable Phase I study will be the only firm invited to perform the Phase II work implementing the Phase I plan. The Firm would be paid for the Phase I study only (1) if the Firm performs Phase II, in which case the costs of their Phase I study would be recovered under Phase II compensation, or (2) if DGS approves the Phase I study but the Using Agency for any reason elects not to implement it, in which case the Using Agency would be required to pay for the Phase I study out of the Agency's funds, subject to appropriation, at the price agreed to in the Phase I contract.
- D. The anticipated selection of ESCOs under this agreement will be within 120 days of the receipt of technical proposals.
- E. The State reserves the right to apply, before or after award of the contract, any reciprocal preference for Resident Bidders as set forth in Section 14-401 of the State Finance and Procurement Article of the Annotated Code of Maryland, at no additional cost to the State. As allowed by Section 14-401(d), a nonresident bidder or offeror submitting a bid or proposal shall attach to its bid or proposal a copy of the current statute, resolution, policy, procedures, or executive order of the resident state of the nonresident bidder or offeror that pertains to that state's treatment of nonresident bidders or offerors. A resident offeror is defined as a business enterprise that has a Maryland address, is registered to do business in

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the State of Maryland, employs Maryland residents, and regularly conducts business within the State. The term includes subsidiaries, divisions, and branches headquartered outside of the State of Maryland.

2. SUBMITTAL INSTRUCTIONS

- A. This solicitation shall be conducted in accordance with and is subject to the Code of Maryland Regulations (COMAR) Title 21, and State Finance and Procurement Article, except as otherwise indicated.
- B. Any selection made pursuant to this solicitation is tentative, and may be executed by the State only upon approval by the Board of Public Works of Maryland.
- C. Technical Proposals will be accepted from firms that offer a qualified design team either in-house or under contract to them to provide the complete feasibility study and design services required for EPC projects, qualified maintenance personnel to provide preventive maintenance and service throughout the length of the contract, financing for all capital costs of the project, and a guarantee of energy savings throughout the life of the project financing.
- D. Transmittal Letter: A transmittal letter must accompany the technical proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one transmittal letter is needed and it does not need to be bound with the technical proposal.
- E. An unbound original and five (5) bound copies of the Technical Proposal must be received by the Procurement Officer, at the address listed, no later than 11:00 a.m., (local time) September 29, 2006 in order to be considered. It is the responsibility of the offeror to ensure receipt of proposal to the Procurement Officer by the due date and time. Proposals received after due date and time will be returned unopened. An electronic version (diskette or CD) of the Technical Proposal in MS Word format must be enclosed with the original technical proposal. Insure that the diskettes are labeled with the Date, RFP title, RFP number, Offeror name and packaged with the original copy of the technical proposal.
- F. Requests for extension of this date or time will not be granted. Offerors mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, proposals received by the Procurement Officer after the due date, September 29, 2006 at 11:00 a.m. (local time) will not be considered and returned unopened. Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.
- G. Sealed Proposals must be submitted to Debbie Pecora, Department of General Services, Procurement & Logistics, 301 W. Preston Street, Room M-10, Baltimore,

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Maryland 21201 no later than 11:00 am on September 29, 2006

Pre-proposal conference will be held on Tuesday, August 29, 2006 at 1:00 p.m. at 301 West Preston St, 14th floor conference room. Attendance is not required but highly recommended.

- H. The Proposal, if submitted by an individual, shall be signed by the individual; if submitted by a partnership, shall be signed by such member or members of the partnership as have authority to bind the partnership; if submitted by a corporation, shall be signed by an officer, and attested by the corporate secretary or an assistant corporate secretary. If not signed by an officer, as aforesaid, there must be attached a copy of that portion of the By-Laws, or a copy of a Board resolution duly certified by the corporate secretary, showing the authority of the person so signing on behalf of the corporation.
- I. The Offeror shall review all certificates and affidavits contained in the RFP and should either execute or be prepared to execute them, as appropriate. In the event that they cannot be truthfully executed, the Offeror shall so notify the State.

3. PROCUREMENT METHOD

- A. The procurement method being utilized in the conduct of this project is Competitive Sealed Proposals in accordance with COMAR 21.05.03.
- B. Selection of ESCOs under this agreement will be made to those successful Offerors whose Technical Proposals are determined to be the most advantageous to the State. Proposals shall be evaluated based on the evaluation criteria listed in Sections VI and VII of this RFP.
- C. Proposals will not be opened publicly, but shall be opened in the presence of the DGS Proposal Evaluation Committee. The register of Proposals will be open to public inspection only after final award of the Contract.
- D. A maximum of five (5) respondents based on the highest ranked firms with a minimum score of 80% will be selected.
- D. This agreement will be effective for a period of 24 months effective April 7, 2007 following BPW approval with the unilateral option for two additional 12 month periods. If a pre-qualified ESCO completes Phase I of a project after the period has expired, the ESCO may be awarded the Phase II work for that specific project.

4. CONTRACT AWARDS

- A. Phase I Contracts will be awarded based on selection criteria as specified in Section IV, Item 2 of this RFP.
- B. Individual contracts for Phase I work (see Section IV - Scope of Work) awarded

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under this agreement may not exceed \$200,000. Phase II contracts have no dollar limit, but must be approved by the Board of Public Works.

- C. The State's selection of successful Offerors under this agreement does not bind the State or the Offeror to enter into any Phase I or Phase II contracts.

5. ISSUING OFFICE AND PROCUREMENT OFFICER

Issuing Office: Office of Procurement and Logistics
Department: General Services
Address: 301 West Preston Street, Room M-10
Baltimore, Maryland 21201

Phone: (410) 767-4945 to request bid documents
Facsimile No.: (410) 333-5164
Procurement Officer: Debbie Pecora (410) 767-4945
Debbie.pecora@dgs.state.md.us

For all matters arising prior to and including final ESCO selection under this agreement and for (1) all purchases, orders, changes or modifications during performance of the contracts awarded under this agreement, and (2) all disputes arising under the contracts subsequent to final award, the sole point of contact in the state for purposes of this RFP and any contract awarded under this RFP is the Procurement Officer. No State or DGS employee, official or representative has authority to change requirements of the contract except the Procurement Officer or his or her designated Representative subject to the limits of their authority and other limitations imposed by law.

6. CONTRACT WITH GOVERNMENT ORGANIZATIONS OTHER THAN DGS

- A. Pursuant to Article 41, Section 18-201 of the Annotated Code of Maryland, except as provided in (b), the following entities may purchase materials, supplies, and equipment under this contract:

- 1) A county or Baltimore City;
- 2) A municipal corporation;
- 3) A governmental agency in the State with Primary Procurement Authority;
- 4) A public or quasi-public agency that:
 - (a) receives State money; and
 - (b) is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
- 5) A private elementary or secondary school that:
 - (a) either has been issued a certificate of approval from the state

SECTION I – PROCUREMENT OBJECTIVE

Board of Education or is accredited by the Association of Independent Schools; and

(b) is exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code; or

6) A nonpublic institution or higher education under Section 17-106 of the Education Article.

- B. A private elementary or secondary school or a nonpublic institution of higher education may not purchase religious materials under this contract.
- C. The right to purchase under this section shall be in addition to, but not in substitution for, the applicable purchasing power granted to any of the listed entities pursuant to any statutory or charter provision.
- D. All purchases under this contract by any such entity which is not a unit or agency of the State of Maryland for which the State of Maryland may be held liable in contract (1) shall constitute a purchase or contract between the Contractor and that entity only, (2) shall not constitute a purchase or contract of the State of Maryland, (3) shall not be binding or enforceable against the State of Maryland or any of its units or agencies, and (4) may be subject to other terms and conditions agreed to by the Contractor and the purchaser. Contractor bears the risk of determining whether or not any entity from which the Contractor receives an order under the contract is a unit or agency of the State of Maryland such that the contract may be enforced against the State of Maryland.

SECTION II – DEFINITIONS

1. DEFINITIONS

In this RFP, the following terms have the meanings indicated:

- A. "Approved Equal" means those supplies or services, or compatible items of construction whose quality, design, or performance characteristics are functionally equal or superior to an item specified.
- B. "Change Order" means a written order signed by the responsible Procurement Officer, directing a Contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Contractor.
- C. "Code" means the Annotated Code of Maryland.
- D. "COMAR" means the Code of Maryland Regulations.
- E. "Consulting engineer" means the State's designed representative for design and engineering oversight.
- F. "Contract" means the written agreement executed between the State and the successful Offeror, covering the performance of the work and furnishing of labor, services, equipment, and materials, by which the Contractor is bound to perform the Work and furnish the labor, services, equipment and materials, and by which the State is obligated to compensate them, therefore at the mutually established and accepted rate or price. The Contract shall include the Technical Proposal, RFP and amendments/addenda thereto, plans and specifications developed by the Contractor, Contract forms and bonds, notice to proceed, and any written change orders and supplemental agreements that are required to complete the construction of the Work in an acceptable manner, including authorized extensions thereof. (Said documents are sometimes referred to as the "contract documents.")
- G. "Contractor" means the person or organization having direct contractual relation with the State for the execution of the "Work." If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.
- H. "Contract Documents" means this RFP, all addenda to the RFP, the successful Offerors' Technical Proposal, successful Offerors' construction drawings and specifications, other documents that may be referenced in the RFP or written contract, and the written contract.
- I. "Contract Price" means the amount payable to the Contractor under the Contract terms.
- J. "Contract Time" means the number of calendar days shown in the contract documents indicating the time allowed for the completion of the work contemplated

SECTION II – DEFINITIONS

in the Contract.

- K. "Critical Path Method (CPM)" means a scheduling/management tool showing a network or work elements or activities for a construction project.
- L. "Day" means calendar day unless otherwise designated.
- M. "Department" means the Department of General Services, State of Maryland.
- N. "DGS" means the Department of General Services, State of Maryland.
- O. "Employee" means all employees of the State of Maryland, whether classified, unclassified, or employed under a personal services contract of employment. It does not include independent contractors or successful Offerors.
- P. "Notice to Proceed" means a written notice to the Contractor of the date on or before which they shall begin the prosecution of the Work to be done under the Contract.
- Q. "OED" means the Office of Engineering and Design of the Maryland Department of General Services.
- R. "OPL" means the Office of Procurement and Logistics of the Maryland Department of General Services.
- S. "Owner" means the State of Maryland or that Agency of the State administering the contract.
- T. "Payback Period" means the amount of time, in years, that the State will need to pay for the cost of the project, including all planning, engineering, design, construction, start-up, training, on-going maintenance, and interest for the length of the loan period.
- U. "Payment Bond" means the security in the form approved by the Department and executed by the Contractor and its surety, subject to Title 17, Subtitle 1 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- V. "Performance Bond" means the security in the form approved by the Department and executed by the Contractor and the surety, guaranteeing complete performance of the Contract.
- W. "Plans and Specifications" mean the official construction drawings and specifications developed by the Contractor and approved by the State.
- X. "Procurement Officer" means that person described by the State Finance and Procurement Article and COMAR, and designated by the Secretary to make decisions with respect to the administration of the work when a project is administered by DGS. When a project is being administered by the Using Agency, that particular Agency will designate its procurement officer. The

SECTION II – DEFINITIONS

procurement officer will be identified at the job initiation conference.

- Y. "Energy" means electricity, fuel, chilled water, steam and water, purchased or generated on-site.
- Z. "Operations Costs" means costs of personnel labor, maintenance materials and contract services, directly associated with operating and maintaining building lighting, HVAC and other energy consuming systems.
- AA. "Cost Avoidance" means the difference between current and baseline cost, baseline cost being what current cost would have been had no energy efficiency measures been implemented. Baseline cost also reflects variation in weather severity, occupancy, equipment loads, operating patterns, and energy rates.
- AB. "Repair" means to restore after injury, deterioration, or wear, to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth, in compliance with contract or warranty, and fully serviceable; and upon completion of such repair, unless otherwise stated to be in such conditions as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish to be applied without extra cost to the State. When the word "repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient and ready for normal use for which it was intended originally.
- AC. "RFP" means the Request for Proposal.
- AD. "Secretary" means the Secretary of the Department of General Services, State of Maryland.
- AE. "State" means the State of Maryland, which includes its agencies, departments, units, and its officials and employees when acting within the scope of their authority and in the course of their official duties.
- AF. "Subcontractor" means only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the "Work." It excludes one who merely finishes material not so worked. It also includes those supplying architectural, engineering, or other design services to the Contractor.
- AG. "Successful Offeror" means the entity to whom a contract is awarded as a result of this RFP.
- AH. "Surety" means the corporate body bound as required by law for the full and complete performance of the contract by the Contractor or for the payment by the Contractor to subcontractors and suppliers.

SECTION II – DEFINITIONS

- AI. "Work" means the furnishing of all labor, materials, equipment, services, utilities, Architectural/Engineering and other design services, financing, cost savings guarantee, maintenance, training, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.
- AJ. "Written Notice" means notice in writing if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or delivered by registered mail, or other means permitted by law, including email, to the last business address. For purposes of written notice required to be delivered or served on the State, its agency(ies), department(s), unit(s), employee(s), or officer(s), delivery by electronic means, including email and facsimile, shall not be considered "written notice."
- AK. "State's Approval" means it is approved in writing by a DGS or Using Agency.
- AL. "ECM" means Energy Conservation Measures.
- AM. "ESCO" means Energy Service Company.
- AN. "MEA" means Maryland Energy Administration.
- AO. EMM means EmarylandMarketplace

In the RFP, such terms as "proposer", "developer", and "offeror" are used interchangeably to refer to the offeror prior to selection of the successful offeror. Similarly, such terms as "selected developer", "selected contractor", "selected offeror", or "successful offeror" are used interchangeably to refer to the successful offeror or list of approved offerors subsequent to selection.

SECTION III – GENERAL CONDITIONS

1. CANCELLATION OF RFP OR REJECTION OF OFFERS

- A. The State reserves the right to cancel this Request for Proposal at any time before the date set for receipt of offers.
- B. The State reserves the right to reject all proposals at any time prior to final award.

2. DEBRIEFING AND UNSUCCESSFUL OFFERORS

- A. Unsuccessful Offerors will be notified in writing pursuant to COMAR 21.05.03.06.
- B. Unsuccessful Offerors may request, in writing, a formal debriefing. The request shall be addressed to the Procurement Officer, and received within seven (7) days, following notification of award.

3. DISCREPANCIES

- A. Additional information, clarifications, and amendments desired by a prospective Offeror regarding the RFP shall be requested only in writing from the Procurement Officer no later than ten (10) calendar days prior to the proposal due date. Requests shall include the RFP number and name of project, and shall be directed to the Procurement Officer. **ORAL EXPLANATIONS OR INSTRUCTIONS WILL NOT BE BINDING AND WILL NOT CHANGE THE TERMS OF THIS RFP.** Written addenda will be binding. Any addenda resulting from these requests or amendments will be mailed to all listed holders of the RFP. The Offeror shall acknowledge the receipt of all addenda in its Technical Proposal.
- B. The State reserves the right to amend the RFP at any time prior to preliminary award. Amendments will be incorporated into and handled as addenda. If the time and date for receipt of proposals does not permit incorporation of addenda, the due date will be delayed accordingly, and noted as such within the addenda; or, if necessary, by FAX, Certified Mail or Telephone, and confirmed by the addenda.

4. MODIFICATION AND WITHDRAWAL OF PROPOSALS

- A. Withdrawal of or modifications to proposals shall be effective only if written notice thereof is received prior to the time and the place specified for proposal due date and time in the Request for Proposal. A notice of withdrawal or modification to a proposal must be signed. If an offer is withdrawn in accordance with regulations, the bid security, if any, will be returned to the Offeror.
- B. Any proposal received at the place designated in the solicitation after the time and date set for receipt of offers is late. Any request for withdrawal or request for modification received after the time and date set for receipt of proposals at the place designated is late.
- C. A late proposal, late request for modification, or late request for withdrawal may
- D. only be considered in accordance with COMAR 21.05.02.10.

SECTION III – GENERAL CONDITIONS

5. (INTENTIONALLY LEFT BLANK)

6. POWER OF ATTORNEY

Attorneys-in-fact who sign bid bond, payment bond, and performance bond must file with each bond a certified and effectively dated copy of the power of attorney.

7. LAWS AND REGULATIONS

All applicable Federal and State laws, municipal ordinances, and the rules and regulations of all governmental authorities having jurisdiction over the performance of the work shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though therein written out in full. In addition, the ESCO shall comply with the following:

A. COMAR Provisions:

The awarded ESCO shall comply with the following COMAR provisions which are incorporated into this contract and all Phase I and Phase II contracts:

- 1) 21.07.01.07 - Maryland Law Prevails
- 2) 21.07.01.17 - Pre-existing Regulations
- 3) 21.07.01.19 - Financial Disclosure
- 4) 21.07.01.20 - Political Contribution Disclosure
- 5) 21.05.08.07 - Bid/Proposal Affidavit
- 6) 21.07.01.25 - Contract Affidavit
- 7) 21.07.02.05-2 - Prompt Payment of Subcontractors
- 8) 21.07.02.05-3 - Retainage
- 9) 21.05.08.09 - Mercury Content
- 10) 21.07.01.18 - Payment of State Obligations
- 11) 21.07.01.05 - Non-Hiring of Officials and Employees
- 12) 21.07.01.09 - Contingent Fees
- 13) 21.07.01.16 - Suspension of Work
- 14) 21.07.01.22 - Compliance With Laws

B. Prevailing Wage Law:

Awarded Offeror performing Phase II shall comply with Prevailing Wage Law, when the specific contract value is \$500,000 or more. COMAR 21.11.11

8. OBLIGATION OF OFFEROR

At the time of the opening of Proposals, each Offeror shall be presumed to have read and to be thoroughly familiar with the RFP (including all addenda, if any). The failure or omission of any Offeror to examine any form, instruments, or document shall in no way relieve any such Offeror from any obligation in respect to its proposal.

9. NATURE OF THIS CONTRACT

SECTION III – GENERAL CONDITIONS

A. This contract is not a "construction" contract, nor is it a contract for architectural or engineering services, even if, in the course of performance, the Contractor or its subcontractors and/or sub-consultants may perform some construction or architectural/engineering services. This contract is an "energy performance contract" as defined in Section 11-101(h) of the State Finance and Procurement Article of the Annotated Code of Maryland. The State is not responsible for and make no warranty of the accuracy of any information contained in the RFP respecting the State's facilities and the State is not responsible for:

- 1) Subsurface or latent physical conditions at the site differing materially from those indicated in the RFP or otherwise indicated by the State; or
- 2) Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work provided for in the contract.

B. Offerors acknowledge that the contract which will result from this procurement:

- 1) Is not a contract for "construction" as defined in State Finance and Procurement Article ("SF") Section 11-101(e) of the Code or as defined in COMAR 21.01.02.01b(23);
- 2) Is not a contract for "architectural services" as defined in SF Section 11-1-1(b) of the Code or as defined in COMAR 21.01.02.01B(6);
- 3) Is not a contract for "engineering services" as defined in SF Section 11-1-1(b) of the Code or as defined in COMAR 21.01.02.01B(37); is not a contract for "maintenance" as defined in COMAR 21.01.02B(53); and
- 4) Is not a contract for "services" as defined in SF Section 11-101(s) of the Code or in COMAR 21.01.02.01b(79). The parties agree that the contract is one undefined in conditions, design, build, maintain, finance, and guarantee cost savings, as provided in the RFP. Therefore, none of the provisions required by law to be included in contracts for "architectural services," "construction," "engineering services," "maintenance," or "services" are applicable to this contract and shall not be implied or incorporated into this contract except to the extent that they are made applicable by express provisions of the contract documents.

10. ~~(INTENTIONALLY LEFT BLANK)~~

11. PUBLIC INFORMATION ACT

Offerors should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets, and provide any justification of why such materials, upon request, should not be disclosed by the Owner under the Maryland Public Information Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

12. MINORITY BUSINESS ENTERPRISE REQUIREMENTS

SECTION III – GENERAL CONDITIONS

If the project value exceeds \$50,000 based on Phase II construction cost, an overall minimum MBE goal of 25% of the total dollar value of the contract is to be provided directly or indirectly from all certified minority business enterprises. However, individual and unique goals for each project may be assigned that may be different based on potential availability of MBE's for the work and location.

Enclosed is a separate package of instructions and documents.

- A. A minimum of seven percent (7%) of the total dollar value of the contract is to be provided directly or indirectly from certified minority business enterprises classified by the certification agency as African American-owned businesses:
- B. A minimum of ten percent (10%) of the total dollar value of the contract is to be provided directly or indirectly from certified minority business enterprises classified by the certification agency as women-owned businesses.

13. ARREARAGE

By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligations due or owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the contract id selected for contract award.

14. ANNOUNCEMENT AND NOTIFICATION OF AWARD

Announcement of award and Successful Offeror notification of award will be published on EmarylandMarketplace for each task awarded under this contract.

15. EXECUTION OF CONTRACT

- A. After the successful Offeror has been selected, the Department shall forward the format contract and the forms for the Payment and Performance Bonds (Phase II only), Contract Affidavit, and MBE Utilization to the successful Offeror for execution. The Offeror shall execute the contract and return it with fully executed Payment Bond, Performance bond, Contract Affidavit, Guaranteed Energy Savings Insurance (if required), Certificates of Insurance, and MBE Utilization to the Department within 15 days after receipt of same.
- B. After receipt of the properly executed contract form and other required documents, the Department will execute the Contract within 90 days and forward the successful Offeror a copy. In the event the State fails to execute the Contract within the 90-day period, the Offeror will have, as its only remedy, the option to declare the contract terminated without any liability by the State or to accept an extended period for execution by the State.

16. FAILURE TO EXECUTE CONTRACT

Failure of the Offeror to execute the contract and file acceptable bonds within the time provided shall be just cause for the payment of the penal sum of the bid bond or other bid security.

SECTION III – GENERAL CONDITIONS

17. PERFORMANCE AND PAYMENT BONDS

The successful Offeror shall, prior to the execution of the Phase II portion of any assigned project, provide performance and payment bonds from a Surety company authorized to do business in the State of Maryland, properly executed in favor of the State of Maryland, each bond to be in an amount not less than 100% of the amount of the sum of the Net ECM cost.

18. OWNER'S RESPONSIBILITIES

- A. The Owner will furnish information and description of the physical characteristics and capacity of equipment to be affected by this project.
- B. Information or services under the Owner's control will be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.
- C. The Owner will confirm all verbal instructions to the Contractor in writing.
- D. The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Work by Owner or by separate Contractors, payments and completion, and insurance.
- E. Nothing in this Section shall make the State responsible to the Contractor for information furnished by the State.

19. CONTRACTOR'S RESPONSIBILITIES

- A. The Contractor shall supervise and direct all phases of the work, using its best skill and attention. The Contractor shall be solely responsible for all feasibility studies, design and construction means methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the contract, including measurements and verification.
- B. The Contractor shall be responsible to the State for the acts and omissions of its employees, subcontractors, and their agents and employees, and other persons performing any of the work.
- C. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the contract documents, and as required to maintain building operations, and shall not unreasonably encumber the site with any materials or equipment.
- D. Cutting and Patching of Work (Phase II only):
 - 1) The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.
 - 2) The Contractor shall not damage or endanger any portion of the work or the Work of the Owner or any separate Contractor by cutting, patching, or otherwise altering any Work, or by excavation. The Contractor shall not cut

SECTION III – GENERAL CONDITIONS

or otherwise alter the Work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any separate Contractor his consent to cutting or otherwise altering the Work.

- E. The Contractor shall perform all Work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the contract documents or as modified by written orders, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.
- F. Indemnification: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the State and its agents and employees from and against all claims, damages, losses and expenses, including but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense:
- (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from; and
 - (b) is caused in whole or in part by any negligent act or omission or breach of contract of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

- 2) In any and all claims against the State or any of its agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 3) The obligations of the Contractor under this paragraph shall include the liability of its Architects, Engineers, agents, employees, subcontractors at any tier and their employees, agents and subcontractors arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (b) the giving of or the failure to give directions or instruction by any of the above, or the performance of any of the work required under the Contract.

SECTION III – GENERAL CONDITIONS

20. DRAWINGS AND SPECIFICATIONS

- A. Drawings: The Contractor shall do no Work without approved contract drawings, specifications, and/or instructions. For an approved project, drawings shall be provided by the Contractor as required in Section IV - Scope of Work. Drawings shall in general be drawn to scale with major equipment and location dimensions clearly indicated, and symbols used shall indicate materials and structural and mechanical requirements. Drawings shall be in conformance with the DGS Procedures Manual for Professional Services (latest edition). When symbols are used, those parts of the drawings are of necessity diagrammatic; and it is not possible to indicate all connections, fitting, fastenings, etc., which are required to be furnished for the proper execution of the Work. Diagrammatic indications of piping, ductwork, conduit and similar items in the Work are subject to field adjustment in order to obtain proper grading, fitting, passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments, at no increased cost to the State.
- 1) Copies Furnished: The Contractor shall furnish the State five (8) copies of the drawings and specifications.
 - 2) Copies at the Site: The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the State. Additionally, one set of all contract drawings shall be maintained as/built drawings. As-built drawings shall be marked upon by the Contractor in the field on a regular basis to record all changes in the Work as they occur, and the exact location of all exposed and concealed pipe runs, valves, plugged outlets, cleanouts, and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate "as-built" record. The location of pipes or control points concealed underground, under concrete, in chases or above hung ceilings shall be dimensioned. "As-built" drawings, both hard copy and on CD, shall be delivered to the State, as a condition precedent to final acceptance of Work.
 - 3) Ownership: All documents remain the property of the State. They must not be used on other Work. They shall be returned to the State upon its completion.
- B. Large Scale Detail Drawings: The Contractor shall furnish, when the State directs, additional instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the Work. These shall be true developments of the bidding documents and reasonably inferable there from. The Work shall be executed in conformity therewith.
- C. Dimensions: The Contractor shall carefully check all dimensions prior to execution of the particular Work. Dimensions for items to be fitted into construction conditions at the job will be taken at the job and will be the responsibility of the Contractor. No extra will be allowed by reason of Work requiring adjustments in order to accommodate the particular item of equipment.

SECTION III – GENERAL CONDITIONS

- D. Specifications: Proper CSI formatted construction specifications shall be produced and submitted for the State's approval.

21. SHOP DRAWINGS AND SUBMITTALS

- A. After checking and verifying all field measurements and after complying with applicable procedures specified in the contract documents, the Contractor shall submit to the State for review and approval, in accordance with the Contractor's schedule, shop drawings or other submittals which will bear a stamp or specific written indication that the Contractor has satisfied their responsibility under the contract documents with respect to the review of such submissions. The data on the shop drawing will be completed with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the State to review the information as required. These drawings shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.
- B. All shop drawings must show the name of the project and the Department contract number.
- C. Size of Drawings: All shop drawings and details submitted to the State for approval shall be printed on sheets of the same size as the contract drawings specified in the Department of General Services Procedures Manual for Professional Services (latest edition). When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the required drawings, this is acceptable. Sheets large than the required drawing size will not be accepted except when specifically permitted by the Department of General Services. Shop details supplied on a sheet of letter size (8-½-in. by 11-in.) are acceptable for schedules and small details.
- D. Items for Which Shop Drawings Will Be Required: Shop drawings shall be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware and all heating, ventilating, piping, plumbing and electrical items requiring special fabrication or detailed connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.
- E. Copies Required: Contractor shall supply eight (8) copies, one (1) copy for the State's consulting engineer's file and two (2) copies for the Department, five (5) copies shall be returned to the Contractor after review.
- F. Examination and Approval: The State will examine and return shop drawings with reasonable promptness, noting desired corrections, or accepting or rejecting them. The Contractor shall assume a minimum review time of two (3) weeks when submitting items for the state's approval.
- G. Field Dimensions and Conditions: The State is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the

SECTION III – GENERAL CONDITIONS

Contractor. No consideration will be given to change orders due to existing field conditions.

- H. Resubmission: When the State notes desired corrections, or rejects the drawings, the Contractor shall resubmit the drawings with corrective changes.
- I. Contractor's Responsibility: Unless the Contractor has, in writing, notified the State to the contrary at the time of the submission, the State may assume that shop drawings and submittals are in conformity with the contract documents and do not involve any change in the Contract price or any change which will alter the space within the structure or alter the nature of the building from that contemplated by the contract documents.
- J. State's Notations: Should the Contractor consider any rejection or State's notation on the shop drawings to cause a change in the cost of the work from that required by the contract documents, then the Contractor shall desist from further action relative to the item he questions and shall notify the State, in writing, within five days of the additional or less cost involved. No Work shall be executed until the entire matter is clarified and the Contractor is ordered by the State to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto. Similarly, should the State's notation or change involve less Work than is covered by the contract documents, the Contractor shall allow the State an equitable credit resulting from the change in the Work.

22. COST AND PRICE CERTIFICATIONS

Cost and Price Certification, for Phase II only.

A. The Contractor by submitting cost or price information certifies that, to the best knowledge, the information submitted is accurate, complete, and current as of 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 office; or

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

"B. 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."

23. INTENT OF THE CONTRACT DOCUMENTS

It is the intent of the contract documents to require the Contractor to perform all of the work necessary to complete the project.

SECTION III – GENERAL CONDITIONS

24. ORDER OF PRECEDENCE AMONG CONTRACT DOCUMENTS

- A. In the event of a conflict between provisions of the contract documents, the conflict shall be resolved in favor of the State in accordance with the Contractor's undertaking to be responsible for all design, investigation, site conditions, construction, financing, and maintenance, as provided in the scope of work, and in accordance with the Contractor's express agreement that Contractor shall be entitled to no payment, reimbursement, damages, costs, expenses or compensation for any reason or cause except from cost savings.
- B. In the event of a conflict between contract provisions which cannot be resolved under Subsection A above, the provisions of the following documents shall take precedence in this order:
 - 1) the Contract form signed by the parties;
 - 2) this RFP;
 - 3) the approved drawings and specifications; and
 - 4) Contractor's Phase II Proposal for the specific project.

25. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve the Contractor from responsibility for successfully performing the work without additional expense to the State. The Contractor agrees not to place any credence in any understanding or representation concerning conditions made by any State employee or agents prior to the execution of this Contract, unless such understanding or representations are expressly stated in the Contract.

26. CHANGES IN THE WORK

- A. The Procurement Officer may, at any time, without notice to the sureties, if any, by written order designated or indicted to be a change order, make any change in the work within the general scope of the Contract.
- B. Any other written order or an oral order (which terms as used in this paragraph shall include direction, instruction, interpretation or determination from the Procurement Officer) which causes any such change, shall be treated as a change order under this clause, provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.
- C. Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. Subject to paragraph "C" above, if any change under this clause causes an

SECTION III – GENERAL CONDITIONS

increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change of method or manner of performance of the work shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and further provided that the State shall have no liability to Contractor except from guaranteed cost savings.

- E. If the Contractor intends to assert a claim for an equitable adjustment under this clause, it shall, within 30 days after receipt of a written change order in the drawings and specifications or the furnishing of written notice of change of method or manner of performance of the work, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice of change in the method or manner of performance of the work.
- F. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment (100%) under this Contract.

27. MODIFICATION OF CONTRACT PRICE (Phase II Only)

When changes in the work require modification of the Contract Price by change order, which modification shall be accomplished as follows: Any modifications to Phase II work or price must be approved by Procurement Officer, within the limits of their authority, or the Board of Public Works.

- A. No modification to the contract price shall be allowed unless the Owner requests additional services, and this work is approved by the procurement officer and/or BPW. Under no circumstances shall the contract price be increased due to field conditions different than assumed by the Contractor, or additional design required due to errors or omissions of Contractor and/or architectural/engineering sub-consultants.
- B. For all changes in the work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully-itemized breakdown of quantities, prices, man-hours and hourly rates which shall bear the original signature of a representative of the subcontractor authorized to act for the subcontractor. The Contractor shall furnish a detailed explanation and justification for the proposed change. If requested by the Owner, the Contractor shall submit proposals from suppliers or other supporting data required to substantiate costs.
- C. Modification of the Contractor Price, when required, shall be determined as follows (Phase II only):
 - 1) When unit prices are stated in the Contract, by application of such unit prices.
 - 2) A lump sum price, if agreed upon by both the State and Contractor.

SECTION III – GENERAL CONDITIONS

Payment to the Contractor shall be added to the project financed capital cost amount (unless capital funding is available). The revised capital cost amount will not be paid to the Contractor until the construction is 100% completed and accepted by the State.

- 3) If job conditions, or the extent of a nature of the change, warrant it, or if the State and the Contractor fail to agree upon a lump sum price or the application of unit prices to determine the cost of any proposed change, the work may be done at the State's option on the basis of a Force Account as hereinafter stated under Paragraph 77. Under these conditions, the State shall have the right to issue an order for the Work to be performed and the Contractor shall proceed as directed under the provisions of Paragraph 26 and 77.
- 4) If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including overhead and profit, however, the Contractor and the subcontractor will be allowed to retain a sum not in excess of three percent (3%) for handling.
- 5) If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes of the work.
- 6) Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with their own forces will be based upon the monetary value of the work in accordance with the following schedule (excluding items included in overhead and profit):

<u>PROFIT</u>	<u>VALUE OF WORK</u>	<u>COMBINED OVERHEAD AND</u>
	\$0 - \$25,000	15%
	Over \$25,000	Negotiated but not more than 15%

- 7) For work performed by a subcontractor with its own forces, the percentages for combined overhead and profit for a subcontractor will be as stated in subparagraph (6) above. On work partly or solely performed by a subcontractor, the Contractor will be allowed five percent (5%) of the total cost of the subcontractor's labor, materials overhead and profit, including taxes and insurance on labor required by statute. On all changes in the work defined in this RFP, no Contractor or subcontractor will be allowed any expenses, overhead or profit for employment of another Contractor to perform work for them.
- 8) On all change in the work, the Contractor will be reimbursed for its expenditures for Workmen's Compensation Insurance, Social Security Taxes, and Unemployment Compensation Taxes covering persons actually engaged upon the Work and the actual increased cost of bonds.

SECTION III – GENERAL CONDITIONS

- 9) The cost of foremen and superintendents may be added only when the change order makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic Contract.
 - 10) The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the State and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors.
 - 11) If the Contractor and the State cannot agree as to the extent the contract time shall be increased for extra work or the extent the Contract time shall be reduced for Work omitted by the State, the increase or decrease, as the case may be, shall be determined by the Procurement Officer. Any disagreement with this decision may be appealed by the Contractor under the Disputes Clause.
 - 12) Notwithstanding any provisions in the contract documents, the State shall not be liable to the Contractor, for any Phase II work, except from guaranteed cost savings.
- D. The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, the following:
Job supervision (project manager, construction foreman/supervisor) and field office expense required by the Contract, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, use of small tools or equipment to job location, and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly-established principal office, branch office or similar facilities.

28. UNAUTHORIZED WORK

The Contractor shall **not** be paid for any work not authorized in writing by the State.

29. CONFORMITY WITH CONTRACT REQUIREMENTS

- A. All work performed and all materials furnished shall be in conformity with the Contract requirements.
- B. In the event the Owner finds the materials or the finished product in which the materials are used for the work performed are not in complete conformity with the Contract requirements and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.
- C. In the event the Owner finds the materials or the finished product in which the materials are used are not in complete conformity with the Contract requirements,

SECTION III – GENERAL CONDITIONS

but have resulted in a satisfactory product, the Owner shall then make a determination if the work shall be accepted. In this event, the Owner will document the basis of acceptance by a Change Order which will provide for an appropriate adjustment in the Contract price. Contractor is at risk for non-compliant work. Retroactive Change Orders are not acceptable.

30. ADJACENT WORK

- A. The State shall have the right, at any time, to contract for and/or perform work on, near, over or under the work covered by this Contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit their own work to such other work as may be directed by the Procurement Officer.
- B. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent Contractors the State will act as referee and decisions made by the State will be binding. The Contractor agrees to make no claims against the State for any inconvenience, delay or loss experienced because of the presence and operations of other Contractors. State will be fully cooperative with all Contractors to resolve the matter.

31. CONTROL BY THE CONTRACTOR

The Contractor shall constantly maintain efficient professional supervision of the work, using current project/construction management procedures. They shall carefully study and compare all drawings, specifications, and other instructions and check them against conditions existing or being constructed on the project. Contractor shall immediately report to the State any error, inconsistency or omission which he may discover. The Contractor's project manager shall be on site at all times during the construction period, unless otherwise directed by the Using Agency.

32. COOPERATION WITH UTILITIES

- A. It is understood and agreed that the Contractor has considered in its proposal all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by them due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto, if required for installation and operation of the Contractor's equipment.
- B. The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor. Contractor is responsible to notify the

SECTION III – GENERAL CONDITIONS

Miss Utility, prior to start of work.

- D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

33. AUTHORITY AND DUTIES OF STATE INSPECTORS

- A. State inspectors and other State personnel will be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the Contract, or to approve or accept any portion of the complete project. The inspectors are authorized to call to the attention of the Contractor any failure of the work or materials to conform to the Contract. The inspectors are authorized to reject materials or suspend the work until any questions at issue can be referred to and decided by the Procurement Officer. Inspectors will perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.
- B. The inspector will in no case act as foreman or perform other duties for the Contractor, or interfere with the management of the work by the latter.
- C. Any advice which the inspector may give the Contractor shall not be construed as binding the State in any way, or releasing the Contractor from fulfilling all the terms of the Contract. The duty of the inspector on the project is to observe the progress of the work and to report any deviations from the requirements of the contract documents; however, should the inspector fail to report any such deviation from the Contract requirements, this does not release the Contractor from fulfilling all of the terms of the Contract. Actions of the inspectors are for the benefit of the State only.
- D. Where there is disagreement between the Contractor and the inspector, the inspector will advise the Procurement officer who will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the work and explaining the reason for such shutdown. As soon as the inspector is advised of the delivery of the shutdown order, the inspector will immediately leave the site of the work and any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

34. INSPECTION OF THE WORK

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- A. All work, including the fabrication and source of supply, is subject to observation by the Department, and those agencies required by law to inspect specific items. The State is not responsible for the actions of county, municipal, or other local officials.
- B. The Contractor shall provide facilities for access and inspection as required by the State.
- C. If the specifications, the Department's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the State timely notice of its readiness for inspection, and if the inspection is by another authority, the date fixed for such inspection. Inspections by the State shall be made promptly and where practicable at the source of supply. Any work covered without approval of the Department must, if required by the Consulting Engineer or the Department, be uncovered for examination at the Contractor's expense.

35. REMOVAL OF DEFECTIVE WORK

- A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the Contract requirements or shall be remedied otherwise in an acceptable manner authorized by the Procurement Officer.
- C. Upon failure on the part of the Contractor to comply promptly with any order of the State, made under the provisions of this Section, the State will have the authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to cause the costs to be deducted from any monies due or to become due the Contractor under this Contract.

36. MAINTENANCE OF WORK DURING CONSTRUCTION

- A. The Contractor shall maintain the work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- B. All cost of maintenance work during construction and before final acceptance shall be included in the price proposal and the Contractor will not be paid any additional amount for such work.
- D. In the event that the Contractor's work is halted by the State for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided herein as may be necessary during the period of suspended work or until the Contractor has been declared in default.

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37. FAILURE TO MAINTAIN ENTIRE PROJECT

Failure on the part of the Contractor, at any time, to adequately maintain installed equipment shall result in the State notifying the Contractor to comply with the required maintenance provisions of the Contract. In the event that the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the State will immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance will be deducted from funds due the Contractor.

38. STATE'S RIGHT TO DO WORK

If the Contractor should neglect to execute the Work properly or fail to perform any provision of this Contract, the State may make good such deficiencies and may deduct the cost thereof from the funds then or thereafter due the Contractor.

39. MATERIALS - GENERAL

- A. All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the State in writing of the sources from which they propose to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract.
- B. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitation as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, fishing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in this RFP shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, or regulations.
- C. Approval. All materials submitted in the Contractor's specifications and as required in this RFP are subject to the State's approval as to conformity with the type, quality, design, color, etc. No work for which approval is necessary shall be completed until written approval is given by the State. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications.
- D. New Materials. Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the Procurement Officer.
- E. Quality. Unless otherwise specified, all materials shall be of the best quality of the respective kinds.
- F. Samples. The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.

SECTION III – GENERAL CONDITIONS

G. Proof of Quality. The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. The Contractor shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in these General Conditions.

H. Century Compliant. The Contractor warrants that the products (computers, controls, software, etc.) provided or systems developed under this Contract are "Century Compliant" meaning that the product:

- 1) Is able to process date data accurately - including date data century recognition, calculations that accommodate same century and multi-century formulas and date values (including leap year factors), and date data interface values that reflect the century-when used either in a stand-alone configuration or in combination with other "Century Compliant" products used by the State.
- 2) Will not abnormally terminate its function or provide or cause invalid or incorrect results due incompatibility with the calendar year.

In addition to any other warranties applicable to this Contract or any remedies otherwise available to the State, the Contractor agreed to promptly repair or replace any product furnished under this contract that is not "Century Compliant," provided the State gives notice within a reasonable time following discovery of such failure.

I. Standard Specifications. When no specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then:

- 1) For items not otherwise specified below, the latest edition of the applicable American Society for Testing and Materials specification is the applicable specification.
- 2) For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the Building Officials and Code Administrators code are the applicable specification.
- 3) For items generally considered as heating, refrigerating, air-conditioning, or ventilating, the applicable portions of the latest four editions of the ASHRAE Handbook published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., are the applicable specification.
- 4) For items generally considered as site work, the applicable portions of the Maryland State Highway Administration standard specifications is the applicable specification.

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- 5) For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical code are the applicable specification.
- 6) For items generally considered as fire protection, the applicable portion of the latest edition of the National Fire Protection Association Code is the applicable specification.

40. STORAGE AND HANDLING OF MATERIALS

- A. Materials shall be so stored as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment; such storage areas must be restored to their original condition by the Contractor at his expense.
- 1) All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50°F).
 - 2) All valves shall be stored under roof on wood pedestals, aboveground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer on oiling, protection and maintenance of equipment during storage. It shall be the Contractor's complete responsibility for the storage and care of the equipment and materials. Material not properly stored prior to installation shall not be considered for payment.
 - 3) Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
 - 4) Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract documents as to the "Limit of Contract."
 - 5) Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- B. Explosives. Explosives shall not be used on projects covered under this contract.
- C. Paints.
- 1) Oil base paints and inflammable liquids shall not be stored in large

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quantities on the project. Containers shall be limited to five gallon size. Any liquid with a flash point of less than one hundred (100) degrees F shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans.

- 2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

41. SUBSTITUTIONS

- A. Should the Contractor desire to substitute another material for one or more specified by name in the RFP or the approved specifications, the Contractor shall apply in writing, for such permission and state the credit or extra involved by the use of such material. The State will not consider the substitution of any material different in type of construction methods unless such substitution affects a benefit to the State.
- B. The Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material" by the State when the Contractor has not designated such materials as a "substitute," shall not be binding on the State nor release Contractor from any obligations of his Contract, unless the State approves such "substitution" in writing expressly acknowledging the substitution.

42. APPROVED EQUALS

The terms "Or Equal," "Equal," "Approved Equal," where used, are used as synonyms in this RFP. They are implied in reference to all named manufacturers in the RFP and specifications unless otherwise stated. Only materials fully equal in all details will be considered. The Department is the final judge of the equality. The Department does not represent or warrant under any circumstances, including by use of the words "or equal," that there exists an equal to any item specified.

43. CONTRACTOR'S OPTIONS

When several products or manufacturers are named in the specifications and approved by the State for the same purpose or use, then the Contractor may select any of those so named. However, all of the units required for, and used in, the project must be the same in material and manufacture.

44. TESTS

- A. If the contract documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the work to be inspected, tested, or approved, the Contractor shall give the State timely notice of its readiness so the State may observe such inspection, testing, or approval. The Contractor shall bear all costs of such inspections, tests, or approvals.

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- B. If the State determines that any work requires special inspection, testing, or approval which the contract documents do not include, the State will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in A., above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the contract documents, the Contractor shall bear all costs thereof, including compensation for the State's additional services made necessary by such failure; otherwise the State shall bear such costs, and an equitable adjustment will be made in the Contract price.
- C. Required certificates of inspection, testing or approval shall be obtained by the Contractor and promptly delivered by them to the State. The work shall not be considered 100% complete until such certifications are in the possession of the State.

45. BUY AMERICAN STEEL

Contractor shall comply with the requirements of Title 17, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland.

46. LAWS TO BE OBSERVED

The Contractor hereby represents and warrants that:

- A. 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;
- B. 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;
- C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and government approvals, if any, necessary to the performance of its obligations under this Contract.

In addition, if the Contractor observes that the drawings and specifications are at variance with any law, they shall promptly notify the State, and make any necessary changes to the drawings and specifications to bring them into compliance with the law at no extra cost to the State. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the State, it shall bear all costs arising there from.

47. PERMITS AND LICENSES

Contractor will file with the appropriate local authorities, drawings and

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specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the contract documents and Contractor shall include the cost of said fees in its bid.

48. PATENTED DEVICES, MATERIALS AND PROCESSES

- A. The Contractor shall pay for all royalties and license fees. They shall defend all suits or claims for infringement of any patent rights and shall save the State harmless from loss on account thereof.
- B. When a particular process or the product of a particular manufacturer or manufacturers is specified or proposed to be used that may be an infringement of a patent, the Contractor will at his option: (1) procure for the State the right to use the applicable process or product; (2) replace the process or product with a non-infringing process or product complying with the specifications; or (3) modify the process or product so it become non-infringing and performs in a similar manner to the original item.

49. LAND, AIR AND WATER POLLUTION

- A. If requested or required, the Contractor must submit evidence to the Department that the governing Federal, State, and local air pollution criteria will be, and were, met. This evidence and related documents will be retained by the Department for on-site examination.
- B. If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Procurement Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required by the State as one of the terms of this Contract. If it is determined that the order is not due in any part to acts or omissions of the Contractor required by the terms of this Contract, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer in the administration of this Contract under the terms of the "Suspension of Work" clause of this Contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) as provided in that clause, subject to all the provisions thereof.
- C. The term "environmental litigation," as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the State has not duly considered, either substantively or procedurally, the effect of the work on the environment.

50. CONSTRUCTION INSURANCE REQUIREMENTS

- A. Insurance During Construction

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- 1) The Contractor and his subcontractors shall purchase and maintain comprehensive third-party legal liability insurance and other such insurance as is appropriate for the work to be performed on the project. Further, the Contractor shall be responsible of the maintenance of this insurance whether the work is performed directly by the Contractor, by any subcontractor, by any person employed by the Contractor or any subcontractor, or by anyone for whose acts the Contractor may be liable. This insurance shall include protection for:
 - (a) Claims arising from Worker's Compensation statutes or similar employee benefit acts, or third-party legal liability claims arising from bodily injury, sickness and disease, or death of Contractor's employees. The minimum limits of such coverage shall be as required by law.
 - (b) Third-party legal liability claims against the Contractor arising from the operations of the Contractor, subcontractors, and supplies with such protection extended to provide comprehensive coverage, including personal injury, completed operations, explosion and collapse hazard, and underground hazard. The minimum combined limit for personal injury and property damage liability shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless higher limits are stated elsewhere in the contract documents.
 - (c) Third-party legal liability claims arising from bodily injury and/or damage to property of others from the ownership, maintenance or use of any motor vehicle, both on-site and off site. The minimum combined limit for personal injury and property damage liability shall be: \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- 2) The Contractor shall purchase and maintain property insurance (Builder's Risk) covering the project, including improvements to real property and goods and materials on the site to be incorporated into the project. Such property insurance shall be for the full insurable value of the property covered and shall be written on an "All Risk" basis covering physical loss and damage including theft, vandalism and malicious mischief, collapse, water damage, and such other perils as may be applicable to the project. Such insurance shall include the interest of the Owner, the General Contractor, and all subcontractors as their interest may appear.

- B. General: All insurance required shall be purchased and maintained with a company or companies lawfully authorized to do business in the State of Maryland. Such insurance shall be for limits of liability as specified for the project or legally required, whichever is greater. All required insurance policies shall be endorsed to provide thirty (30) days prior written notice by certified mail, or any material change, cancellation, or non-renewal to:

Department of General Services
Contract Services Division

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301 West Preston Street, Room M-7
Baltimore, Maryland 21201

- C. All required insurance shall be maintained until the State has fully accepted the work required under the Contract. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the Contract for default.

51. ASSIGNMENTS

The Contractor shall not assign the Contract and shall not assign any monies due or to become due to him hereunder, without the previous written consent of the State.

52. SEPARATE CONTRACTS

- A. The State reserves the right to let other contracts in connection with this work. The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.
- B. If any part of the Contractor's work depends on proper execution or results upon the work of any other Contractor, the Contractor shall inspect and promptly report to the State any defects in such work that render it unsuitable for such proper execution and results. Their failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to the defects which may develop in the other Contractor's work after the execution of his work.
- C. To ensure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the Procurement Officer any discrepancy between the executed work and the drawings.

53. RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND EMPLOYEES

- A. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the State, it being understood that in all such matters they act solely as agents and representatives of the State.
- B. The State may terminate the right of the Contractor to proceed under this Contract if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; the facts upon which the Procurement Officer makes such findings may be reviewed in any competent court.
- C. In the event this Contract is terminated as provided in paragraph B hereof, the

SECTION III – GENERAL CONDITIONS

State shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

- D. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- E. Non hiring of State 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 subcontractor to this contract.

54. NO WAIVER OF LEGAL RIGHTS

- A. The State shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, or from showing that the work or materials do not in fact conform to the requirements of the Contract. The State shall not be precluded or stopped, notwithstanding any such measurement, estimate, or certificate and payment from recovering from the Contractor or his sureties, or both, such damage as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the State, or any representative of the State, nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the State shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages.
- B. The waiver by the State of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

55. COVENANT AGAINST CONTINGENT FEES

The contractor, architect, or engineer (as applicable) warrants that it has not employed 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 agreement, 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 agreement.

56. ASSIGNMENT OF ANTI-TRUST CLAIMS

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The Contractor sells, transfers, and assigns to the State of Maryland all rights, title and interest of and in and to any causes of action arising at any time before the date of this assignment or during the performance of this Contract under the anti-trust Laws of the United States, including Section 1 of the Sherman Act, and the Antitrust Law of Maryland relating to the purchase by him or the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this agreement. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

57. FEDERAL PARTICIPATION

When the United States Government pays all or any portion of the cost of a project, the work shall be subject to the inspection of the appropriate Federal agency. Such inspection shall in no sense make the Federal government a party to this Contract, and will not interfere, in any way, with the rights of either party hereunder.

58. DISPUTES

- A. This Contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland and COMAR 21.10. (Administrative and Civil Remedies.)
- B. Except as may otherwise be provided in the Act or aforesaid regulations, all disputes arising under or as a result of a breach of this Contract which are not disposed of by mutual agreement shall be resolved in accordance with this clause.
- C. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this Contract.
 - 1) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim for the purpose of this clause.
 - 2) A claim by a Contractor shall be made in writing and submitted to the Procurement Officer for decision in consultation with the office of the Attorney General. A claim by the State shall be the subject of a decision by the Procurement Officer.
- D. Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

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- E. When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- F. In connection with any claim under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his claim to the Procurement Officer.
- G. The Procurement Officer will render a written decision on all claims. This decision will be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of the receipt. The Procurement Officer's decision will be deemed the final action of the State. The decision shall be furnished to the Contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the State.
- H. The Procurement Officer's decision will be final and conclusive unless the Contractor files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of said decision.
- I. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision or interpretation.

59. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the parties hereto and other communications between the parties prior to the execution of the Contract, whether written or oral, with reference to the subject matter of the Contract, are superseded by the agreements contained herein. The Contract may not be modified, amended, changed or altered except by written instrument executed by the parties hereto and approved by the Procurement Officer.

60. NOTICE TO PROCEED (Phase I and Phase II)

After the Contract has been executed, the State will issue to the Contractor a "Notice to Proceed" and this notice will stipulate that date on or before which the Contractor is expected to begin work. Any preliminary work started, or materials ordered, before receipt of the "Notice to Proceed," shall be at the risk of the Contractor.

61. PROSECUTION OF THE WORK; DELAYS AND EXTENSION OF TIME

- A. It is imperative that the Contractor complete the work within the time limits specified and agreed to in the contract.
- B. The date of commencement of the work is the date established in a Notice to Proceed signed by the Project Manager.
- C. The Contractor agrees to prosecute the work continuously and diligently and no charges or claims 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

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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.

62. PUBLIC CONVENIENCE AND SAFETY

The Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the Procurement Officer. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets and portions of the project under construction shall not be obstructed more than is absolutely necessary.

63. BARRICADES AND WARNING SIGNS

The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the work and safety of the agency and its employees.

64. PRESERVATION, PROTECTION, AND RESTORATION OF PROPERTY

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the State property from injury or loss arising in connection with this Contract. He shall repair and indemnify against any such damage, injury or loss, except such as may be directly due to errors in the contract documents or caused by agents or employees of the State. He shall adequately protect adjacent property as provided by law and the contract documents.
- B. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling

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materials.

65. PROGRESS SCHEDULE AND TIME (Phase II only)

- A. Preparation of Work Schedule. The Contractor shall prepare a Critical Path Method (CPM) schedule setting forth his dates for completing various portions of the work. Included among the tasks set forth on the schedule shall be the critical design completion dates, submittal dates (to the State), and dates for return of the approved submittals. The schedule shall be reviewed by the State for approval of the time within which the State must evaluate the Contractor's submittals. The State's approval of the Contractor's schedule does not constitute an approval of the entire schedule; it merely constitutes an approval of that portion of the schedule that relates to the State's review of submittals. Offeror shall assume a turnaround time of 3 weeks for submittal review by the State.
- B. Preparation of Critical Path Method Schedules. The Contractor shall submit a CPM to DGS before the Notice to Proceed is issued. The CPM will be updated at least monthly, or more often if dictated by circumstances, to reflect changes and variances in the progress of the project.

66. SUSPENSION OF THE WORK

- A. The Procurement Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the State.
- B. If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of the Contract, or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), the Contract period may be extended for a reasonable amount of time.
- C. No request for an extension under this clause will be allowed:
 - 1) for any costs incurred more than 20 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim, resulting from a suspension order), and
 - 2) unless the request is asserted in writing no more than 20 days after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

67. STATE'S RIGHT TO TERMINATE FOR ITS 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 reasonable costs associated with this contract that the Contractor has incurred up to the

SECTION III – GENERAL CONDITIONS

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).

68. TERMINATION FOR DEFAULT

If the Contractor fails to fulfill its obligations 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 will specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor will, at the State's option, become the State's property. The State will pay the Contractor 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 shall 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.

69. PARTIAL ACCEPTANCE

- A. If during the construction of work the State desires to occupy any portion of the project, the State will have the right, at its sole option and discretion, to occupy and use those portions of the project which is, in the opinion of the Procurement Officer, can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the State for maintenance, heat, light, utilities, and insurance are mutually agreed to by the Contractor and the State.
- B. Partial occupancy shall in no way relieve the Contractor of his responsibilities under the Contract.

70. FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES

- A. Time is an essential element of the Contract and it is important that the work be vigorously prosecuted until completion.
- B. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount(s) specified in the contract, provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders.
- C. The State will deduct and retain out of the monies due to or become due to the Contractor hereunder the amount of liquidated damages, and in case the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the State for the difference.

SECTION III – GENERAL CONDITIONS

71. SUBSTANTIAL COMPLETION AND FINAL INSPECTION

- A. When the installation is substantially completed, the Contractor shall notify the Procurement Officer that the work will be ready for final inspection and test on a definite date. Sufficient notice shall be given to permit the Procurement Officer to schedule the final inspection with the State's consulting engineer.
- B. On the basis of the inspection if the Procurement Officer and consulting engineer determine that the work is substantially complete and the project can be occupied or used for its intended purpose, the Procurement Officer will establish the date of substantial completion and will state the responsibilities of the State and the Contractor for maintenance, heat, utilities, and insurance.
- C. The Procurement Officer will fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (punch list) prepared by the State. If the Contractor fails to complete the remaining items so listed in the time stipulated, the State will have the undisputed right to complete the work and deduct any cost incurred from any monies related under the Contract.

72. CLEANING-UP

The Contractor shall at all times keep the construction area, including storage areas used by them, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the State. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Procurement Officer.

73. GUARANTEES (Phase II only)

The Contractor guarantees for the life of the Contract, commencing on the date fixed by the parties: (normally at Master Lease Program Loan Takedown, unless otherwise noted).

- A. That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.
- B. That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, have been installed in accordance with specifications, all applicable codes and manufacturers recommendations, and shall operate with ordinary care and attention in a satisfactory and efficient manner.
- C. That the Contractor will re-execute, correct, repair, or remove and replace with proper work, without cost to the State, any work found not to be as guaranteed by this Section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this Section.
- D. That the entire work shall be water-tight and leak-proof.

SECTION III – GENERAL CONDITIONS

- E. That the actual adjusted cost avoidance for the life of the Contract will be no less than the guaranteed savings as defined in the Contract.

74. NOTICE TO STATE FOR LABOR DISPUTES

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.
- B. The Contractor agrees to insert the substance of this clause, including this Paragraph B., in any subcontract hereunder as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

75. SCOPE OF PAYMENT

- A. The State agrees to pay the Contractor on the following basis as compensation for the Contractor's services:
 - 1) Total ECM capital cost, as quoted in the Contractor's Final Phase I Report, (Phase II proposal), including engineering feasibility study, preparation of comprehensive energy plan, design, construction documents, construction, training and start-up. This amount is to be payable to the Contractor upon acceptance by the State at 100% completion of the construction phase of the project, and subject to the loan takedown schedule set by the State's Guaranteed Energy Performance Lease Line of Credit. The date the Contractor is paid constitutes the start of the guarantee period. The cost or contract value of any ECMs not operating to the expected performance levels will be the responsibility of the ESCO.
 - 2) Yearly maintenance/service costs as quoted in the Contractor's Final Phase I Report, (Phase II Proposal), for the duration of the contract, and payable by the Owner.
- B. The State's total yearly cost for the repayment of the project capital cost including interest and yearly maintenance costs, cost of M & V, cost of guarantee, and cost of Project manager shall not be greater than the guaranteed energy and energy related savings for the duration of the contract.
- C.
 - 1) Should the recommendations contained in the engineering feasibility study (Phase I) fail to meet the State's objectives for the project (as outlined in Section I and Section III of this RFP), or is deemed unreasonable, unworkable, or cost excessive by the State, the State will have no

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obligation to pay the Contractor the fee associated with the study.

- 2) Should the recommendations, including capital cost, yearly maintenance cost, and guaranteed savings, meet or exceed the State's objectives (as outlined in Section I and Section III of this RFP) as determined by the State, and the State elects to proceed with Phase II of the project, the cost of the study shall be included in the Contractor's ECM capital cost, and financed by the State, either through the Contractor or privately. In either case, the payment to the Contractor shall be the same as noted in A1 and A2 above.
 - 3) Should the recommendations contained in the engineering feasibility study/comprehensive energy efficiency and guaranteed savings program (Phase I study) meet or exceed the State's objectives and all contract requirements as determined by the State and the State, for any reason, does not proceed with the implementation phase (Phase II, design and construction, and maintenance of the ECMs), then the ESCO shall be paid the previously agreed upon cost of the Phase I engineering study. The cost of the study is to be included in the ESCO's Phase I letter of intent upon assignment of each project.
- D. After completion of project phases noted above, and upon demand, the Contractor shall certify to the State in writing that, in accordance with contractual arrangements, suppliers and subcontractors:
- 1) have been paid from the proceeds of the financing arranged by the Contractor or the State, and
 - 2) no liens have been filed or are pending against the installed equipment.
- E. The State may withhold payment under this Contract if it determines that any part of the contract, including completion of punch list items, has not been completed satisfactorily. A letter notifying the Contractor of the outstanding work will be submitted by the State. Neither payment made to the Contractor nor partial or entire use of the work by the State shall be an acceptance of any work or materials not in accordance with this Contract.
- F. The State has the right to withhold from payments due to the Contractor any amounts the State claims to be owed the State by the Contractor.
- G. In applying for all payments, the Contractor shall submit in addition to the above a certificate that he has paid:
- 1) all labor to date;
 - 2) all vendors and material suppliers in full for all items received;
 - 3) all subcontractors in full, less the retained amount; and

SECTION III – GENERAL CONDITIONS

- 4) all insurance premiums.

76. FORCE ACCOUNT WORK (Phase II only)

- A. When the Contractor is required to perform work as a result of additions or changes to the Contract for which there are no applicable unit prices in the Contract, the Department and Contractor shall attempt to agree to a price for the performance of such work. If an agreement cannot be reached, the Department may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:
 - 1) Labor. For all labor, including design services, and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said persons are actually engaged in such work. The Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work.
 - 2) Materials. For materials accepted by the State and used, the Contractor shall receive the actual cost of such materials delivered on the work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).
 - 3) Equipment. For any machinery or special equipment (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Contract. For purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.
 - 4) Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the State, the Contractor shall receive the actual cost of such materials and supplies used.
 - 5) Bond, Insurance, and Tax. For bond premiums, property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on the force account work, the Contractor and State shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
 - 6) Subcontractors. For work done solely by a subcontractor, the subcontractor's cost shall be determined as stipulated in Subparagraphs 1.) through 5.), above. The allowable percentages for combined overhead and profit for the subcontractor shall be as stipulated hereinafter under Subparagraph 8. The Contractor shall be entitled to an allowance of five percent (5%) of the subcontractor's total cost of doing the work.

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- 7) Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
- 8) Contractor's Overhead and Profit. The Contractor will be paid overhead and profit for work performed by his own forces as a percentage thereof, at the following scale:

<u>VALUE OF WORK</u>	<u>COMBINED OVERHEAD AND PROFIT</u>
\$0 - \$25,000	15%
Over \$25,000	Negotiated; maximum of 15%

- B. Compensation. The compensation as set forth above shall be received by the Contractor as payment in full for the work done on a force account basis in accordance with all other provisions in the Contract respecting payment. At the end of each day, the Contractor's representative and the Procurement Officer shall compare records of the cost of work as ordered on a force account basis.
- C. Statements. No payment will be made for work performed on a force account basis until the Contractor furnishes the Procurement Officer duplicate itemized statements of the cost of such force account work detailed as to the following:
 - 1) Name, classification, date, daily hours, total hours, rate, and extension for such laborer, foreman.
 - 2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
 - 3) Quantities of materials, prices, and extensions.
 - 4) Transportation of materials.
 - 5) Cost of property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
 - 6) Payments of items under Subparagraphs 3. and 4. above, shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the Contractor's stock, then in lieu of the original invoices, the statement shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.

77. DEDUCTIONS FOR UNCORRECTED WORK (Phase II only)

If the State deems it inexpedient to correct work injured or done not in accordance with the Contract, an equitable deduction from the payment shall be made thereof.

SECTION III – GENERAL CONDITIONS

78. CORRECTION OF WORK NOT IN ACCORDANCE WITH THE CONTRACT (Phase II only)

- A. The Contractor shall promptly remove from the premises all materials condemned by the State as failing to conform to the Contract, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the State and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
- B. If the Contractor does not remove such condemned work and materials within a reasonable time, the State may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal, the State may, sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor.

79. RETENTION OF RECORDS

- A. 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 designee, at all reasonable times.
- B. The Contractor further agrees to include in all their subcontracts hereunder a provision to the effect that the subcontractor agrees that the State or any of its duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract.

80. EMPLOYEES AND CONSULTANTS

- A. Qualification of Employees: Only personnel thoroughly trained and skilled in the task assigned them may be employed on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work.
- B. Licensed Employees: When Municipal, County, State, or Federal laws require that certain personnel (electricians, plumbers, architects, engineers, etc.) be licensed, then all such personnel employed on the work shall be so licensed.
- C. Quantity of Labor: The Contractor shall employ on the work, at all times, sufficient personnel to complete the work within the time stated in the Contract.
- D. Work Areas. The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or direction of the Department.

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E. Methods and Quality:

- 1) All workmanship shall be of good quality. Whenever the method of the work or manner of procedure is not specifically stated in the contract documents, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. This, however, does not remove any requirement in these specifications to add to the manufacturer's recommendations.
- 2) All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
- 3) All methods, procedures, and results are subject to the State's approval as to finished result to be obtained.

F. Scheduling:

- 1) The Contractor shall so schedule the work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching, and digging necessary to the execution of the work is included.
- 2) The Contractor shall so schedule the scope of work (including design, construction, maintenance, training, etc.) that each installation or portion of the work shall be properly coordinated with all other portions of the work as required for a complete installation, all according to accepted good design and construction practice, and in accordance with the project schedule.

G. Superintendent. The Contractor shall keep on the project site, at all times during its progress, a competent, English-speaking Superintendent and any necessary assistants, all approved by the Department prior to commencement of the work. The Contractor shall submit in writing to the Department the name of the person it intends to employ as superintendent for the execution of this Contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by the Department and an approval or rejection given in writing. Persons who have previously provided unsatisfactory work executed for the State of Maryland, or who are without proper qualifications, will not be approved. Should it be necessary to change the Superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same institution or close to each other only when approved by the Department in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Directions shall be confirmed in writing on written request from the contractor. Should the Superintendent be complained of by the Department for cause, he shall be removed from the work and a new Superintendent obtained and approved as

SECTION III – GENERAL CONDITIONS

described above.

- H. Discipline. The Contractor shall at all times enforce strict discipline and good order among their employees and shall not employ or permit to remain on the work any unfit person. They shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law, and the State. Employees must not be allowed to loiter on the premises before or after working hours.
- I. Employee Safety. The Contractor shall designate a responsible member of his organization, on the work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards required under the Contract. The name and position of the person so designated shall be reported to the Department by the Contractor at the commencement of the work.

81. NON-DISCRIMINATION IN EMPLOYMENT

- A. Contractor agrees:
 - 1) 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;
 - 2) to include a provision similar to subsection 1), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and
 - 3) 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 subsection A.
- B. Contractor shall be subject to and shall comply with all other requirements of Section 13-219 of the State Finance and Procurement Article of the Annotated Code of Maryland.
- C. Contractor shall comply with all other applicable federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.
- D. The Contractor, subcontractors, and agents of both insofar as possible, shall secure labor through the Maryland Job Service of the Maryland Department of Economic and Employment Development, except where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by the union. In that case, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland Job Service for referral of such labor as they may mutually agree shall be referred. The Contractor shall be the sole judge of the competency or fitness and for satisfactory service of any laborer referred to him by the Maryland Job Service.

82. SUBCONTRACTS

SECTION III – GENERAL CONDITIONS

- A. The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Department in writing, of the name of subcontractors proposed for the principal parts of the work and for such others as the State may direct and shall not employ any that the Department may object to as incompetent or unfit.
- B. The Contractor agrees that the Contractor is as fully responsible to the State for the acts and omissions of their subcontractors at any time and of persons either directly employed by them, as it is for the acts and omissions of persons directly employed by the subcontractors.
- C. Nothing contained in the contract documents shall create any contractual relation between any subcontractor and the State, and nothing in the contract documents is intended to make the subcontractor a beneficiary of the Contract between the State and the Contractor.

83. RELATION OF CONTRACTOR AND SUBCONTRACTOR

- A. The Contractor agrees to bind every subcontractor and will see that every subcontractor agrees to be bound by the terms of the Contract documents, as far as applicable to its work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the Department.
- B. The Contractor agrees and shall incorporate by reference or otherwise include these General Conditions and the following provisions in all subcontracts and supply contracts applicable to the work. Subcontractor agrees to be bound to the Contractor by the terms of the Agreement, General Conditions, Drawings and Specifications, and to assume toward them all obligations and responsibilities that they, by those documents, assumes toward the State.
- C. The subcontractor agrees, upon completion of their work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, to permit simultaneous final payment by the Contractor.
- D. The Contractor and the subcontractor agree that nothing in the Contract shall create any obligation on the part of the State to pay to or to see to the payment of any sums to any subcontractor.

84. CONSTRUCTION SAFETY AND HEALTH STANDARDS (Phase II only)

It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of this Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health or safety, as determined under construction safety and health standards, laws and regulations of the locality in which the work is done, the State, and the Federal government.

85. MANDATORY CONTRACTUAL TERMS

By submitting an offer in response to this RFP, offerors, if selected for award, shall be

SECTION III – GENERAL CONDITIONS

deemed to have accepted the terms of this RFP and the Contract--Attachment A. Any exceptions to the RFP or the Contract must be clearly identified in the Executive Summary of the Technical Proposal. A proposal that takes exception to these terms may be rejected.

86. VERIFICATION OF REGISTRATION AND TAX PAYMENT

Before a corporation can do business in the State of Maryland it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore Maryland 21201. It is strongly recommended that any potential offeror complete registration prior to the due date for receipt of proposals. An offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful offeror from final consideration and recommendation for contract award.

87. BID PROPOSAL AFFIDAVIT

Proposals submitted by offerors must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this RFP.

88. STATE ETHICS LAW

The State Ethics Law, State Government Article §15-508, applies to persons that are involved in the drafting of specifications. In general, and with certain exceptions, such persons are prohibited from participating in the implementation of those specifications whether as a prime or subcontractor. The State Ethics Law may apply to contracts to Contractors under the RFP. Please see §15-508 for further detail.

89. ELECTRONIC FUNDS TRANSFER

Payments to Contractors by Electronic Funds Transfer (EFT):

(Pursuant to: Section 7-227.1, State Finance and Procurement Article, Maryland Code;COMAR 25.03.02.02.). Every solicitation for a contract expected to exceed \$200,000 that requires Board of Public Works approval must include the following clause:

PAYMENT TO CONTRACTORS BY ELECTRONIC FUND TRANSFER (EFT):

(For bids over \$200,000)

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Bidder/Offeror shall register using the attached 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.

SECTION IV – SCOPE OF WORK

1. GENERAL

A. The ESCO shall, for each project:

- 1) Provide all necessary study, investigation, design, construction, training, monitoring and verification, and maintenance for the complete installation of ECM's under the conditions required in this RFP.
- 2) Provide construction drawings, specifications, and equipment submittals for review and approval by the State of Maryland.
- 3) Provide optional project financing, directly to the State that will allow the State of Maryland to pay all costs out of the savings resulting from the installation of the proposed system. Any third party financing arrangements must be made between the ESCO and the third party.
- 4) Provide a program that will result in guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract.
- 5) Study all possible energy conservation measures.
- 6) Provide Certificate of Insurance and bond prior to any funding of the projects.
- 7) Provide training to facility maintenance/operations and DGS personnel. Training shall address the purpose, operation and maintenance of the equipment and systems installed throughout the project.
- 8) Provide monitoring and validation of energy consumption throughout the contract period. This may also include the requirement for measurements to be recorded during the Phase I study phase.
- 9) Provide service/maintenance, for everything installed, throughout the contract period.

B. All engineering and design work shall be performed in accordance with the DGS Procedures Manual for Architects and Engineers (latest edition) unless noted otherwise in the RFP.

C. All energy audits, feasibility studies, plans and specifications shall be prepared by Professional Engineers licensed in the State of Maryland at the time of ESCO's submittal. A certified energy manager is required on each project.

D. Any as-built drawings of the facility shall be made available to the ESCO upon assignment of a project. The State does not guarantee the accuracy or completeness of these documents. The ESCO shall consult with the facility maintenance/operations staff and DGS as to any conditions which might exist not shown in the drawings. The selected ESCO shall be responsible for verifying the accuracy of the information given to him by the State. The ESCO shall also field verify existing conditions as necessary to accurately design and locate the installation of new equipment and retrofit or expansion of existing systems. The State is not liable under any circumstances for differing site conditions.

SECTION IV - SCOPE OF WORK

E. This RFP is a "Performance Specification" and not a "Design Specification".

2. SPECIFIC

A. Method of Project Assignment

- 1) All Phase I projects will be awarded based on competitive proposals for Phase I of an EPC by each ESCO.
- 2) All ESCO's on the IDC list will receive written notification of the intent of an agency to enter into an EPC 10 working days prior to the initial meeting with the agency, DGS and/or MEA representatives.
 - (a) Agencies interested in an Energy Performance Contract will coordinate with DGS and/or MEA, where appropriate, to gather pertinent data and establish goals.
- 3) The purpose of the initial meeting is to introduce the goals of the agency to the ESCOs as well as to discuss the facility purpose and usage patterns. ESCOs will be notified of the date of the official site visit at this meeting.
- 4) Each ESCO will have 30 days after the initial meeting to submit a proposal for Phase I services to the agency/DGS. The ESCO agrees that its Phase II project will comply with the promises made in the Phase I proposal in response to the following and evaluation factors. In this proposal for Phase I, the following information must be included. The proposal will be scored on the criteria listed below. An ESCO will be selected based on the proposal with the highest score.
 - (a) Guaranteed Cost Avoidance for the facility for a 13 year term with an amortization at an interest rate determined by the State. (This may include energy and operational savings.)
 - (b) Guaranteed percentage energy reduction.
 - (c) Proposed list of ECM's to be included in the project. This can be a generalized list. However, major equipment upgrades or replacements should be included specifically.
 - (d) Proposed overhead and profit rates on both subcontract prices and internal ESCO prices.
 - (e) Proposal for new and/or renewable technologies as an energy conservation measure. This must include specific applications at the proposed facility. No points will be given for ESCO's representing a cursory look at the potential application of new technologies.
 - (f) Proposed Phase I schedule.
 - (g) Cost of the Phase I study.

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- (h) Proposed method of Guaranty in accordance with Section IV.C.2.
- 6) Once an ESCO successfully completes Phase I of an assigned project, if Phase I meets the State's objectives, and if the State elects to proceed with Phase II, the same ESCO will implement the energy efficiency program under Phase II. The Phase II scope of work, capital cost, guaranteed savings and yearly maintenance costs will require final contract approval by the Board of Public Works.
- B. Phase I: For each assigned project, ESCO shall develop the proposed comprehensive energy efficiency and guaranteed savings program. ESCO shall:
- 1) Conduct a comprehensive energy audit, a detailed engineering feasibility study of the energy/utility systems serving the facility, and effectively analyze all existing systems, equipment, operations and utility costs. Identify technical solutions in order to maximize energy and cost savings as well as operation and maintenance savings. (Operational and maintenance savings must be clearly defined by the agency and the States' project manager. Facility labor costs savings associated with all upgrades may only be included by approval from the agency and project manager.) Further, provide a definitive estimate of all costs and savings expected to result from the proposed energy conservation/efficiency measures. The ESCO shall consult utility/fuel supply companies prior to effectively conducting analysis of existing systems and utility costs. The ESCO shall also field verify existing conditions to accurately design and locate the installation of new equipment, retrofits or expansion of existing systems.
 - 2) Identify, recommend and provide (if approved) potential Energy Conservation/Efficiency Measures (ECM) for the facility.
 - 3) Identify and quantify deferred maintenance items that qualify as energy cost reduction measures to be included in the project. Provide comprehensive technical analysis including but not limited to: building envelope (roofing, windows, glass, walls, insulation, etc.) automatic temperature control systems, HVAC and HVAC controls, electrical systems, energy efficient lighting retrofit, chiller and boiler operation, including distribution systems, insulation, window filming, glass replacement, ductwork cleaning, coils, etc. All systems will be evaluated and supporting documentation provided regardless of inclusion in the project. Items selected to be included in the project shall meet the requirements of the RFP and support any Master Plan for the facility.
 - 4) Assess the feasibility of the replacement/upgrade of electrical, steam, and/or natural gas distribution systems.
 - 5) Provide plan to install sub-meters for all buildings (gas, electric, water, etc.) to measure savings. Include cost and description of such equipment. Provide plan to document assumptions used for baseline creation. This may require the installation of sub-meters or data loggers during the Phase

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I study portion. This should be determined between the State and the ESCO.

- 6) Assess the feasibility and implement plans, if approved, for new energy management systems/controls.
- 7) All Phase I studies must include a comprehensive evaluation for renewable and /or innovative new technology that either justifies or quantifies that measure for inclusion or exclusion in Phase II. The Offeror's objective shall be to identify technical solutions in order to maximize energy and cost savings and provide a definitive estimate of costs and savings resulting from the proposed energy conservation measures. Upon approval of this phase of the project, the Offeror will be expected to guarantee all identified costs and savings. A project must meet minimum energy reduction requirements, meet minimum expectations of equipment replacement, acceptable costs, and be fully funded with guaranteed energy savings to proceed to Phase II.
- 8) Ensure that the project plan conforms to all requirements of applicable utility energy conservation/rebate incentive programs in order to minimize cost and payback period.
- 9) An overall project proforma shall be created to document the following costs on an annual basis, for each year of the project. The costs of financing the project shall be included. The total project costs should be amortized. The project costs shall include, but be listed individually:
 - (a) total fee for engineering and design;
 - (b) total cost of construction period interest;
 - (c) total Material and equipment costs;
 - (d) total Labor costs;
 - (e) funding interest rate;
 - (f) cost of the study; and
 - (g) cost of the guarantee.
- 10) The proforma shall include for each year:
 - (a) energy savings in dollars;
 - (b) operational and maintenance savings (if applicable);
 - (c) water savings (if applicable);
 - (d) debt service;
 - (e) maintenance costs;
 - (f) training and M&V costs;
 - (g) SALP repayments; and
 - (h) DGS costs for construction management services and annual monitoring and verification into project cash flow.
- (11) (A) Should the recommendations contained in the engineering feasibility study/comprehensive energy efficiency and guaranteed savings program (Phase I) fail to meet the State's objectives for the project, or is deemed unreasonable, unworkable, or cost excessive

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by the State, the State shall have no obligation to pay the ESCO any fee for preparation of the Phase I study.

- (B) Should the recommendations of the Phase I study meet or exceed the State's objectives and all contract requirements and if the State contracts for Phase II (implementation of the Phase I study) , the cost of the Phase I study shall be included in the ECM capital cost financed by the State, either through the ESCO or otherwise.
 - (C) Should the recommendations contained in the engineering feasibility study/comprehensive energy efficiency and guaranteed savings program (Phase I study) meet or exceed the State's objectives and all contract requirements, and the State, for any reason other than those in A above, does not proceed with the implementation phase (Phase II, design and construction, and maintenance of the ECMs), then the ESCO shall be paid the previously agreed upon cost of the Phase I engineering study. The cost of the study is to be included in the ESCO's Phase I proposal for the project.
- (12) As part of Phase I, and prior to submission by the State to the Board of Public Works (BPW) for approval of Phase II, the ESCO shall prepare a Phase II Proposal specifying the ECM recommendations approved in Phase I including, but not limited to the following:
- (a) List of all subcontractors and responsibilities and a list of the project team if it is different from the response to the IDC solicitation.
 - (b) Layout/floor plans of major equipment, (35% CDs in accordance with the Department of General Services Procedure Manual for A/E Professional Services, latest edition).
 - (c) Schematic diagrams and single line diagrams for all HVAC and electrical equipment.
 - (d) Cut sheets for major equipment, such as boilers, chillers, cooling towers, generators, air handling units, etc.
 - (e) Outline specifications for all major components, including but not limited to:

(1) Cooling System:

The ESCO shall provide a schematic diagram of the existing and the proposed Cooling System. The schematic diagram of the existing system shall include all the major existing equipment, along with their performance parameters, pipe sizes, flow rates, etc. Any unique control requirements should be noted as well as comments made about the acceptability of the performance of the associated equipment to remain such as Compressors, Expansion Tanks, Air Separators, Insulation, Valves, piping, or any part

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of the associated distribution system. etc. The schematic diagram of the proposed Cooling System shall provide the performance parameters of the new equipment, as well as any new appurtenances such as valves, flow meters, temperature sensors, etc. The equipment specifications for the new equipment to be installed in the Cooling System shall provide details including, but not limited to, the following:

- Chiller
 - Nominal Design Efficiency at Full Load (not APLV)
 - Nominal Capacity (Tons)
 - Refrigerant Type
 - Fluid (Chilled Water, Glycol)
 - Evaporator Entering and Discharge Temperatures
 - Condenser Entering and Discharge Temperatures
 - Electrical Characteristics (HP, Phase, Volts, Hz)
 - List of Acceptable Manufacturers

- Cooling Tower:
 - Nominal Duty (tons)
 - Enter Fluid Temperature
 - Leaving Fluid Temperature
 - Ambient Air Temperature (DB/WB)
 - Electrical Characteristics (HP, Phase, Volts, HZ)
 - List of Acceptable Manufacturers

- Pump:
 - Pump Type (Horizontal Split-case, End Suction, etc.)
 - Capacity (GPM)
 - Total Developed Head
 - Minimum NPSH
 - Pump RPM
 - Minimum Operating Efficiency
 - Mounting (Base, Inertia Pad, Vibration Isolators)
 - Electrical Characteristics (HP, Phase, Volts, Hz)
 - List of Acceptable Manufacturers

(2) Heating System:

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The ESCO shall provide a schematic diagram of the existing and the proposed Heating System. The schematic diagram of the existing system shall include all the major existing equipment, along with their performance parameters, pipe sizes, flow rates, etc. Any unique control requirements should be noted as well as comments made about the acceptability of the performance of the equipment to remain such as Hot Water Storage Tanks, Expansion Tanks, Air Separators, Insulation, Valves, steam traps, existing piping and associated insulation and the entire distribution system, etc. The schematic diagram of the proposed Heating System shall provide the performance parameters of the new and the old equipment, as well as any new appurtenances such as valves, flow meters, temperature sensors, etc.

The equipment specifications for the new equipment to be installed in the Heating System shall provide details including, but not limited to, the following:

- Boiler:
 - Fuel (Primary/Secondary, if applicable)
 - Output Rating (MBH)
 - Maximum Firing Rate (scfh)
 - Operating Pressure or GPM
 - Boiler Type (Cast-Iron Sectional, Firetube, etc.)
 - Electrical Characteristics (HP, Phase, Volts, Hz)
 - List of Acceptable Manufacturers

- Pump:
 - Pump Type (Horizontal Split-case, End Suction, etc.)
 - Capacity (GPM)
 - Total Developed Head
 - Pump RPM
 - Minimum Operating Efficiency
 - Mounting (Base, Inertia Pad, Vibration Isolators)
 - Electrical Characteristics (HP, Phase, Volts, Hz)
 - List of Acceptable Manufacturers
 - Minimum NPSH

- Heat Exchanger:
 - Fluid Types

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- Flow Rates
- Entering Temperature for Both Fluids
- Leaving Temperature for Both Fluids
- Heat Exchanger Type (Plate & Frame, Shell & Tube, etc.)
- List of Acceptable Manufacturers

(3) HVAC System:

The ESCO shall provide a schematic diagram of the existing and the proposed HVAC System. The schematic diagram of the existing system shall include all the major existing equipment, along with their performance parameters, duct sizes, flow rates, etc. Any unique control requirements should be noted as well as comments made about the acceptability of the performance of the equipment to remain such as VAV Boxes, Coils, Diffusers, Dampers, Ductwork, Insulation, etc. The schematic diagram of the proposed Heating System shall provide the performance parameters of the new equipment, as well as any new appurtenances such as dampers, flow sensors, temperature sensors, etc.

The equipment specifications for the new equipment to be installed in the HVAC System shall provide details including, but not limited to, the following:

- Air Handling Unit
 - Air Flow Capacity
 - External Static Pressure
 - Total Cooling Capacity
 - Sensible Cooling Capacity
 - Sensible Heating Capacity
 - Entering Air Temperature
 - Leaving Air Temperature
 - Design Space Temperature
 - Design Outdoor Air Temperature
 - Minimum Outdoor Air (%)
 - Electrical Characteristics (HP, BHP, RPM, Phase, Volts, Hz)
 - List of Acceptable Manufacturers

- Exhaust Fan
 - Airflow Capacity
 - Fan RPM
 - Electrical Characteristics (HP, BHP, Phase, Volts, Hz)
 - List of Acceptable Manufacturers

(4) Block load calculations, based on existing building

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parameters supporting the selection of major HVAC equipment and new/renovated HVAC systems included in the project. Existing people and lighting densities shall be verified based on actual field surveys. (Check for accuracy) ASHRAE guidelines shall be used for ventilation standards to size primary heating and cooling equipment or latest edition in effect at the time of Phase II proposal submittal.

- (5) Calculations and methodology of all energy savings supporting the energy guarantee; savings/year to be dollar based, based on utility time-of-day rates and estimated energy demand or unit reductions.
- (6) Equipment warranty for all ESCO furnished equipment for life of payback period. ESCO furnished equipment warranted by ESCO shall be serviced by ESCO.
- (7) Identification by room/area: existing light fixtures, lamps, and ballasts, and proposed new fixtures, lamps and ballasts. Where lighting renovations include alterations from existing configurations, zonal lighting calculations shall be provided. ESCO shall evaluate existing lighting conditions and recommend new lighting designs, where applicable.
- (8) CPM schedule of Phase II work, including any outages necessary.
- (9) Commissioning methodology/scheduling for all ECMs.
- (10) Description of maintenance services, including but not limited to a detailed list of all equipment installed by the ESCO, type of service to be performed, specific cost of services, frequency of service, records of service and date performed and ESCO response time for each piece of equipment or system involved. Identify each entity that will be providing work. Any existing maintenance contracts to be consolidated into ESCO provided maintenance must be included for review by DGS or the Using Agency. It is the responsibility of the ESCO to ensure that all existing services currently provided under existing contracts is included in their list of services.. The ESCO proposed contract for services must also be included.
- (11) Detailed capital cost estimate breakdown, by ECM:
 - all subcontractors quotes
 - detailed engineering fees
 - construction labor
 - materials
 - major equipment cost
 - construction cost estimate:

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– Demolition Costs:

New Work listed by system Cost, including but not limited to:

- central cooling system, central heating system, cooling and heating distribution systems (HVAC) automatic temperature controls.

To verify that the capital cost estimate is fair and reasonable, the State will, by whatever method it considers reasonable and appropriate, base its own independent estimate. ESCO ongoing training, maintenance, and energy guarantee cost (the cost of the insurance or bond for entire project term) are considered non-capital costs by the State, and shall not be included in capital financing. Costs shall be paid annually by Using Agency and shall be included in the project's overall cash flow. Labor costs shall be based on Prevailing Wage Rates, as issued by Maryland Department of Labor, Licensing & Regulation. All major sub-contractors (mechanical, electrical, controls, etc.) must be contracted directly to the ESCO.

- Engineering cost breakdown: disciplines, hours per discipline, hourly rates, OH, profit, etc.
- Identification and inclusion of an on-line monitoring system (capital costs and annual fees).
- Baseline methodology and methodology of calculation of guaranteed energy savings. All energy savings to be based on time-of-day rates and are to be quoted in dollars/yr; energy unit costs shall be current rates or future rates, whichever is greater. Baseline shall include verification occupancy schedules, temperature set points, equipment runtimes, lighting burn times, utility rates of natural gas, electricity, fuel oil, water/sewer charges, as applicable.

C. Phase II: For each assigned project, the Contractor shall implement the comprehensive energy efficiency and guaranteed savings program, which shall include:

- 1) Final Design and Specifications. Before installation of the proposed ECMs, the ESCO shall prepare detailed construction plans and specifications for the installation of all equipment and systems proposed under Phase I. The plans and specifications shall be prepared in accordance with the

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Department of General Services Procedure Manual for A/E Professional Services, latest edition, and shall include, but not be limited to the following:

- (a) Within 14 days of the execution of the contract, Contractor must submit a preliminary critical path network (CPM) diagram outlining activities for the first 90 days of construction. Include a skeleton diagram for the remainder of the work with the preliminary diagram. This preliminary diagram must be approved prior to the first requisition being processed. Include each significant construction activity. Coordinate each activity in the network with other activities. Schedule each construction activity in proper sequence.
 - (1) Floor plans and site plans showing equipment, equipment location, pipe routing, pipe connections to existing systems, valves and fittings, instrumentation and electric meter location, electrical connections, electrical schematics are including wire and conduit sizes, electrical equipment, and isometric diagrams showing connections to all HVAC equipment.
 - (2) Control sequence of operation, logic diagrams, and wiring diagrams.
 - (3) Equipment list with: manufacturer names, model numbers, and operating characteristics.
 - (4) Specifications indicating material, sizes, and thicknesses being used in construction components and equipment components, pressure and temperature ratings of system components, national standards or national laboratory testing standards being met (i.e. NFPA, ASHRAE, ASME, UL, NEC, ASTM, etc.), methods of installation, electrical ratings of electrical components, and any special requirements relating to this installation.
 - (5) A complete description of any modifications to existing HVAC equipment.
 - (6) Lighting retrofit plans and specifications.
 - (7) All shop drawing submittals during construction shall be in accordance with Section III- General Conditions, paragraph 21 of this RFP. All submittals must be approved by DGS prior to ordering of equipment. ESCO shall allow a three week turnaround for DGS review.
 - (8) 95% and 100% construction documents, prepared in accordance with the DGS A/E Procedures Manual, latest edition. Allow Three week turnaround for DGS review. All drawings must be approved and signed by DGS and Using

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Agency prior to initiation of construction.

- 2) Execution:
- (a) Furnish and install all equipment and accessories in accordance with the requirements specified in the RFP (including Section III- General Conditions), and the ESCO's approved Phase I proposal.
 - (b) Completions of all punch list items.
 - (c) Submittal of all applicable O&M manuals to Using Agency.
 - (d) Completion of on-site training and education of facility maintenance and operating personnel in the functions, operations and maintenance of all equipment installed under the project.
 - (e) Completion of all necessary commissioning.
 - (f) Compliance with all issued change orders.
 - (g) Electrical inspection certificate issued by State approved independent inspection company.
 - (h) Boiler inspection by Department of Labor, Licensing, and Regulation (if applicable).
 - (i) Detailed list of all installed and/or repaired equipment (for loan takedown).
 - (j) Final acceptance of construction phase DGS/Using Agency.
 - (k) Maintenance, for the term of the contract, of installed equipment including replacement of worn, failed, and doubtful components, preventive service. Emergency on-site service and component replacement must be included on a 24-hour per day basis. Specific list to include each piece of equipment and the applicable service schedule. During Phase II, ESCO shall provide DGS and/or agency, submittals of all equipment, including piping, valves, etc, in coordination with construction documents for DGS approval prior to ordering of equipment or proceeding with construction. Allow 21 day turnaround for DGS review of all construction drawings, specifications, and shop drawings.
 - (l) All necessary support services during the period of operations and throughout the contract, including, but not limited to, the following:
 - (1) Ongoing Monitoring and Verification Services. (See section V for details).
 - (2) Periodic on-site analysis to determine whether

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mechanical/electrical systems are operating as programmed and to assess the operational efficiencies of the systems and equipment installed.

- (3) Re-evaluation of software provided as newer versions become available and upgrade of software.
- (4) Hourly, daily, weekly, monthly, quarterly and annual operation and maintenance tasks that must be performed.
- (m) Provision of an acceptable project financing plan to cover 100% of the costs of developing and implementing the approved comprehensive energy efficiency and guaranteed savings program.
- (n) The ESCO shall recover all costs of the feasibility study, identified ECM's engineering design, equipment procurement, installation, maintenance, training, support services and finance charges over the life of the contract. Payments by the facility will be solely from the savings guaranteed and payments will never be greater than the actual savings generated.
- (o) The financing shall be severable from all other aspects of this project and is subject to the fiscal non-appropriation clause.
- (p) Conditions of Work and Job Site Visit
 - (1) Site Investigation: By submitting a Phase II Proposal, the Offeror acknowledges that it has investigated and satisfied itself as to the conditions affecting the work, including but not restricted to those bearing upon physical conditions at the site, the formation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work.
 - (2) Any failure of the Offeror to acquaint itself with the available information will not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the work. The State will not be responsible for any conclusions or interpretations made by the Contractor on the basis of the information made available in this RFP.

D. Energy Savings Guarantee/Project Financing

- 1) The ESCO shall provide an energy savings guarantee whereby the ESCO guarantees that a certain level of energy and energy related operating and maintenance savings will accrue as result of implementing the approved comprehensive energy efficiency and guaranteed savings program, and that if the actual savings achieved is less than the guaranteed savings, the ESCO will reimburse the State an amount equal to the difference between the actual savings and the guaranteed savings.

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- 2) The State requires that each ESCO provide a method of guaranteeing the energy savings promised to the State. The method will be determined by the State on a project by project basis depending on the nature of the insurance and/or the surety markets. Listed below are examples of acceptable forms of a guarantee. If self-insured, the ESCO shall provide an irrevocable letter of credit payable to the State and issued by a solid financial institution, approved by the State Treasurer. As an alternative, the ESCO shall provide, for a period mutually agreed to by the State and ESCO, a performance bond issued by a bonding agency or an insurance policy issued by a reputable insurance company who has provided similar policies for similar projects, and are approved by the State. Insurance and bonds shall provide for direct payment of the shortfall amount to the State, as well as allow the State to file a claim against the bond/insurance.
- 3) Prior to the initiation of Phase II of each project, the ESCO shall provide an indexed rate of interest which reflects the cost of the financing to be provided by the ESCO. The effective rate of interest the ESCO proposes to charge for this contract will be determined and fixed on the funding date based on the index.
- 4) The State shall, at its sole option, determine whether or not to accept the financing offered by the ESCO or arrange an alternate means of financing. No payments by the State for the capital costs (design, construction, training and startup services) shall be made to the ESCO until 100% completion and acceptance of all ECM installations by the State. Payments by the State (including capital cost principal & interest cost of the guarantee, and maintenance costs) for the duration of the project will be solely from the guaranteed cost savings.

3. CAPACITY TO PERFORM WORK

The successful ESCO shall maintain an adequate staff to provide the services required herein with the professional quality and timeliness mutually agreed upon. Preferably, the same personnel shall be utilized for the duration of each project. Failure to maintain adequate staff or to provide staff replacements with personnel of equivalent quality and experience shall be cause for Termination for default by Procurement Officer.

4. SCHEDULE

The State and the ESCO will mutually agree on the schedule for Phase I and Phase II for each assigned project. Failure of the ESCO to satisfactorily complete work assignments within the time specified may be cause for termination for default by Procurement Officer.

5. PERFORMANCE EVALUATIONS

The State of Maryland agencies utilizing this contract must submit a performance evaluation of the ESCOs at the end of Phase II for each contract awarded under the IDC. The evaluation will consist of questions relative to the ESCO's performance on the contract. Survey responses will be used to calculate an overall score for each pre-qualified ESCO listed on the IDC contract.

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Attachment I is a sample of the form (or general list of criteria) that may be used by the State to evaluate Contractor performance. The Contractor will be provided a copy of the State's evaluation of the Contractor's performance. If a conflict occurs, the State's Project Management Office (PMO) for the Contract will make the final determination. The performance evaluation will be used in evaluating future contracts awarded under this contract.

SECTION V - PERFORMANCE MEASURE AND VERIFICATION

1. GENERAL

A. Energy Reduction

It is expected that implementation of this program will result in a net reduction in energy consumption, comprising electricity, natural gas, fuel oil, water, and other utilities in State owned facilities.

B. Cost Avoidance

It is expected that implementation of this program will result in guaranteed energy cost avoidance, sufficient to finance the cost of the program over the term of the contract.

2. STANDARDS

All measurement and verification procedures shall be consistent with the following documents:

A. International Performance Measurement and Verification Protocol (IPMVP2001)

B. Federal Energy Management Program M&V Guidelines: Measurement and Verification for Federal Energy Projects, Ver. 2.2 (FEMP)

3. MEASUREMENT AND VERIFICATION (M&V) METHODOLOGY

A. Overview

- 1) Various measurement and verification (M&V) methodologies may be employed to document guarantee performance. All methodologies shall be consistent with the documents cited in Paragraph 2 above.
- 2) The ESCO, in consultation with the State, shall develop the appropriate M&V methodology or methodologies, during the technical feasibility study phase (Phase I). Each methodology or procedure must be approved by the State prior to implementation, and no substitutions will be permitted without explicit approval of the State.

B. M&V Plan and Methodology

- 1) The ESCO shall prepare and include, as a separate section of the final Phase I technical feasibility study, a detailed M&V plan. The plan shall indicate and describe the proposed IPMVP (2001) and/or FEMP methodology or methodologies, to be employed throughout the project, for baseline development and ongoing monitoring during the guarantee period. In accordance with Section IV, B.5.), the State requires, unless otherwise directed, as part of the M&V Plan, installation of metering, instrumentation and related software, during Phase 1 for various purposes, including to verify existing equipment performance, to refine energy reduction estimates and guarantee cost avoidance, development of performance baselines, and ongoing monitoring during the guarantee

SECTION V - PERFORMANCE MEASURE AND VERIFICATION

period.

- 2) The M&V plan shall be summarized in table format. In addition, accompanying documentation shall describe how each methodology is to be implemented.
- 3) For ECM specific methodologies, the following shall also be specified:

- (a) Method A

Basis for stipulated performance parameters. (Rarely acceptable to the State. Note: stipulated measures are generally unacceptable and must be specifically approved by the State.)

- (b) Method B

- (1) All parameters, which are to be measured, including units of measure, e.g.:

- Power (watts, kilowatts)
- Energy (watt-hours, kilowatt-hours, therms)
- Temperature (^oF, ^oC)
- Flow rate (gallons per minute, cubic feet per minute)

- (2) Measurement frequency and duration, e.g.:

- One-time
- Once each 15 minutes
- 24 hours
- 60 days

- (3) Measurement method, e.g.:

- Hand held instrument
- Portable data logger
- Field mounted data collection panel

- (c) Performance Baseline

- (1) Performance baseline (baseline) shall be defined as a detailed documentation of the operating characteristics of a facility during a suitably chosen recent period, prior to implementation of any ECMs. Documented operating characteristics shall include, but not necessarily be limited to:

- Electric energy consumption and demand
- Natural gas, fuel oil and water consumption
- Operating hours of heating, cooling and ventilating equipment
- Operating hours of lighting systems

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- Facility occupancy levels
 - Facility square footage
 - Weather severity (degree days)
- (2) The baseline period shall be chosen such that the nature, level and pattern of operations during the period are most representative of current operations, other than changes as a result of implementation of any ECMs. In the event of a significant lapse of time between project scope development (Phase I) and final completion (Phase II), the baseline period may be revised to correspond to a period ending just prior to implementation of any ECMs.
- (3) The ESCO shall develop and include, in the final Phase I technical feasibility study, documentation and detailed descriptions of baseline performance. Documentation shall indicate and describe the proposed IPMVP 2001 and/or FEMP methodology or methodologies, to be employed throughout the project, for initial baseline development, as well as on-going monitoring during the guarantee period.
- (4) During the guarantee monitoring period, the ESCO may adjust the baseline, as required, to account for changes in facility operational characteristics (see Paragraph 3, C. 1), beyond the ESCOs control, which occur after the original baseline is established.

(d) Sampling Plan

For certain ECMs, which encompass multiple units of a similar equipment type, and monitored through IPMVP 2001/FEMP Method B, the ESCO may elect to perform measurements on a random statistical sample, for the purpose of establishing baseline or guarantee performance. Prior to performing measurements, the ESCO shall prepare a detailed sampling plan, indicating sample size and measurement locations. The sampling plan must be carefully designed, based on recognized statistical techniques, in accordance with procedures set forth in FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects, Ver. 2.2., Appendix D. Prior to implementation, the Sampling Plan must be submitted to the State for approval.

(e) Energy Rates

- (1) Unless explicitly approved by the State, all performance results (baseline and guarantee period) shall be based on costs determined through application of applicable utility rate schedules to energy units. Electric costs and cost avoidance, in particular, must be based on the application of time-of-use (TOU) energy rates, where in effect, and separate demand rates, to energy and demand units,

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respectively. In addition, the application of rate schedules shall include an explicit itemization of fixed charges, such as customer charges of minimum charges, and all applicable surcharges.

- (2) The ESCO shall include, in the final Phase I technical feasibility study, applicable baseline energy rates and/or utility rate schedules, for each energy type. Where utility rate schedules are not available (e.g. fuel oil rates), the ESCO shall include documentation, supporting the baseline rate.
- (3) Where utilities are provided on a deregulated basis, the ESCO shall include separate schedules for commodity and distribution components.

(f) Energy and Cost Avoidance Calculation

- (1) Energy units avoidance during any period shall be calculated as the difference between baseline units consumed, adjusted for changes in operational characteristics, as described in Paragraph 3, C., 4), and actual units consumed, during the period.
- (2) Energy cost avoidance during any period shall be calculated as the difference between baseline energy cost, adjusted for changes in operational characteristics, as described in Paragraph 3, C., 4), and actual cost, during the period. Costs shall be calculated by applying actual utility or energy supplier rates to baseline units and actual units. Unless explicitly approved by the State, cost avoidance calculated with blended unit rates will not be acceptable.

(3) Applied Energy Rates

- For measures which achieve cost avoidance through energy units reduction, applied rates shall be the greater of baseline or actual energy rates, currently in effect.
- For measures which achieve cost avoidance through energy rate reduction (e.g. fuel switching), shall be the lesser of baseline or current energy rate differentials, during the period. (Rate differential is the difference between rates of the baseline energy source and converted energy source.)

(g) Reconciliation of Actual vs. Guaranteed Savings

- (1) At the end of each year following completion of the ECM installation, ESCO shall provide documentation verifying

SECTION V - PERFORMANCE MEASURE AND VERIFICATION

actual energy use and cost avoidance, as defined in Paragraph 3 above. If the actual cost avoidance is greater than the ESCO's guaranteed cost avoidance, then the State shall retain the difference.

- (2) If the actual cost avoidance is less than the guaranteed cost avoidance, the ESCO shall submit documentation verifying temperature set points, operating hours or other parameters agreed to in the Contract. If a deviation from Contract parameters by the State has resulted in lower than expected cost avoidance, then the amount due to the State may be reduced by an amount equivalent to the actual cost avoidance minus the expected cost avoidance.
- (3) Any payment due the State shall be made within 60 days of the yearly anniversary date of the completion of the ECM installation. Failure to submit payment during this time frame may result in Termination for Default by the Procurement Officer.

The State will not permit any provisions allowing excess cost avoidance during any annual monitoring period to be carried over to any future (or past) year, to offset future (or past) cost avoidance shortfalls. Each monitoring year following completion of ECM installation is to be evaluated and reconciled on a stand-alone basis.

The State will not allow any provisions allowing cost avoidance realized during the ECM installation period (construction period) to be applied toward the guarantee cost avoidance.

4. PRODUCTS AND SPECIAL SERVICES

A. Energy Accounting Software

- 1) If IPMVP/FEMP Whole Building Method C methodology is employed, the ESCO shall provide and use State approved, third-party commercially available energy accounting software. Such software shall accommodate a detailed inventory of energy records and shall employ linear regression analysis to model baseline performance, incorporating changes in weather severity, and other operational variations.
- 2) The State may direct the ESCO to include in the project cost, purchase of one or more licenses as directed by the State on a project by project basis of any energy accounting software, including training and product support, as the State may require.

B. Internet Data Acquisition

- 1) The State may direct the ESCO to include in the project cost, purchase of an Internet based facility energy monitoring service, including setup,

SECTION V - PERFORMANCE MEASURE AND VERIFICATION

training and product support, as the State may require.

- 2) The Internet monitoring service shall support interval storage and retrieval of utility and energy data, which will permit calculation of an approximate monthly bill, for a given utility, and creation of usage trend reports.

C. Instrumentation

1) Electric Power and Energy

- a) All devices employed to meter electric power use shall be capable of metering continuous RMS power at accuracy within +/- 1.0% of actual value, over the entire load range.
- b) Metering of polyphase loads shall include independent measurement of each phase.
- c) All devices employed to meter electric power for continuous monitoring (i.e. other than one-time measurement) shall be minimally capable of storing data in 15 minute intervals, for a minimum of 24 hours.
- d) Where required, due to voltage levels, the ESCO shall employ potential transformers.

2) Temperature

All devices employed to meter temperature of liquid media shall have accuracy within +/- 0.1 F ° of actual value, or better. Sensors such as strap on types may not be used for the purpose of verifying baseline or guarantee period performance, unless specifically approved by the State. Temperature sensors shall be suitable insertion type.

3) Pressure

All pressure sensing devices shall have accuracy within +/- 1% of full scale. Primary devices used for the purpose of providing information to a control system or energy information system, shall be provided with an accuracy/calibration certificate. Sensors needing field calibration shall be calibrated using a dead weight tester, by a qualified technician.

4) Flow Rate

- a) All devices employed to meter flow rate of liquid media shall have accuracy within +/- 1.0 % of actual flow or better.
- b) Approved flow metering devices shall include orifice, venturi, turbine or ultrasonic types. Flow rates based on equipment manufacturer's specifications or performance curves (including pump curves), or operating equipment pressure differential, will not be acceptable, for the purpose of verifying baseline or guarantee

SECTION V - PERFORMANCE MEASURE AND VERIFICATION

period performance.

- c) Flow rates in constant volume flow systems shall be verified by monitoring average flow rate, for a minimum continuous period of 30 minutes.
- d) Flow rates in variable volume flow systems shall be verified by continuous monitoring, throughout the monitoring period.

5. COMMISSIONING

- A. Prior to final acceptance by the State, the ESCO shall demonstrate to the satisfaction of the State that all components, systems, and processes required to fully verify guaranteed cost avoidance, are complete and properly functioning.
- B. Prior to final acceptance by the State, the ESCO shall submit to the State for approval, a Commissioning plan. The plan will include a detailed specification of all procedures, including preliminary check-out and functional performance testing, which must be executed to demonstrate and verify proper data collection, processing, communication, and report preparation capability.
- C. The ESCO shall prepare and submit to the State for approval, detailed documentation of all conditions, requirements and the results of all final inspections and functional performance tests.
- D. The State shall be notified in advance, of the schedule of any final inspections and functional performance tests.

6. ENERGY AND COST AVOIDANCE REPORTS

- A. The ESCO shall provide a detailed report of energy and cost avoidance performance, at least once a year, or at frequency specified in the Contract. Reports must clearly indicate energy baselines, monitoring period energy performance, applicable rates and any adjustments to energy and cost baselines.
- B. All reports shall conform to the format agreed to by the ESCO and the State. Report formats shall be such that the State can easily confirm the logic, formulas, and calculation algorithms, in order to independently validate the performance results.

SECTION VI – CONTENTS OF TECHNICAL PROPOSAL

1. INTRODUCTION

This section defines the minimum material and documentation to be submitted in the Offeror's Technical Proposal. Submissions should be carefully organized in the same order as the RFP and clearly provide the information required. Clarity and conciseness are important. Technical proposals shall be classified as being either reasonably or not reasonably susceptible for award. The Technical Proposal shall consist of an original and five (5) copies of each of the following documents:

2. OFFEROR'S QUALIFICATIONS

Offerors are encouraged to submit sufficient graphic, narrative, and documentary material required to clearly demonstrate qualifications, financial responsibility, and performance capability of the Offeror's team. Qualification data will include the following:

A. Team Qualification:

Submit an organizational chart that clearly shows the responsibility and interrelationship of all key team members of the project team, including all sub-consultants and subcontractor firms. All sub-consultants and subcontractors shall be contracted directly to the Offeror. Submit qualifications and experience for the engineering design team firms and the proposed individuals and resumes and business references for the Offeror. Provide resumes for key project managers, energy engineers, design engineers (mechanical, Electrical, Structural, etc), construction managers, and operations managers, and Maintenance personnel. The Project Manager, Mechanical Engineer, Electrical Engineer and Structural Engineer must all be registered engineers in the State of Maryland at the time of proposal submittal. Designated project managers must have experience on similar size and types of projects. If identified individuals or associated firms are changed by the successful Offeror for a specific assigned project, Offeror must submit request for change to the State. The State reserves the right to reject the requested replacement. Describe how work assignments are made and how the team will be affected by additional EPC projects whether they be State or local government projects. The Offeror should present their ability to develop project tracking and reporting documents for submittals, requests for information and proposals/change orders. Therefore, offerors must include resumes that indicate qualifications of in-house staff or consultants proposed for scheduling responsibilities and tools/systems/software to be used for implementation of the scheduling effort.

All information presented should clearly demonstrate the ability of the ESCO to successfully execute energy performance projects, including analysis, engineering, construction, maintenance, and measuring and verification of energy savings.

B. Prior Project Experience:

Describe the offeror's energy performance contracting (EPC) experience in both

SECTION VI – CONTENTS OF TECHNICAL PROPOSAL

the public and private sector with emphasis on State and local governmental projects with a maximum of 15 year payback. Greater consideration shall be given to Offerors with experience in prime management of EPC's with capital costs of at least \$1,000,000. List five (5) projects within the past five years, where the construction phase is completed, indicating experience in the development, construction and implementation of comprehensive energy efficiency and guaranteed savings programs and proposed versus actual completion duration. Explain variances. Complete the form included in Appendix 1 for each reference. Failure to fully complete the form may render your proposal not reasonably susceptible of being selected for award.

1) Sample Detailed Engineering Feasibility Study

Include one detailed engineering feasibility study conducted by the Offeror's project team on a similar energy conservation project, funded by energy savings. Clearly mark "Sample Detailed Technical Study" on the cover with your firm's name. The study must include detailed energy and economic calculations, preliminary design and specifications, narrative clearly indicating scope of work. Study should be submitted for project where construction has been completed.

2) Green Building and Sustainable Design Experience:

Describe offeror's experience with the analysis, design, construction, and operation of geothermal heat pump system, solar energy, fuel cells, or other renewable energy resources. Describe in detail previous projects where these technologies were evaluated even if they were not implemented. If studied and not implemented explain why. Greater consideration shall be given to Offerors with experience in offering creative and cutting edge technology for evaluation and inclusion in projects. All ESCO's must examine renewables for all State projects as part of the Phase I study.

3) Past Performance:

The State will consider the Offeror's past performance on energy performance projects with Maryland State Agencies, or other municipalities. Ability to properly assess facilities loads, adherence to schedule, engineering, operability of installed systems, timely delivery of services and achievement of energy guarantee, creativity of Phase I study and project development, use of new or renewable technologies, compliance with IDC , ability to properly price a project, and timely response to any shortfall in guaranteed savings will all be considered.

4) List of all ECMs:

Provide Offeror's comprehensive check list of all possible ECMs.

C. Technical and Managerial Approach

SECTION VI – CONTENTS OF TECHNICAL PROPOSAL

1) Construction Schedule:

The Offeror must clearly demonstrate knowledge and means of proper scheduling and planning practices in accordance with the scheduling requirements of the General Conditions, Offeror's submission of a Critical Path Method (CPM) construction schedule that clearly indicates from the estimated start of construction the duration of the major elements of the project and how they interface sequentially. Describe Offeror's proactive management of the project's schedule and ability to recover from delays. Provide actual CPM schedule that was developed for one of the five (5) reference projects.

2) Project Management:

Describe Offeror's approach to managing the entire project, including interface with sub-consultants and subcontractors, development of a comprehensive plan, detailed design, procurement, construction, training, punch lists and start-up. Identify site members of the project team who will be responsible for the various stages of design and implementation. Describe the various responsibilities and coordination of the team members, as well as the Using Agency, facility, DGS personnel and MEA, to ensure an effective and timely completion of both Phase I and Phase II of a project.

3) Development of Project Scope:

To demonstrate expertise in identifying energy conservation measures, provide the methodology involved in the preparation of a typical detailed engineering feasibility study, and development of preliminary plans and specifications in order for the State to proceed with the approval and implementation of the facility energy efficiency program. This shall include but not be limited to site investigation, analysis of the existing HVAC, and or steam or chilled water systems in their entirety including but not limited to existing distribution systems, operations and utility costs which may be supported with measured data, fuel switching, load calculations, current system operation practices, and maintenance. The State is paying for expert advice and analysis and fully expects to receive this expertise in the form of a comprehensive energy audit and Phase II proposal. Oversights or omissions of existing conditions, systems or equipment, and/or operating routines, will not be acceptable

4) Owner Training:

Provide detailed information on the training and education programs available for facility operating and maintenance personnel, including course content, location, schedule, hours, and types of trainees that are included.

D. Financial Approach

1) Procurement:

SECTION VI – CONTENTS OF TECHNICAL PROPOSAL

Describe the proposed method of procurement of all major types of equipment and services, including those subcontracted, and the pricing policy that will be applied to provide a competitive cost environment throughout a project.

2) Financing:

Describe the sources of the funds to be acquired by the Offeror and applied to implement a project. The project financing must be directly from the Offeror to the State. Indicate the Offeror's prior use and experience with this method of financing. This section should include the acknowledgment that the State may choose to finance all or part of the funds necessary to implement this project through its own sources.

3) Energy Savings Guarantee:

Provide terms, conditions, exclusions, insurers name and source of cost savings performance guarantee including provisions for payment due to the State in the event guaranteed savings exceed actual savings. Offeror shall provide sample policy proposed for use in this project, and if self-insured, provide a complete description of how insurance is funded. Offeror shall obtain insurance or bond that will remain in effect for the term of the Contract to guarantee savings in the event the Offeror is unable or unwilling to pay any difference between actual cost savings and guaranteed savings. Policy/bond must be written such that the State is listed as an additionally insured entity which will provide the State with the ability to make a claim against the bond/policy.

4) Owner Training:

Indicate Offeror's approach to monitoring the actual energy savings associated with the project. Provide sample energy savings calculation documents which will become an attachment to the guaranteed energy savings contract. Describe the methodology, measurement, and monitoring format of actual energy savings. Also, describe the process used to adjust the energy consumption baseline throughout the contract period.

3. FINANCIAL AND LEGAL CAPABILITY

A. Financial Status

1) Financial Statement:

Offerors must demonstrate the financial soundness of their firm by submitting a certified Financial Statement from a Bank and/ or Dunn & Bradstreet.

2) Legal Proceedings:

SECTION VI – CONTENTS OF TECHNICAL PROPOSAL

List all legal or administrative proceedings involving your firm currently pending or concluded adversely within the last five years which related to procurement or performance of any public or private contracts. In addition to the information requested, the case name and docket number, as well as the issues in the case, should be provided.

3) Performance Bond or Insurance:

List the name of the agent or bonding/insurance company that will be providing the bond/policy for the guarantee. List current bonding/insurance capacity and maximum length of term for bond/policy.

SECTION VII – EVALUATION CRITERIA AND SELECTION PROCEDURES

1. CRITERIA FOR PROPOSAL EVALUATION

The technical evaluation criteria that will be used by the Evaluation Committee for each Technical Proposal are those listed in descending order of importance. A transmittal letter must accompany the technical proposal. The purpose of this letter is to transmit the proposal and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. Only one transmittal letter is needed and it does not need to be bound with the technical proposal.

The criterion is as follows:

A. Team Qualifications

- 1) Team Qualifications
- 2) Prior Project Experience
 - (a) Sample Detailed Engineering Feasibility Study
 - (b) Green Building and Sustainable Design Experience
 - (c) Past Performance
- 3) Technical and Managerial Approach
 - (a) Construction Schedule
 - (b) Scheduling and Planning Practices
 - (c) Project Management
 - (d) Development for Project Scope
 - (e) Owner Training
- 4) Financial Approach
 - (a) Procurement
 - (b) Financing
 - (c) Energy Savings Guarantee
 - (d) Savings Monitoring and Verification
- 5) Financial Status
 - (a) Financial Statement
 - (b) Legal Proceedings
 - (c) Performance Bond or Insurance

2. SELECTION

The Evaluation Committee will make recommendations to the Procurement Officer for the IDC contract to the responsible ESCOs whose proposals are determined to be the most advantageous to the State, considering the factors listed in item (1) above. The Evaluation Committee will select a maximum of 5 respondents based on the highest ranked firms with a minimum score of 80% will be selected. Proposals will only be scored

SECTION VII - PROPOSAL EVALUATION AND BASIS OF AWARD

once by the Evaluation Committee, unless oral presentations are required. If oral presentations are conducted, the Evaluation Committee may conduct a final scoring upon completion of the oral presentations. Recommended contract awards, if any, resulting from this RFP are subject to appropriate State approvals.

3. ORAL PRESENTATION

At the discretion of the Evaluation Committee, an oral presentation may be required for this solicitation. The oral presentation, if held, will be considered to be part of the offeror's technical proposal. Eligible firms will be notified of time and date. If necessary, separate instructions regarding the conduct of oral presentations will be issued.

**HOWARD COUNTY, MARYLAND
ENERGY PERFORMANCE CONTRACT
CONTRACT#**

THIS AGREEMENT (“Agreement”), is made this _____ day of _____ in the year 2009, by and between ENERGY SYSTEMS GROUP, LLC (“Contractor”), 4401 O’Donnell Street, Baltimore, MD 21224 (“the Contractor”), and HOWARD COUNTY, MARYLAND, (“the County” or “the Owner”).

RECITALS

WHEREAS, this Agreement is being made for the Contractor to provide to project management, energy audit, engineering, construction, provision of certain equipment, and measurement & verification to the County in order to develop and implement comprehensive energy efficiency and guaranteed savings programs at County facilities; and.

WHEREAS, this Agreement will fulfill the provision that a formal contract should be executed by and between the Contractor and the County evidencing the terms of the award.

NOW THEREFORE, in consideration of the mutual promises and covenants of the parties and payments by the County to the Contractor as agreed to below, the parties agree as follows:

AGREEMENTS

1. The Contract is subject to all the conditions, covenants, stipulations, terms and provisions contained in the Contract Documents as described in Paragraph 6 of this Agreement.
2. The Contractor covenants and agrees with the County that it will well and faithfully furnish all of the materials and perform all of the work and provide the guarantees and savings, and do everything required by the Contract Documents, all of which are made a part hereof and are referred to herein as the “Contract” at and for a sum equal to the aggregate cost of the work, labor, equipment, materials, and supplies done and furnished at the prices and rates respectively named in the Attachment A. The Contractor further covenants and agrees that it will well and faithfully comply with and perform each and every obligation imposed upon him by the Contract Documents, or the terms of the award.
3. The Contractor covenants and agrees that its obligations pursuant to the Contract Documents include but are not limited to the furnishing of all material, labor, equipment, supplies, plant, tools, and all other services, facilities and expenses necessary for the full operational performance and completion of the requirements of the Contract Documents.
4. The County agrees that it will pay the Contractor, when due and payable under the terms of said Contract Documents and of said award, the sums set forth in Attachment A, and the Contractor agrees that it will well and faithfully comply with and perform each and every obligation imposed upon it by this Agreement.
5. The Contractor (if a corporation) hereby certifies that it is a Maryland corporation in good standing or a foreign corporation registered to do business in Maryland with the Maryland State Department of Assessments and Taxation.
6. The Contractor and County agree that the following enumerated documents, collectively referred to as Contract Documents, are all essential documents of this Agreement and are incorporated herein and made a part hereof as if fully set forth:

- a. This Agreement
- b. State of Maryland's Indefinite Delivery Contract No. DGS-06-EPC-IDC-5.0 dated August 21, 2006 and documents identified therein as part of the Contract Documents.
- c. All engineering drawings and design documents in supporting the final proposal from both ESG and ESG's subcontractors.
- d. Proposal entitled "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" dated February 9, 2009.
- e. Performance Bond _____
- f. Payment Bond _____
- g. Guarantee Energy Savings Bond _____

In the event of a conflict between or among provisions of the Contract Documents, documents shall be controlling in the order in which they are listed in Section III – General Conditions of Indefinite Delivery Contract No. DGS-06-EPC-IDC-5.0, Paragraph 24, except that this Agreement shall be deemed to have the highest order of precedence.

The term "State" in Indefinite Delivery Contract No. GGS-06-EPC-IDC-5.0 shall be deemed to mean "County." The term "Contractor" or "ESCO" shall be deemed to mean the Contractor.

7. Time of Completion for Specified Tasks

- a. The tasks identified in Section III, "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" for Phase I Construction, shall be commenced upon issuance of a Purchase Order and written Notice to Proceed and shall be completed within 12 months of the issuance of the Notice to Proceed.
- b. If notified by the County by issuance of a Purchase Order and written Notice to Proceed to initiate the tasks identified in Section III, "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" for Phase II Construction, Contractor shall complete them within 12 months of the issuance of the Notice to Proceed (if issued by July 30, 2009). It is understood and agreed, that inclusion of Phase II tasks under this Agreement is subject to the authorization of the Howard County Council of the required funds in the FY2010 Capital budget.
- c. The Contractor shall provide other performances under this Agreement, for the period set forward in Section 8 d. 3).

8. Special Provisions

- a. Acknowledgment of Election of Owner Financing. By executing this Contract, Contractor acknowledges that the Owner has elected to finance the energy improvements through an Owner's Energy Performance Master Lease Purchase Agreement. Contractor further acknowledges that the Owner's election of tax exempt financing places limitations on the private business use of such funds and the property financed with such funds.
- b. Management Services. "Management Services" are all monitoring and verification of energy savings (as defined in Section IV, Measurement and Verification, of the Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" proposal);; service, and training (as defined in Sections IV & V, of Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" Proposal), and the securing of a

Guarantee Energy Savings Bond, defined more particularly below. Payment for Management Services, consisting of an annual fee invoiced and payable monthly, shall be based upon the cash flow analysis on pages 1 & 2 of Section II, Financials, of the Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County" and will include M&V, and Guarantee Energy Savings Bond. The County will self-perform maintenance services.

- c. Severability of Management Services and Guarantee. The parties agree that the Owner may terminate the Management Services (and resultant fee) at any time, without violating the terms of the Guarantee, by providing reasonable notice, in writing, to the Contractor.
- d. Agreement on Guarantee of Annual Savings.
 - 1) Contractor warrants and guarantees that Owner will realize guaranteed energy savings of \$8,212,800 (\$6,402,574 for Phase I construction & \$1,810,226 for Phase II construction) and overall savings of \$8,308,483 (\$6,498,257 for Phase I construction & \$1,810,226 for Phase II construction), as set forth in Contractor's Final Phase II Proposal, Table – Cash Flow Analysis on pages 1 & 2 of Section II Financials, and the other contract documents.
 - 2) The price for Contractor's guarantee that Owner will realize the savings set forth in the Guaranteed Savings Summary section of Contractor's Phase II Proposal is \$82,128.00 and is included in the price set forth in Attachment A (\$64,026.00 for Phase I Construction & \$18,102 for the Phase II construction). The surety for the Guarantee Energy Savings Bond will be provided from a financial institution approved by the State Treasurer's Office and the Owner. This amount is shown as apportioned annually within the Contractor's Final Phase II Proposal, Section II – Cash Flow Analysis and will be invoiced and payable monthly as part of the Management Services. The Guarantee Energy Savings Bond shall be provided within 10 days of execution of the contract and prior to issuance of the purchase order.
 - 3) Unless otherwise terminated sooner in accordance with the terms of the Contract Documents, this Contract shall remain in force and effect for the period described in the Contractor's "Final Phase II Proposal for Energy Performance Contract (EPC) for Howard County", provided that this Contract shall automatically terminate on the date which is fifteen (15) years from the first date on which Owner obtains tax-exempt financing to finance the capital portion (design and construction) of this Contract.
 - 4) Owner acknowledges that the Payment and Performance Bonds required hereunder shall expire upon final acceptance of all Energy Conservation Measures required under this Contract, including any applicable two year warranty period, and shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by ESG under this Contract. This surety will be provided by an insurance company, which is licensed in the State of Maryland by the Maryland Insurance Commission. The bonds shall be provided prior to issuance of the purchase order.
 - 5) The following clarifications to Section V of the Indefinite Delivery Contract are incorporated herein:
 - a) Guaranteed Savings Reconciliation Report. Contractor will provide Owner

with a Guaranteed Savings Reconciliation Report after the one-year anniversary of the end of the Construction Period and after the end of each subsequent annual Guaranty Period within 120 days after the year's end. The County shall provide the with access to, relevant records relating to such Energy and Operations and Maintenance Costs. The County shall permit access to any energy billing information, maintenance records, drawings, or other data reasonably necessary to generate the said report. Data and calculations utilized by Contractor in the preparation of its Guaranteed Savings Reconciliation report will be made available to Owner, along with such explanations and clarifications as Owner may reasonably request.

- b) Upon receipt of the Reconciliation Report, Owner shall have forty-five (45) days to review the Guaranteed Savings Reconciliation Report and provide written notice to Contractor of rejection of the Guaranteed Savings Reconciliation Report for that Guaranty Year. Such written notice shall explain the with reasonable particularity the reasons why the Owner does not accept the report. If the Owner fails to provide written notice of rejection within forty-five (45) days of the receipt of the Guaranteed Savings Reconciliation Report, it shall be deemed accepted..
- c) Whenever either party shall be prevented from or delayed in carrying out any obligation of such party hereunder (other than for the payment of money) by reason of any riot, strike, work stoppage, embargo, quarantine, accident, fire, flood or other similar or dissimilar cause beyond the reasonable control of such party, the performance of such obligation by such party shall be excused to the extent of such prevention or delay, provided that such party immediately begins to take in good faith whatever reasonable steps are available to ameliorate, cure, and mitigate the impact of the difficulties created by the cause beyond the party's control."

- 6) Upon receiving a written request (the "Written Request") from the Contractor, the County agrees that it will consider the allocation (the "Allocation") of the energy efficient tax deduction allowable under Section 179D of the Internal Revenue Code, as it may be amended, and any regulations or notices promulgated thereunder (the "Code") allowable to a Designer (as such term is defined in the Code). After receipt of the Written Request, the County may require the Contractor to provide any data, analysis, or other information that may assist the County in evaluation the Written Request. The provision of such data, analysis, or other information shall be at the Contractor's sole cost and expense.

The County's decision as to the execution of the Allocation shall be in its sole discretion and may be withheld for any reason whatsoever or may be conditioned as the County determines in its sole discretion. Nothing in this Agreement shall be construed or interpreted to create any obligation whatsoever upon the County to execute the Allocation pursuant to the Code and should the County decide not to execute the Allocation, the Contractor shall not have any rights, remedies, or recourse against the Contractor for such determination."

- e. Liquidated Damages. The amount of liquidated damages for this contract shall be \$1,000.00 per calendar day if the Time of Completion requirements, stipulated in Section 7. a. above, are not met.

9. Ownership of Goods.

All finished or unfinished work, reports, or goods that are the subject of this Agreement; including any licenses or consents acquired by the Contractor for performance hereunder, shall be and shall remain the property of the County.

10. Ethics.

10.1 The Contractor certifies that the officer of the corporation who is executing this Agreement has read and understands Attachment A, entitled Howard County Charter and Code References to Ethics, which contains the provisions of Section 901(a) of the Howard County Charter dealing with conflicts of interest and Section 22.204 of the Howard County Code dealing with conflicts of interest.

10.2 The Contractor certifies that he/she has (1) not been a party to an agreement to bid a fixed or uniform price; (2) not offered nor will offer any gratuity to any county official or employee; and (3) not violated any of the fair employment provisions of Code Sec. 4.119 Ethics and Fair Employment Practices detailed in Attachment A.

This Agreement is made and entered into in Maryland and is to be construed under the laws of Maryland. As to the Contractor, this Agreement is intended to be a contract under seal and a specialty.

11. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland without regard to any choice of law principles that would dictate the laws of any other jurisdiction. The parties agree that the exclusive venue for any and all actions related hereto shall be the appropriate Federal or State court located within the State of Maryland.

12. Termination:

12.1 Termination for Convenience: The County may terminate this Agreement, in whole or in part, whenever the County determines that such termination is in the best interest of the County, without showing cause, upon giving at least 30 days written notice to the Contractor. The County shall pay all reasonable costs incurred by the Contractor up to the date of termination. However, in no event shall the Contractor be paid an amount which exceeds the price bid for the work performed. The Contractor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.

12.2 Termination for Default: When the Contractor has not performed or has unsatisfactorily performed one or more material terms of the Agreement, the County may terminate the Agreement for default. Upon termination for default, payment may be withheld at the discretion of the County. Failure on the part of a Contractor to fulfill the contractual obligations shall be considered just cause for termination of the Agreement. If the damages exceed the undisbursed sums available for compensation, the County shall not be obligated to make any further disbursements hereunder. The Contractor will be paid for work satisfactorily performed prior to termination less any excess costs incurred by the County in reprocurring and completing the work.

13 Notice: Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered to the following address and individual or at such other address and/or such other individual a party may identify in writing to the other party:

FOR THE COUNTY:
Helen Ashley, CPPB, Buyer
Howard County, Maryland
Office of Purchasing
6751 Columbia Gateway Drive

Columbia, MD 21046
Telephone: (410) 313-6378
Fax: (410) 313-6388
Email: hashley@howardcountymd.gov

FOR THE CONTRACTOR:
Karen Galindo-White, Account Executive
ENERGY SYSTEMS GROUP, LLC
4401 O'Donnell Street
Baltimore, MD 21224
(410) 522-5656
(812) 492-8323

14 Indemnification.

14.1 The Contractor shall indemnify and hold harmless the County, its employees, agents and officials from any and all claims, suits, or demands including reasonable attorney fees which may be made against the County, its employees, agents or officials resulting from any act or omission committed in the performance of the duties imposed by and performed under the terms of this Agreement by the Contractor or anyone under agreement with the Contractor to perform duties under this Agreement. The Contractor shall not be responsible for acts of negligence or willful misconduct committed by the County, its employees, agents and officials.

14.2 Any property or work to be provided by the Contractor under this Agreement will remain at the Contractor's risk until written acceptance by the County; and the Contractor will replace, at the Contractor's expense, all property or work damaged or destroyed by any cause whatsoever.

15 Reports/Information/Inspections/and Audits:

15.1 At any time during normal business hours and as often as the County may deem necessary, the Contractor shall make available to and permit inspection by the County, its employees or agents, all records, information and documentation of the Contractor related to the subject matter of this Agreement, including, but not limited to, all contracts, invoices, payroll, and financial audits.

This Agreement is made and entered into in Maryland and is construed under the laws of Maryland. As to Contractor, this Agreement is intended to be a contract under seal and a specialty.

ATTEST:

Secretary

Print Name

ATTEST:

Lonnie R. Robbins
Chief Administrative Officer

RECOMMENDED FOR APPROVAL:

James M. Irvin, Director
Director of Public Works

APPROVED FOR LEGAL SUFFICIENCY:

Margaret Ann Nolan
County Solicitor

APPROVED AND AGREED TO:
ENERGY SERVICES GROUP

By: _____ (SEAL)

Title: _____

APPROVED:
HOWARD COUNTY, MARYLAND

By: _____

Ken Ulman
County Executive

APPROVED FOR SUFFICIENCY OF FUNDS

Sharon F. Greisz, Director
Department of Finance

ATTACHMENT A

CONTRACT PRICE

The Owner shall pay the Contract as follows, subject to and in accordance with the Contract Documents. For Phase II Construction, payment is specifically made subject to appropriation by the Howard County Council of the required design/construction funds (\$1,095,277.00) in the FY2010 Capital Budget:

<u>Amount</u>	<u>Description</u>	<u>Terms of Payment</u>
<u>PHASE I CONSTRUCTION</u>		
\$4,400,000.00	<i>Design/Construction - Miscellaneous Work</i>	<i>Payable Monthly as progress is approved by the Owner</i>
\$ 177,928.00	<i>Total Management Service (Measurement & Verification, and Guarantee Energy Savings Bond)</i>	<i>Payable Monthly by Owner</i>
\$4,577,928.00	<i>Total Contract Amount (Construction and Management Services)</i>	
<u>PHASE II CONSTRUCTION</u>		
\$1,095,277.00	<i>Design/Construction - Miscellaneous work</i>	<i>Payable Monthly as progress is approved by the Owner</i>
\$ 50,686.00	<i>Total Management Services (Measurement & Verification, And Guarantee Energy Savings Bond)</i>	<i>Payable Monthly by Owner</i>
\$1,145,963.00	<i>Total Contract Amount (Construction and Management Services)</i>	

ATTACHMENT B

AFFIDAVIT

Contractor _____

Address _____

Telephone _____

I, _____, the undersigned, _____ of the above named Contractor
(Print Signer's Name) Print Office Held)

does declare and affirm this _____ day of _____, _____, that I hold the aforementioned office
(Month) (Year)
in the above named bidder and I affirm the following:

AFFIDAVIT I

The Contractor, his Agent, servants and/or employees, have not in any way colluded with anyone for and on behalf of the Contractor or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein.

AFFIDAVIT II

No officer or employee of Howard County, whether elected or appointed, has in any manner whatsoever, any interest in or has received prior hereto or will receive subsequent hereto any benefit, monetary or material, or consideration from the profits or emoluments of this contract, job, work or service for the County, and that no officer or employee has accepted or received or will receive in the future a service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally, nor has any such officer or employee of the County received or will receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable to the County in connection with this contract, job, work, or service for the County, excepting, however, the receipt of dividends on corporation stock.

AFFIDAVIT III

Neither I, nor the Contractor, nor any officer, director, or partners, or any of its employees who are directly involved in obtaining contracts with Howard County have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state, or of the federal government for acts of omissions committed after July 1, 1977.

AFFIDAVIT IV

Neither I, nor the Contractor, nor any of our agents, partners, or employees who are directly involved in obtaining contracts with Howard County have been convicted within the past 12 months of discrimination against any employee or applicant for employment, nor have we engaged in unlawful employment practices as set forth in Section 12.200 of the Howard County Code, or of Section 16 of Article 49B of the Annotated Code of Maryland or, of Sections 703 and 704 of Title VII of the Civil Rights Act of 1964.

I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavits are true and correct to the best of my knowledge, information and belief.

DATE

SIGNATURE

PRINTED NAME

TITLE

ATTACHMENT C
HOWARD COUNTY CHARTER AND CODE REFERENCES TO ETHICS

Charter Section 901. Conflict of Interest.

(a) **Prohibitions.** No officer or employee of the County, whether elected or appointed, shall in any manner whatsoever be interested in or receive any benefit from the profits or emoluments of any contract, job, work, or service for the County. No such officer or employee shall accept any service or thing of value, directly or indirectly, from any person, firm or corporation having dealings with the County, upon more favorable terms than those granted to the public generally, nor shall he receive, directly or indirectly, any part of any fee, commission or other compensation paid or payable by the County, or by any person in connection with any dealings with the County, or by any person in connection with any dealings with or proceedings before any branch, office, department, board, commission or other agency of the County. No such officer or employee shall directly or indirectly be the broker or agent who procures or receives any compensation in connection with the procurement of any type of bonds for County officers, employees or persons or firms doing business with the County. No such officer or employee shall solicit or accept any compensation or gratuity in the form of money or otherwise for any act or omission in the course of his public work; provided, however, that the head of any department or board of the County may permit an employee to receive a reward publicly offered and paid for, for the accomplishment of a particular task.

(b) **Rules of construction; exceptions by Council.** The provisions of this Section shall be broadly construed and strictly enforced for the purpose of preventing officers and employees from securing any pecuniary advantages, however indirect, from their public associations, other than their compensation provided by law.

In order, however, to guard against injustice, the Council may, by resolution, specifically authorize any County officer or employee to own stock in any corporation or to maintain a business in connection with any person, firm or corporation dealing with the County, if, on full public disclosure of all pertinent facts to the County Council by such officer or employee, the Council shall determine that such stock ownership or connection does not violate the public interest.

The County Council may, by ordinance, delegate to the Howard County Ethics Commission the power to make such determinations and to authorize the ownership or connection. Any ordinance which delegates this power shall provide for procedures including a public hearing, and shall establish criteria for determining when the ownership or connection does not violate the public interest.

(c) **Penalties.** Any officer or employee of the County who willfully violates any of the provisions of this Section shall forfeit his office. If any person shall offer, pay, refund or rebate any part of any fee, commission, or other form of compensation to any officer or employee of the County in connection with any County business or proceeding, he shall, on conviction, be punishable by imprisonment for not less than one or more than six months or a fine of not less than \$100.00 or more than \$1,000.00, or both. Any contract made in violation of this Section may be declared void by the Executive or by resolution of the Council. The penalties in this Section shall be in addition to all other penalties provided by law.

Code Section 4.119. Ethics and Fair Employment Practices.

(a) **Conflict of Interest.** Bidders, vendors, purchasers and county employees involved in the purchasing process shall be governed by the provisions of the Howard County Charter and Howard County law regarding conflict of interest. No vendor shall offer a gratuity to an official or employee of the county. No official or employee shall accept or solicit a gratuity.

(b) **Discouragement of Uniform Bidding.**

(1) It is the policy of the county to discourage uniform bidding by every possible means and to endeavor to obtain full and open competition on all purchases and sales.

(2) No bidder may be a party with other bidders to an agreement to bid a fixed or uniform price.

(3) No person may disclose to another bidder, nor may a bidder acquire, prior to the opening of bids, the terms and conditions of a bid submitted by a competitor.

(c) **Fair Employment Practices**

(1) Bidders, vendors and purchases may not engage in unlawful employment practices as set forth in Subtitle 2 "human Rights" of Title 12 of the Howard County Code Section 24 of Article 49B of the Annotated Code of Maryland or Sections 703 and 704 of Title VII of the Civil Rights Act of 1964 as amended. Should any bidders, vendors or purchasers engage in such unlawful employment practices, they shall be subject to being declared irresponsible or being debarred pursuant to the provisions of this subtitle.

(2) The Howard County Office of Human Rights shall notify the county purchasing agent when any bidder is found, by a court of competent jurisdiction, to have engaged in any high unlawful employment practices.

(3) If any bidder has been declared to be an irresponsible bidder for having engaged in an unlawful employment practice and has been debarred from bidding pursuant to this subtitle, the Howard County Office of Human Rights shall review the employment practices of such bidder after the period of debarment has expired to determine if violations have been corrected and shall, within 30 days, file a report with the county purchasing agent informing the agent of such corrections before such bidder can be declared to be a responsible bidder by the county purchasing agent.

(4) Payment of subcontractors. All contractors shall certify in writing that timely payments have been made to all subcontractors supplying labor and materials in accordance with the contractual arrangements made between the contractor and the subcontractors. No contractor will be paid a second or subsequent progress payment or final payment until such written certification is presented to the county purchasing agent.

Code Section 22.204. Prohibited Conduct and Interests.

(a) **Participation Prohibitions:** County official and employees subject to this subtitle shall not:

(1) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate on behalf of the county in any matter which would, to their knowledge, have a direct financial impact as distinguished from the public generally, on them, their spouse, parent, child, sibling or upon any business interest with which they are affiliated;

(2) Except as exempted by the county council pursuant to Section 901(b) of the Howard County Charter, hold or acquire an interest in a business entity that has or is negotiating a contract with the county or is regulated by the official or employee;

(3) Except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to the matter, participate in any matter involving a business entity with which they, their spouse, parent, child or sibling are negotiating or have an arrangement concerning prospective employment.

(b) **Employment Prohibitions:** Except as exempted by the county council pursuant to section 901(b) of the Howard County Charter or when the employment or interest does not create an actual or apparent conflict of interest, officials and employees shall not:

(1) Be employed by:

(i) Any entity subject to their official authority;

(ii) Any entity subject to the authority of the Howard County agency, board or commission with which they are affiliated;

(iii) Any entity which is negotiating or has entered into a contract with the Howard County agency, board or commission with which they are affiliated.

(2) Represent any party for a fee, commission or other compensation before any county body;

(3) Within one (1) year following termination of county service, act as a compensated representative of another in connection with any specific matter in which they participated substantially as a county official or employee.

The employment provisions listed above do not apply to:

(1) An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to its jurisdiction be represented in appointments to it;

(2) Subject to other provisions of law, a member of a board or commission who publicly disclosed a financial interest or employment to the appointing authority at the time of appointment;

(3) Employees or officials whose duties are ministerial, provided that the private employment or financial interest does not create a conflict of interest or the appearance of such a conflict.

(c) **Solicitation/Acceptance of Gifts or Compensation:** No employee or official shall solicit any gifts. No employee or official shall accept any gift or compensation, directly or indirectly from any person that he/she knows or has reason to know, has

financial interests, distinguishable from the interest of the public, that would be affected by the actions of the employee or official.

(d) **Use of Prestige of Office**: No county officials or employees subject to this subtitle shall intentionally use the prestige of their office for their own gain or that of another. The performance of usual and customary constituent services without additional compensation does not constitute the use of prestige of office for an official or employee's private gain or that of another.

(e) **Disclosure of Confidential Information**: Other than in the discharge of official duties, officials or employees may not disclose or use, for their own gain or that of another, confidential information acquired by reason of public position and which is not available to the public.