

Request for Proposals

Management Consulting Services Video Lottery Terminals

PROJECT NO. DEXR0400056



EXECUTIVE DEPARTMENT

Issue Date: January 20, 2010

NOTICE

Prospective Offerors who have received this document from the Governor's Office of Minority Affairs (GOMA) website or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide their name, email address and mailing address so that amendments to the RFP or other communications can be sent to them.

Minority Business Enterprises are Encouraged to Respond to this Solicitation

**STATE OF MARYLAND
NOTICE TO OFFERORS/CONTRACTORS**

To help us improve the quality of State solicitations, and make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your proposals. If you have chosen not to bid on this Contract, please fax this completed form to: 410-333-7568 to the attention of the Procurement Officer. Thank you for your assistance.

Title: VLT Management Consulting Services
Project No: DEXR0400056

1. If you have responded with a "no bid", please indicate the reason(s) below:

- Other commitments preclude our participation at this time.
- The subject of the solicitation is not something we ordinarily provide.
- We are inexperienced in the work/commodities required.
- Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- The scope of work is beyond our present capacity.
- Doing business with Maryland Government is simply too complicated. (Explain in REMARKS section.)
- We cannot be competitive. (Explain in REMARKS section.)
- Time allotted for completion of the bid/proposals is insufficient.
- Start-up time is insufficient.
- Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- Bid/Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- MBE requirements. (Explain in REMARKS section.)
- Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- Payment schedule too slow.
- Other: _____

2. If you have submitted a bid or proposal, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

Offeror Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

**KEY INFORMATION SUMMARY SHEET
STATE OF MARYLAND
Request for Proposals**

**Management Consulting Services – Video Lottery Terminals
PROJECT NUMBER DEXR0400056**

RFP Issue Date: Wednesday, January 20, 2010

RFP Issuing Office: Executive Department
Governor’s Office of Minority Affairs

Procurement Officer: Janice C. Montague, CPPO
Director MBE Compliance
Governor’s Office of Minority Affairs
6 Saint Paul Street, Ste. 1502
Baltimore, MD 21202
jmontague@mdminoritybusiness.com
410-767-6580 (phone)
410-333-7568 (fax)

Proposals are to be sent to: Governor’s Office of Minority Affairs
6 Saint Paul Street, Room 1502
Baltimore, MD 21202
Attention: Janice Montague

Pre-Proposal Conference: Wednesday, January 27, 2010 10:00 AM Local Time
7201 Corporate Center Drive
Hanover, MD 21076

Closing Date and Time: Tuesday, February 16, 2010 – 2:00 PM Local Time

NOTE

Prospective Offerors who have received this document from the GOMA website or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this RFP, should immediately contact the Procurement Officer and provide a name, email address and postal mailing address so that amendments to the RFP or other communications can be transmitted in a timely fashion.

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

The Governor's Office of Minority Affairs (GOMA), is issuing this Request for Proposals (RFP) for the sole purpose of entering into a contractual agreement to provide management consulting services in connection with the State of Maryland's Video Lottery Terminal (VLT) Expansion Program. Pursuant to the VLT Law, State Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland, each Licensee must comply with the Minority Business Enterprise (MBE) requirements that are part of the Licensee Agreement. The VLT law requires GOMA to monitor the Licensee's compliance with the MBE requirements specifically as they relate to: a) construction of the physical VLT facility, and, b) any other procurements related to the development, management and operation of the VLT facility.

- 1.1.2 It is the State's intention to obtain services, as specified in this Request for Proposals, from a Contract between the successful Offeror and the State.
- 1.1.3 The Department intends to award one contract to the Offeror whose proposal is deemed to be the most advantageous to the State, considering price and technical factors. See Section 4 for a discussion of the evaluation factors.
- 1.1.4 Offerors must be able to fully meet the requirements outlined in Section 2 of this solicitation for the full duration of the contract. Offerors are further advised that the overall simplicity and efficiency of the proposed solution will be a significant factor in the award decision.

1.2 Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

- a. **ADA** - Americans With Disabilities Act, Public Law 101-336 of the 101st Congress, enacted July 26, 1990, and regulations promulgated pursuant to that statute.
- b. **Applicant** – An entity that submitted an application in response to the RFP issued by the Lottery Agency for purposes of issuing a Video Lottery Operation License.
- c. **Background Investigation** – A security, criminal, and credit investigation that may be required for individuals requesting access to a VLT facility.
- d. **BAFO** – Best and Final Offer
- e. **COMAR** – The Code of Maryland Regulations (available at <http://www.dsd.state.md.us/comar/>).
- f. **Contract Manager (CM)** – The State representative for this project who is primarily responsible for Contract administration functions, including issuing written direction, compliance with terms and conditions, and achieving on budget/on time/on target (e.g., within scope) completion of the project.

g. Contractor - An entity awarded a contract with the Governor's Office of Minority Affairs. The term "Contractor" may occasionally be used interchangeably in this RFP to mean the successful offeror who is awarded a contract resulting from this RFP.

h. Eastern Time - Eastern Standard Time or Eastern Daylight Savings Time, as applicable.

i. EFT - Electronic Funds Transfer through a bank employing the Automated Clearing House ("ACH") network.

j. FY - Fiscal Year, July 1 – June 30. For example, FY09 represents the period beginning July 1, 2008 through June 30, 2009.

k. Governors Office of Minority Affairs ("GOMA") –The State agency responsible for monitoring the Licensees' compliance with the Minority Business Enterprise("MBE") requirements of Operation Licenses.

l. License – Means, unless the context otherwise requires, a License required under the VLT law.

m. Licensee – An entity who has been issued a License required under the VLT law.

n. Local Time - Time in the Eastern Time Zone as observed by the State.

o. Location Commission - The Video Lottery Facility Location Commission.

p. Lottery Commission - The State Lottery Commission.

q. Lottery - The State Lottery Agency.

r. Offeror – An entity that submits a proposal in response to this RFP.

s. Procurement Officer – The State representative responsible for administering and otherwise executing the RFP in compliance with state law and regulation. The procurement officer for this procurement is Janice Montague.

t. Proposal – The written response submitted by an offeror to this RFP. The response may include but is not limited to an offeror's price, proposed solution, a description of technical expertise, work experience, and other information as requested in the RFP.

u. Race Neutral Methodologies – Strategies that are used to assist all businesses, regardless of the social, economic, racial or sexual composition of those who own or control the business (see COMAR 21.11.03.03(13)).

v. Regular Business Hours – Refers to the State of Maryland's regular hours of operation, 8:00 am to 4:30 pm Eastern Standard Time, Monday through Friday, except for state holidays.

v. Request For Proposals (RFP) - This Request for Proposals for Management Consulting Services, Video Lottery Terminals, #DEXR0400056, dated January 20, 2010, including any amendments.

w. State - The State of Maryland.

x. Video Lottery – Means gaming or betting conducted using a VLT.

y. Video Lottery Employee (“Employee”) – An employee of a person who holds a VLT Operation License.

z. Video Lottery Facility (“Facility”) – A facility at which Players play VLTs.

aa. Video Lottery Operation License (“Operation License”) – A License issued to a person that allows Players to operate VLTs. A License awarded by the Location Commission and Issued by the Lottery Commission to operate a Video Lottery Facility.

bb. Video Lottery Terminal (“VLT”) (1) Any machine or other device that, on insertion of a bill, coin, token, voucher, ticket, coupon, or similar item, or on payment of any consideration:

(I) is available to play or simulate the play of any game of chance in which the results, including the options available to the Player, are randomly determined by the machine or other device; and

(II) by the element of chance, may deliver or entitle the Player who operates the machine or device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payout is made automatically from the device or in any other manner.

(2) “Video Lottery Terminal” includes a machine or device:

(I) that does not directly dispense money, tokens, or anything of value to winning players; and

(II) described under paragraph (1) above that uses an electronic credit system making the deposit of bills, coins, or tokens unnecessary.

(3) “Video Lottery Terminal” does not include an authorized slot machine operated by an eligible organization under Title 12, Subtitle 3 of the Criminal Law Article.

cc. VLT Law – means the Maryland Video Lottery Terminals Law, state Government Article, Title 9, Subtitle 1A, Annotated Code of Maryland

1.3 Contract Type

This Contract shall be a firm fixed unit price contract based upon 3 firm component prices as provided in COMAR 21.06.03.02 A(1). No other costs, fees or charges of any type are payable or reimbursable by the State to the Contractor for services required under the Contract.

1.4 Contract Duration

The Contract resulting from this RFP shall be for a period of 15 months, starting approximately on April 1, 2010 and ending on June 30, 2011. There will be one (1) one-year option to renew the contract, extending from July 1, 2011 through June 30, 2012. The single contract renewal option will be exercised solely at the discretion of the state.

1.5 Procurement Officer

The sole point of contact in the State for purposes of this RFP prior to the award of any Contract is the Procurement Officer at the address listed below:

Janice Montague
Governor's Office of Minority Affairs
6 Saint Paul Street, Rm 1502
Baltimore, MD 21202
Phone Number: 410-767-6580
Fax Number: 410-333-7568
E-mail: jmontague@mdminoritybusiness.com

The Department may change the Procurement Officer at any time by written notice. The Procurement Officer is responsible for the Contract, issuing notices to proceed, determining scope issues, and is the only State representative that can authorize changes to the Contract.

1.6 Contract Manager

The Contract Manager is:

Tracie Watkins-Rhodes
Governor's Office of Minority Affairs
6 Saint Paul Street, Suite 1502
Baltimore, Maryland 21202
Phone Number: 410-767-8232
Fax Number: 410-333-7568
Email: trhodes@mdminoritybusiness.com

The Department may change the Contract Manager at any time by written notice. The Contract Manager has the authority to oversee day-to-day administration of the Contract and the Contractor's performance. The Contract Manager may delegate authority to a designee.

1.7 Pre-Proposal Conference

A Pre-proposal Conference will be held on **Wednesday, January 27, 2010, beginning at 10:00 AM**, Local Time at MDOT Headquarters, 7201 Corporate Center Drive, Hanover, MD 21076.

As promptly as is feasible subsequent to the Pre-Proposal Conference, a summary of the Pre-Proposal Conference and all questions and answers known at that time will be distributed to all prospective Offerors known to have received a copy of this RFP.

In order to assure adequate seating and other accommodations at the Pre-Proposal Conference, please e-mail or fax the Pre-Proposal Conference Response Form to the attention of the Procurement Officer with such notice no later than 4:00 PM on January 25, 2010. The Pre-Proposal Conference Response Form is included as RFP **Attachment D**. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability,

please call or e-mail no later than January 23, 2010. A reasonable effort will be made to provide such special accommodations.

1.8 eMarylandMarketplace

If already registered at the time of proposal submission, the Offeror should indicate their eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted as part of the technical proposal package.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the GOMA website (www.mdminoritybusiness.com) and other means for transmitting the RFP and associated materials, the solicitation and summary of the pre-proposal conference, Offeror questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via e-Maryland Marketplace.

In order to receive a contract award, a vendor must be registered on eMarylandMarketplace. **Registration is free.** Go here to register: <https://ebidmarketplace.com>. Click on "Registration" to begin the process and follow the prompts.

1.9 Questions

Written questions from prospective Offerors will be accepted by the Procurement Officer prior to the pre-proposal conference. If possible and appropriate, such questions will be answered at the pre-proposal conference. (No substantive question will be answered prior to the pre-proposal conference.) Questions may be submitted by mail, facsimile, or preferably, by e-mail to the Procurement Officer. Questions, both oral and written, will also be accepted from prospective Offerors attending the Pre-Proposal Conference. If possible and appropriate, these questions will be answered at the Pre-Proposal Conference.

Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted in a timely manner prior to the proposal due date to the Procurement Officer. If time allows, answers to all substantive questions that have not previously been answered, and are relevant to all potential offerors, will be distributed to all individuals who are known to have received a copy of the RFP.

1.10 Proposal Due (Closing) Date

An unbound original and three (3) bound copies of each proposal (technical and financial) must be received by the Procurement Officer, at the address listed in Section 1.6, **no later than 2:00 PM (local time) on Tuesday, February 16, 2010** in order to be considered. An electronic version (CD) of the Technical Proposal and Financial Proposal in MS Word format must be enclosed with the original proposals. Ensure that the CDs are labeled with the RFP title, RFP number, and Offeror name and packaged with the original copy of the technical and financial proposals.

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 21.05.03.02F, proposals received by the Procurement Officer after the due date/time of **February 16, 2010 at 2:00 PM (local time)** will not be considered.

Proposals may not be submitted by e-mail or facsimile.

1.11 Duration of Offer

Proposals submitted in response to this RFP are irrevocable for 120 days following the closing date of proposals or of Best and Final Offers (BAFOs), if requested. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

1.12 Revisions to the RFP

If it becomes necessary to revise this RFP before the due date for proposals, amendments will be provided to all prospective Offerors who were sent this RFP or otherwise are known by the Procurement Officer to have obtained this RFP. In addition, amendments to the RFP will be posted on the GOMA website and through eMarylandMarketplace. Amendments made after the due date for proposals will be sent only to those Offerors who submitted a timely proposal.

Acknowledgment of the receipt of all amendments issued before the proposal due date to this RFP must accompany the Offeror's proposal in the Transmittal Letter accompanying the Technical Proposal submittal. Acknowledgement of the receipt of amendments to the RFP issued after the proposal due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Offeror from complying with all terms of any such amendment.

1.13 Cancellations; Discussions

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

1.14 Oral Presentation

Offerors may be required to make oral presentations to State representatives. Significant representations made by an Offeror during the oral presentation shall be submitted in writing. All such representations will become part of the Offeror's proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the exact time and place of any oral presentations, if any. Typically, oral presentations occur approximately two to four weeks after the proposal due date.

1.15 Incurred Expenses

The State will not be responsible for any costs incurred by an Offeror in preparing and submitting a proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities relative to this solicitation.

1.16 Economy of Preparation

Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's proposals to meet the requirements of this RFP.

1.17 Protests/Disputes

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

1.18 Multiple or Alternate Proposals

Neither multiple nor alternate proposals will be accepted.

1.19 Access to Public Information Act Notice

Each Offeror should give specific attention to the clear identification of those portions of its proposal that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Title 10, Subtitle 6, of the State Government Article of the Annotated Code of Maryland. (See Section 4.4.4)

Offerors are advised that upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed. Information which is claimed to be confidential is to be identified (by page, attachment or section number) after the Title Page and before the Table of Contents in the Technical proposal and, if applicable, in the Financial proposal.

1.20 Selected Offeror Responsibilities

The selected Offeror shall be responsible for all products and services required by this RFP. All known subcontractors must be identified and a complete description of their role relative to the proposals must be included in the Offeror's proposals. If an Offeror that seeks to perform or provide the services required by this RFP is a subsidiary of another entity, all information submitted by the Offeror, such as but not limited to, references and financial reports, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's proposal must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

1.21 Mandatory Contractual Terms

By submitting an offer in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms of this RFP and the *Contract*, attached as **Attachment A**. **Any exceptions to this RFP or the Contract must be clearly identified in the Executive Summary of the technical proposal; exceptions to the required format, terms and conditions of the Financial Proposal must also be clearly identified in the Executive Summary, without disclosing any pricing information.** A proposal that takes exception to these terms may be rejected.

1.22 Bid/Proposal Affidavit

A proposal submitted by an Offeror must be accompanied by a completed *Bid/Proposal Affidavit*. A copy of this Affidavit is included as **Attachment B** of this RFP.

1.23 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a *Contract Affidavit*. A copy of this Affidavit is included for informational purposes as **Attachment C** of this RFP. This Affidavit must be provided within five business days of notification of proposed Contract award.

1.24 Minority Business Enterprises

A minimum overall MBE subcontractor participation goal of zero (0%) has been set for this contract. Minority Businesses are strongly encouraged to respond directly to this solicitation.

1.25 Arrearages

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

1.26 Procurement Method

This Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03.

1.27 Verification of Registration and Tax Payment

Before a corporation can do business in the State 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 (SDAT) may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award. To verify if a corporation is registered visit the SDAT website at: http://sdatcert3.resiusa.org/UCC-Charter/CharterSearch_f.aspx

1.28 False Statements

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

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

1.29 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAC X-10 form can be downloaded from:

http://compnet.comp.state.md.us/General_Accounting_Division/Static_Files/gadx-10.pdf

1.30 Living Wage Requirements

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

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier Area. The specific Living Wage rate is determined by

whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. If the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The contract resulting from this solicitation will be deemed to be a Tier 1 contract or a Tier 2 contract depending on the location(s) from which the Contractor provides 50% or more of the services. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the contract will be a Tier 1 contract. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the contract will be a Tier 2 contract. **If the Contractor provides more than 50% of the services from an out-of-State location, then the contract will be deemed to be a Tier 1 contract.** The Offeror must identify in their Offer the location(s) from which services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

1.31 Prompt Payment Policy

This procurement and the contracts to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror/Contractor must comply with the prompt payment requirements outlined in the Contract, § 28.-Prompt Payment. Additional information is available on the GOMA website at: http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf

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SECTION 2 – SCOPE OF WORK

2.1 Purpose and Background

- 2.1.1** The State is issuing this RFP for the purposes outlined in Section 1.1 above.
- 2.1.2** The State of Maryland Video Lottery Facility Location Commission issued a solicitation on December 19, 2008 (See **Attachment H**). The purpose of the solicitation was to award up to five (5) Video Lottery Operation Licenses to operate gaming facilities at various authorized locations within the State of Maryland. As of the issuance of this RFP for management consulting services, three of the licenses and associated facility locations have been approved by the Location Commission. The approved licensees/sites are as follows:
- A. **Location 1:**
Ocean Enterprises 589 LLC
Worcester County
MBE Goal: 25% Overall; 10% Women, 10% African American
 - B. **Location 2:**
Penn Cecil Maryland, Inc.
Cecil County
MBE Goal: 25% Overall; 10% Women, 10% African American
 - C. **Location 3:**
PPE Casino Resorts Maryland
Anne Arundel County
MBE Goal: 35% Overall; 10% Women, 10% African American

The VLT Location Commission may issue up to 2 (two) additional licenses pursuant to the VLT Law. Accordingly, GOMA reserves the right to modify the contract resulting from this RFP to facilitate MBE oversight of any additional VLT locations. All terms of the modification will be mutually agreed upon at the time of execution and may be subject to Board of Public Works approval.

Each of the above referenced licensees, as part of their response to the Location Commission's solicitation, has committed to achieve the MBE participation goals and sub-goals established for each VLT location as stated above. Further, each licensee has agreed to act in good faith over the course of the MBE compliance monitoring period to fulfill the MBE commitments made pursuant to the licensee's agreement with the State.

The management consulting Contractor selected from this RFP will assist GOMA with overseeing the activities of each licensee for the purpose of documenting all actions related to the licensees' MBE good faith efforts, including but not limited to, MBE outreach activity, MBE prime contract and subcontract awards, actual MBE utilization, compliance with MBE reporting requirements, prompt payment, and compliance with all other MBE best practices as agreed.

Licensees will be evaluated periodically against, at a minimum, the following MBE compliance criteria:

- 1) Responsiveness of the licensee, the licensee's construction and operations staff, and all licensee designees, to requests for information, payment/accounting data, records, reports, etc. from the Contractor and/or GOMA
- 2) Responsiveness of the licensees' MBE subcontractors, regardless of tier, to requests for information, payment/accounting data, reports, etc. from the Contractor and/or GOMA
- 3) Scope and timing of MBE outreach efforts conducted by the licensee and/or its designee(s) in connection with competitive procurements or other purchasing transactions subject to GOMA's MBE compliance review
- 4) Evidence that the licensee and/or its designee(s) have incorporated the use of race-neutral methodologies as required and defined.
- 5) Timeliness and accuracy of licensees' monthly MBE activity and payment report submissions.
- 6) Timeliness and accuracy of MBE subcontractors' monthly MBE activity and payment report submissions.
- 7) Evidence that the licensee has policies and procedures in place to ensure that named MBEs are actually utilized to deliver the goods/services intended, and are compensated for such in a timely manner.

2.2 Scope of Work

2.2.1 General Services and Performance

The Contractor shall provide management consulting services for GOMA as described below:

- 1) Establish and maintain a simple data collection and reporting system that captures, at a minimum, all prime/subcontractor business information, project-specific MBE commitments, project-specific prime contractor and MBE subcontractor monthly payment data, relevant written correspondence such as cure notices, MBE remediation plans, complaint notices, etc.
- 2) Conduct periodic site inspections to ensure that MBEs are performing work or delivering goods as anticipated under the pre-approved MBE utilization plan;
- 3) Act as the primary point of contact for each VLT licensee with regard to any MBE-related issue including general inquiries, MBE plan changes, utilization schedules, performance issues, monthly activity/payment reporting and verification, and MBE subcontractor complaint/dispute referrals.
- 4) Issue MBE compliance cure notices, as necessary, to inform licensee of failure to meet reporting deadlines, to meet prompt payment requirements, or to otherwise act in good faith with regard to MBE outreach and utilization;
- 5) Upon request from GOMA, participate in meetings with licensees' staff to discuss unresolved MBE payment issues and/or underutilization of MBEs as anticipated;
- 6) Submit draft and final versions of bi-annual reports required to be submitted to the VLT Commission and, upon request by GOMA, attend meetings with VLT Commission staff to discuss report contents, including MBE compliance data and recommended actions;
- 7) Ensure that all documentation relating to a licensee's compliance with the VLT MBE requirements is organized and stored securely in both electronic and hard copy formats, and within easy access to GOMA staff at all times.

2.2.2 Project Activity and Due Dates

Following are the required activities and the State's desired due dates, where applicable:

DATE	ACTIVITY
Within 15 calendar days of Notice To Proceed	a) Provide GOMA with access to all data capture and reporting templates, tools and systems to be used by contractor to document licensees' MBE activity b) Attend transition meeting with GOMA and licensees to provide overview of contractor's tracking methodology and preliminary site inspection protocols
Within 30 calendar days of Notice To Proceed	a) Complete set up of each licensee's electronic and hard copy MBE compliance file that contains all licensees' MBE data to date b) Obtain written confirmation of each licensee's agreement with final MBE reporting protocols, policies and procedures c) Complete and submit to GOMA the final on-site inspection schedule for each active VLT construction site
Within 45 calendar days of Notice To Proceed	a) Complete at least one on-site inspection for each active VLT construction site b) Submit baseline VLT Licensee MBE Compliance Summary Report for each licensee for which a site inspection was completed
Within 90 calendar days of Notice To Proceed	a) Begin submitting monthly MBE Compliance Summary Reports for each licensee. b) Facilitate meeting with VLT Commission to present initial licensee MBE compliance reports and findings
Ongoing Monthly	Conduct scheduled and unscheduled site inspections; provide meeting minutes; handle all incoming inquiries, refer formal complaints to GOMA, document and summarize licensees' bidding/award activity and overall construction progress; ensure that data system is current with regard to licensee/subcontractor verified payment data, and actual MBE goal achievement
Ongoing quarterly	Attend progress meetings with GOMA to provide updates and discuss all outstanding licensee MBE issues

2.2.3 Customer Service

The Contractor shall act on behalf of GOMA as a customer service representative for licensees, MBE subcontractors, MBE trade organizations and others with VLT MBE-related inquiries. Inquirers must be able to access the Contractor during regular business hours by phone or e-mail to, at a minimum:

- 1) make general MBE-related inquiries,
- 2) request technical assistance with monthly reporting,
- 3) report alleged fraudulent activity related to the naming and use of MBEs
- 4) express other concerns or lodge complaints.

2.3 Reports

2.3.1 Report Contents

By the 15th of each month, the Contractor shall provide to GOMA the following report, one for each licensee, in electronic and hard copy format:

1. For each VLT licensee, a MBE Compliance Status Report that summarizes, at a minimum, the licensee's:
 - a) construction and operations cumulative purchasing activity,
 - b) MBE utilization/payment activity for each construction and operations contract,
 - c) actual % MBE goal achievement for each contract in progress,
 - d) MBE outreach efforts and use of race neutral measures
 - e) overall status with regard to the criteria outlined in RFP Section 2.1.2

The monthly status reports shall also contain a summary of the results of site inspections conducted during the reporting period and any other outstanding issues that are relevant to the licensees' adherence to the agreed upon MBE policies, procedures and best practices

2. The report must be submitted in the format pre-approved by GOMA. All information included in the reports must be generated from and supported by data that resides within the Contractor's data collection/reporting system.

2.3.2 Report Quality/Format/Acceptance

Written reports shall not contain structural errors such as poor grammar, misspellings, incorrect punctuation, incorrect mathematic functions or accounting elements, and must:

- Be submitted on or before the due date;
- Be presented in a format appropriate for the subject matter and depth of discussion;
- Be organized in a manner that presents a logical flow of the deliverable/report's content;
- Be reviewed and accepted by the Contract Manager.

2.4 Invoicing

2.4.1 Payment Specifications

The Contractor shall accept the payment procedures and parameters outlined in this RFP Section 2.4.1 and in RFP Attachment A, Contract, Section 4. Payment to the contractor will be made on a monthly basis within 30 days of receipt of an acceptable invoice. The invoice must, at a minimum, include the state's contract ID#, invoice performance period, contractor's name, mailing address, and Federal ID #.

2.5 Insurance

2.5.1 The Contractor shall maintain general liability, property and casualty insurance with minimum limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, employees or subcontractors.

2.5.2 The Contractor shall provide a copy of the Contractor's current certificate of insurance that, at a minimum, shall contain the following:

- Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
- General Liability - The Contractor shall purchase and maintain the following insurance protection for liability claims arising as a result of the Contractor's operations under this agreement.

\$1,000,000 - General Aggregate Limit (other than products/completed operations)

\$1,000,000 - Products/completed operations aggregate limit

\$1,000,000 - Each Occurrence Limit

\$1,000,000 - Personal and Accidental Injury Limits

\$ 50,000 - Fire Damage Limit

\$ 5,000 - Medical Expense

2.5.3 Upon execution of a Contract with the State, Contractor shall provide the State with current certificates of insurance, and shall maintain and report such insurance annually to the procurement officer.

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SECTION 3 – PROPOSAL FORMAT

3.1 Two Part Submission

Offerors shall submit proposals in separate volumes:

1. Volume I - TECHNICAL PROPOSAL
2. Volume II - FINANCIAL PROPOSAL

3.2 Proposals

Volume I-Technical Proposal shall be sealed separately from Volume II-Financial Proposal, but submitted simultaneously to the Procurement Officer. An unbound original, so identified, and three (3) copies of each volume are to be submitted. An electronic version of both the Volume I- Technical Proposal in MS Word format and the Volume II- Financial Proposal in MS Word format shall also be submitted with the unbound original technical or financial volumes, as appropriate. Electronic media is to be submitted on a CD and shall bear a label on the outside containing the RFP number and name, the name of the Offeror and the volume number.

3.3 Submission

Each Offeror is required to submit a separate sealed envelope for each "Volume", which are to be labeled Volume I- Technical Proposal and Volume II-Financial Proposal. Each envelope shall also bear the RFP title and number, name and address of the Offeror, and closing date and time for receipt of the proposals.

All pages of both proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").

3.4 Volume I – Technical Proposal

3.4.1 Transmittal Letter

A transmittal letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the proposal, acknowledge the receipt of any addenda, and shall contain the name, title, telephone #, and e-mail address of a contact person for the offeror relative to the proposal. 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. See Offeror's responsibilities in Section 1.20. All signatures required by this RFP and attachments must be from an individual authorized to bind the Offeror to the proposal.

3.4.2 Additional Required Technical Submissions

Immediately following the Transmittal and before the Table of Contents of the Technical Proposal, include signed copies of the following, with the submissions of the complete Technical Proposal:

- A) Completed Bid/Proposal Affidavit (Attachment B),
- B) Completed Living Wage Affidavit (Attachment I).

3.4.3 Format of Technical Proposal

Inside a sealed package, as described in Section 3.3, above, an unbound original, to be so labeled, three (3) copies and the electronic version shall be provided. Section 2 of this RFP outlines Contractor requirements and Section 3 provides instructions for responding to the RFP. The paragraphs in these RFP sections are numbered for ease of reference. In addition to the instructions below, the Offeror's Technical Proposals should be organized and numbered in the same order as this RFP. This proposal organization will allow the evaluators to "map" Offeror responses directly to RFP requirements by paragraph number.

In compiling the Technical Proposal and providing a response that meets the requirements of this Section 3.4, Offerors are advised not to duplicate information.

The Technical Proposal shall include the following sections in this order:

3.4.4 Title and Table of Contents

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. The following items should follow the Title Page in the order listed:

- a. Information which is claimed to be confidential in the technical proposal
- b. The forms required under RFP Section 3.4.2, “Additional Required Technical Submissions”, and
- c. Table of Contents

Note: An explanation for each claim of confidentiality shall be included in the first item listed above.

3.4.5 Executive Summary

The Offeror shall condense and highlight the contents of the technical proposal in a separate section titled “Executive Summary”. Include in the Executive Summary the Offeror’s Tax Identification Number and eMarylandMarketplace ID Number.

The executive summary shall also identify any and all exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment A**), or any RFP attachments. Exceptions to terms and conditions may result in having the proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award. If no exceptions to terms and conditions are made, the Offeror shall make an affirmative statement to that effect in the Executive Summary.

3.4.6 Offeror Experience and Capabilities

Each Offeror shall include information on past experience with similar management consulting assignments, particularly MBE contract compliance/monitoring projects. This section of the Offeror’s proposal shall include the following:

3.4.6.1 An overview of the Offeror’s experience and capabilities providing services. This description shall include, at a minimum:

- 3.4.6.1.1 A brief description of the data capture system that is being proposed by the Contractor to collect, organize and report each licensee’s MBE compliance history; describe how this or similar systems have been used successfully by the Contractor on other assignments;
- 3.4.6.1.2 The number, length and description of separate engagements the Offeror has previously undertaken within the last 7 years that match this RFP’s scope of work;
- 3.4.6.1.3 The number of clients and geographic locations that the Offeror currently serves in this capacity; and,
- 3.4.6.1.4 A brief history of the Offeror’s organization, its growth, and its ownership structure.

3.4.6.2 References who are capable of documenting the Offeror's relevant past performance. Each client reference shall be from a client for whom the Offeror provided service within the past 7 years and shall include name, title, phone number, e-mail address and street address for the individual(s) with direct personal knowledge regarding the offeror’s performance.

NOTE: GOMA reserves the right to request additional references or contact references not provided by the offeror.

3.4.6.3 In addition, as part of its proposal, each Offeror is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which have been completed within the last 5 years. The subject matter of the engagement is not a limiting factor for this disclosure. For each identified contract, the Offeror is to provide:

- The State contracting entity;
- A brief description of the services/goods provided;
- The dollar value of the contract;
- The term of the contract;
- The State employee contact person (name, title, telephone number and if possible e-mail address); and
- Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

3.4.7 Offeror Technical Response to RFP Requirements

In responding to the requirements outlined in Section 2.2 and 2.3 of this RFP, the Offeror shall describe in detail how each of the stated work elements and deliverables will be accomplished. The clarity and brevity of the written responses will be considered by the evaluators during the proposal review process. The physical location that the offeror intends to use to complete the deliverables outlined in Section 2 must be disclosed as part of the Offeror's technical proposal.

Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing shall only be included in the Financial Proposal (Volume II).

3.4.8 Financial Capability and Statements

The Offeror shall include Financial Statements, specifically, an abbreviated Profit and Loss (P&L) and an abbreviated Balance sheet for the last two years (independent audit preferred).

3.4.9 Certificate of Insurance

The Offeror shall provide a copy of the Offeror's current certificate(s) of insurance with the prescribed limits set forth in Section 2.5.

3.4.10 Subcontractors

Offeror shall identify any proposed subcontractors and the role these subcontractors will have in the performance of the Contract.

3.4.11 Economic Benefit Factors

The Offeror shall describe the benefits that will accrue to the State economy as a direct or indirect result of the Offeror's performance of the Contract resulting from this RFP. The Offeror will take into consideration the following elements. (Do not include any detail of the Financial Proposals with this technical information):

- A. The estimated percentage of Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. Offerors should be as specific as possible and provide a percentage breakdown of expenditures in this category.

- B. The estimated number and types of jobs for Maryland residents resulting from this Contract. Indicate job classifications, number of employees in each classification, and the aggregate Maryland payroll percentages to which the Contractor has committed at both prime and, if applicable, subcontract levels.
- C. Tax revenues to be generated for Maryland and its political subdivisions as a result of this Contract. Indicate tax category (sales tax, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract.
- D. The estimated percentage of subcontract dollars committed to Maryland small businesses and MBEs.

Note: No pricing information is to be included in the Technical Proposal (Volume 1). Pricing will only be included in the Financial Proposal (Volume II).

3.5 Volume II - Financial Proposal

Under separate sealed cover from the Technical Proposal and clearly identified in the format requirements identified in Section 3.3, the Contractor shall submit an original copy, three (3) copies, and an electronic version in MS Word of the financial proposal. The financial proposal shall contain all price information in the format specified in **Attachment E, Financial Response Form**.

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SECTION 4– EVALUATION CRITERIA AND SELECTION PROCEDURE

4.1 Evaluation & Selection

Evaluation of the proposals will be performed by a committee organized for that purpose. The committee can request assistance from any appropriate source. Evaluations will be based on the criteria set forth below.

4.2 Technical Criteria

The criteria to be applied to each Technical Proposal are listed in descending order of importance:

- The extent to which the Offeror’s technical response outlines and documents their understanding of the RFP requirements and provides a clear, detailed explanation of how the services will be provided (Ref Section 3.4.7).
- The simplicity and efficiency of the proposed data capture system (Ref Section 3.4.6.1.1)
- The extent of the Offeror’s past experience providing services matching those outlined in this RFP (Ref Section 3.4.6.1.2 and 3.4.6.1.3)
- References (Ref Section 3.4.6.2)
- Economic Benefits to the State of Maryland (Ref. Section 3.4.11).

4.3 Financial Criteria

All qualified Offerors will be ranked from the lowest to the highest price based on their total price proposed (as submitted on **Attachment E—Financial Response Form**).

4.4 Reciprocal Preference

Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. Therefore, as described in COMAR 21.05.01.04, a resident business preference will be given if: a responsible Offeror whose headquarters, principal base of operations, or principal site that will primarily provide the services required under this RFP is in another state submits the most advantageous offer; the other state gives a preference to its residents through law, policy, or practice; and, the preference does not conflict with a Federal law or grant affecting the procurement Contract. The preference given shall be identical to the preference that the other state, through law, policy or practice gives to its residents.

4.5 Selection Procedures

4.5.1 General Selection Process

The Contract will be awarded in accordance with the competitive sealed proposals process under COMAR 21.05.03. The competitive sealed proposals method is based on discussions and revision of proposals during these discussions.

Accordingly, the State may hold discussions with all Offerors judged reasonably susceptible of being selected for award, or potentially so. However, the State also reserves the right to make an award without holding discussions. In either case of holding discussions or not doing so, the State may determine an Offeror to be not responsible and/or an Offeror’s proposal to be not reasonably susceptible of being selected for award, at any time after the initial closing date for receipt of proposals and the review of those proposals. If the State finds an Offeror to be not responsible

and/or an Offeror's Technical Proposal to be not reasonably susceptible of being selected for award, an Offeror's financial proposal will be returned unopened.

4.5.2 Selection Process Sequence

4.5.2.1 The first step in the process will be an evaluation for technical merit. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform, and to facilitate arrival at a Contract that will be most advantageous to the State. For scheduling purposes, Offerors should be prepared to make an oral presentation and participate in discussions within two to four weeks of the delivery of proposals to the State. The Procurement Officer will contact Offerors when the schedule is set by the State.

4.5.2.2 Offerors must confirm in writing any substantive oral clarification of, or change in, their proposals made in the course of discussions. Any such written clarification or change then becomes part of the Offeror's proposal.

4.5.2.3 The financial proposal of each qualified Offeror will be evaluated separately from the technical evaluation. After a review of the financial proposals of qualified Offerors, the Procurement Officer may again conduct discussions to further evaluate the Offeror's entire proposal.

4.5.2.4 When in the best interest of the State, the Procurement Officer may permit Offerors who have submitted acceptable proposals to revise their initial proposals and submit, in writing, best and final offers (BAFOs). However, the State reserves the right to make an award without issuing a BAFO if/when it's determined to be in the State's best interest.

4.5.3 Award Determination

Upon completion of all discussions and negotiations, reference checks, and site visits, if any, the Procurement Officer will recommend award of the Contract to the responsible Offeror whose proposal is determined to be the most advantageous to the State considering technical evaluation factors and price factors as set forth in this RFP. **In making this determination, price factors will receive greater weight than technical factors.**

ATTACHMENTS

ATTACHMENT A is the State's Contract. It is provided with the RFP for informational purposes and is not required at proposal submission time. If you are the successful Offeror, the procurement officer will finalize the contract document for final signature and forward it for execution. The contract must be signed and returned by the successful Offeror to the Procurement Officer expeditiously upon notification of proposed Contract award.

ATTACHMENT B – Bid/Proposal Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT C – Contract Affidavit. It is not required at proposals submission time. It must be submitted by the selected Offeror to the Procurement Officer within 5 working days of notification of proposed award.

ATTACHMENT D – Pre-Proposal Conference Response Form. It is requested that this form be completed and submitted as described in RFP section 1.7 by those potential Offerors who plan on attending the conference.

ATTACHMENT E – Financial Response Form. This form must be completed and submitted as the Financial Proposal (Volumn II).

ATTACHMENT F – Living Wage Information. This document outlines the Living Wage requirements for state services contracts.

ATTACHMENT G – Living Wage Affidavit. This form must be completed and submitted with the Offeror's technical proposal.

ATTACHMENT H – Video Operations Licenses RFP. This RFP was issued on December 19, 2008 by the Lottery Agency for purposes of awarding the VLT Licenses.

ATTACHMENT A – CONTRACT

Management Consulting Services – Video Lottery Terminals

THIS CONTRACT (the “Contract”) is made this ____ day of _____, 2010 by and between _____ and the STATE OF MARYLAND, acting through the EXECUTIVE DEPARTMENT, GOVERNOR’S OFFICE OF MINORITY AFFAIRS.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Contract Manager” means the individual identified in § 1.6 of the RFP. The Department may change the Contract Manager at any time.
- 1.2 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.
- 1.3 “Department” means the Executive Department, Governor’s Office of Minority Affairs..
- 1.4 “Financial Proposal” means the Contractor’s Financial Proposal as submitted on RFP Attachment E, Financial Response Form, dated _____.
- 1.5 “Procurement Officer” means the individual identified in § 1.5 of the RFP. The Department may change the Procurement Officer at any time.
- 1.6 ”RFP” means the Request for Proposals for Management Consulting Services for Video Lottery Terminals, Project DEXR0400056, all attachments, and any amendments thereto issued in writing by the State.
- 1.7 “State” means the State of Maryland.
- 1.8 “Technical Proposal” means the Contractor’s Technical Proposal, dated _____.

2. Scope of Work

2.1 The Contractor shall provide management consulting services as described in the RFP and the Contractor’s Technical Proposal. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

- Exhibit A – The RFP
- Exhibit B – The Technical Proposal
- Exhibit C – The Financial Proposal
- Exhibit D - State Contract Affidavit, executed by the Contractor and dated _____.

2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance.

The Contract resulting from this RFP shall be for a period beginning on or about April 1, 2010 and ending June 30, 2011. The State may, at its unilateral discretion, exercise one 1-year option period beginning July 1, 2011 and ending June 30, 2012.

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the rates specified on Attachment E, Contractor's Financial Proposal. The Contractor shall not receive any other payment for implementation, testing, administrative, and other services required by this Contract. Except with the express written consent of the Procurement Officer, payment to the Contractor pursuant to this Contract shall not exceed \$_____.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____. Contractor's eMaryland Marketplace vendor ID number is _____. Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

4.3 Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Invoices shall be submitted to the Contract Manager. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

4.4 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. Nothing in this Article 5

shall abrogate or transfer any intellectual property rights of the Contractor in its proprietary information related to its methodologies, methods of analysis, ideas, know-how, methods, techniques and skills possessed prior to this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Manager, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

6. Confidentiality

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

7. Loss of Data

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Manager. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

8. Indemnification

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

8.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor’s obligations under this Contract.

8.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

8.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

9. Non-Hiring of Employees

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

10. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the 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, but 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.

11. Maryland Law

This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

12. Nondiscrimination in Employment

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

13. Contingent Fee Prohibition

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

14. Non-availability of Funding

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

15. Termination for Cause

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 shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

16. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, 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 21.07.01.12 (A) (2).

17. Delays and Extensions of Time

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

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

18. Suspension of Work

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

19. Pre-Existing Regulations

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

20. Financial Disclosure

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

21. Political Contribution Disclosure

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

22. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract closeout and final payment by the State under this Contract 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 the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, Contractor shall provide assistance to the State, without additional compensation, to identify, investigate and reconcile any audit discrepancies and/or variances. This provision shall survive termination of the Contract.

23. Compliance with Laws

The Contractor hereby represents and warrants that:

A. It is qualified to do business in the State 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, 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 governmental approvals, if any, necessary to the performance of its obligations under this Contract.

24. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

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 of its bid or offer, was inaccurate, incomplete, or not current.

25. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 9 and 11 through 24 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

26. Parent Company Guarantee (If Applicable)

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Contractor]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

27. Commercial Non-Discrimination

27.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from

participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

28. Prompt Pay Requirements

- 28.1. If a contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the contractor until payment to the subcontractor is verified;
 - (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 28.2. An "undisputed amount" means an amount owed by a contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- (a) Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
 - (b) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 28.3. An act, failure to act, or decision of a procurement officer or a representative of the Department, concerning a withheld payment between a Contractor and subcontractor under this provision, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
 - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
 - (c) Result in liability against or prejudice the rights of the Department.
- 28.4. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 28.5. To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.

- (b) This verification may include, as appropriate:
 - i. Inspecting any relevant records of the Contractor;
 - ii. Inspecting the jobsite; and
 - iii. Interviewing subcontractors and workers.
 - iv. Verification shall include a review of:
 - a. The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- (c) If the Department determines that a Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- (d) If the Department determines that a Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
 - i. Terminate the contract;
 - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
 - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
- (e) Upon completion of the contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

29. Living Wage

29.1 A State contract for services valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland and COMAR 21.11.10.

29.2 Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier Area. If Contractor is an out of state Contractor, this contract is deemed to be a Tier 1 Contract.

29.3 The Contractor shall comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.11.10, including the submission of payroll reports to the Commissioner for Labor and Industry and the posting in a prominent and easily accessible place at the work site(s) of covered employees, a notice of the Living Wage Rates, employee rights under the law, and the name address and telephone number of the commissioner.

30. Administrative

30.1 **Procurement Officer.** The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

30.2 **Notices.** All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Janice Montague, Procurement Officer

Executive Department
Governor's Office of Minority Affairs
6 Saint Paul Street, Room 1502
Baltimore, Maryland 21202

With a copy to:

Jeremy Rosendale
Executive Department
State Circle
Annapolis, Maryland 21401
Phone Number: 410-974-3901
Fax Number: 410-974-5152
E-mail: jrosendale@gov.state.md.us

If to the Contractor: _____

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

CONTRACTOR

STATE OF MARYLAND
BY: EXECUTIVE DEPARTMENT

By:

By:

Date

Date

Witness

Witness

Approved for form and legal
sufficiency this ____ day _____, 2010.

Assistant Attorney General

APPROVED BY BPW: _____
(Date) (BPW Item #)

ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

_____.

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

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

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

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

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

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

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

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

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

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

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

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

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

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

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

K. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K (2) (b), above;
 - (h) Notify its employees in the statement required by §K (2) (b), above, that as a condition of continued employment on the contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
 - (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
 - (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
 - (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
 - (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

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

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

Date: _____ By: _____ (Authorized Representative and Affiant)

ATTACHMENT C - CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name:_____ Address:_____.

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

C. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date:_____

By:_____

(Authorized Representative and Affiant)

ATTACHMENT D – PRE-PROPOSAL CONFERENCE RESPONSE FORM

Project No. DEXR0400056

Management Consulting Services – Video Lottery Terminals

A Pre-proposal Conference (Conference) will be held on Wednesday, January 27, 2010 beginning at 10:00 AM, Local Time at 7201 Corporate Center Drive, Hanover, MD 21076.

Return via e-mail or fax this form to the Procurement Officer:

Janice C. Montague, CPPO
Director MBE Compliance
Governor’s Office of Minority Affairs
6 Saint Paul Street, Ste. 1502
Baltimore, MD 21202
jmontague@mdminoritybusiness.com
410-767-6580 (phone)
410-333-7568 (fax)

The following representatives will be in attendance:

Signature

Title

ATTACHMENT E – FINANCIAL RESPONSE FORM

Locations 1, 2, and 3

Each of the requirements outlined in Section 2 of the RFP requires a culminated, fully loaded, firm, fixed price bid which must include ALL costs for each location.

	<u>PRICE (Base Term)</u>	<u>PRICE (Option Period)</u>
<u>Location 1</u>	\$ _____ (PRICE A)	\$ _____ (PRICE A1)
<u>Location 2</u>	\$ _____ (PRICE B)	\$ _____ (PRICE B1)
<u>Location 3</u>	\$ _____ (PRICE C)	\$ _____ (PRICE C1)

TOTAL PRICE D (SUM OF PRICE A, A1, B, B1, C AND C1):

\$ _____

NOTE: “TOTAL PRICE D” above will be used to rank the offerors’ financial proposals in order of lowest to highest cost to the state. In making the award determination, price will have greater weight than technical factors. Fully loaded costs include all fringe benefits, general and administrative costs, profit, office supplies, travel, printing and any other costs associated with providing this service.

ATTACHMENT F-LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

Living Wage Requirements for Service Contracts

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

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

ATTACHMENT G- LIVING WAGE AFFIDAVIT OF AGREEMENT

Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

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

Bidder/Offeror is a nonprofit organization

Bidder/Offeror is a public service company

Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000

Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

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

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

The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract

ATTACHMENT G- LIVING WAGE AFFIDAVIT OF AGREEMENT (CONTINUED)

Maryland Living Wage Requirements-Service Contracts

The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or

The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

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

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

Submit This Affidavit with Bid/Proposal

ATTACHMENT H-VIDEO OPERATIONS LICENSES RFP

See separate PDF File Labeled “RFP Attachment H”