



**MARYLAND STADIUM AUTHORITY**

**REQUEST FOR PROPOSALS (RFP)**

**SOLICITATION NO. 18-040**

**Issue Date: December 21, 2017**

**Energy Procurement and Consulting Services**

**CAMDEN YARDS SPORTS COMPLEX**

**NOTICE TO OFFERORS**

A Prospective Offeror that has received this document from the Maryland Stadium Authority's website, <https://emaryland.buyspeed.com/bsa/>, or a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this RFP should immediately contact the Procurement Officer and provide the Prospective Offeror's name and mailing address so that addenda to the RFP or other communications can be sent to the Prospective Offeror.

**Minority Business Enterprises Are Encouraged to Respond to this Solicitation**

MARYLAND STADIUM AUTHORITY
NOTICE TO VENDORS

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, take a few minutes and provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Sheet below for contact information).

Title: Energy Procurement and Consulting Services
Solicitation No: 18-040

1. If you have chosen not to respond to this solicitation, 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 the State of Maryland is simply too complicated. (Explain in REMARKS section.)
( ) We cannot be competitive. (Explain in REMARKS section.)
( ) Time allotted for completion of the Proposal is insufficient.
( ) Start-up time is insufficient.
( ) Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
( ) 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 response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

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

Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**MARYLAND STADIUM AUTHORITY  
RFP KEY INFORMATION SUMMARY SHEET**

**Request for Proposals:** Energy Procurement and Consulting Services

**Solicitation Number:** MSA 18-040

**RFP Issue Date:** December 21, 2017

**RFP Issuing Office:** MARYLAND STADIUM AUTHORITY

**Procurement Officer:** John F. Samoryk, Vice President, Procurement  
Maryland Stadium Authority  
333 West Camden Street, Suite 500  
Baltimore, Maryland 21201  
Phone: (410) 333-1560  
Fax: (410) 333-1888  
e-mail: jsamoryk@mdstad.com

**Contract Monitor:** Philip Hutson, Associate Vice President  
Maryland Stadium Authority  
333 West Camden Street, Suite 500  
Baltimore, Maryland 21201  
Phone: 410-223-4107

**Pre-Proposal Tele-Conference:** January 9, 2018, beginning at 11:00 a.m.  
Please visit & join the meeting space from your computer, tablet, or smartphone.  
<https://www.gotomeet.me/mdstad/pre-proposal-conference-for-energy-procurement-and-consulting-services>  
  
[Use your microphone and speakers \(VOIP\) for audio. You'll sound best with a headset.](#)  
  
[Join the conference call.](#)  
[1-866-684-5887](tel:1-866-684-5887) | [7262188602](tel:7262188602)  
  
333 West Camden Street, Suite 500  
Baltimore, Maryland 21201

**Proposals are to be sent to:** MARYLAND STADIUM AUTHORITY  
333 West Camden Street, Suite 500  
Baltimore, Maryland 21201  
**Attention: John Samoryk**  
**Vice President, Procurement**

**Proposal Due (Closing) Date and Time:** No later than 1:00 p.m. (Local Time) on January 22, 2018

**Contract Type:** Competitive Sealed Proposal

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## **SECTION 1 – MINIMUM QUALIFICATIONS**

- 1.1 The following qualifications shall be met, at a minimum, for consideration of award:
  - 1.1.1 The Offeror shall be in good standing with the State of Maryland and registered to do business with the State of Maryland.
  - 1.1.2 The consultant shall be independent from energy suppliers. The consultant shall not have any relationships with an energy supplier that could be deemed a conflict of interest. The consultant shall submit an official letter indicating their independence.
  - 1.1.3 The consultant must have conducted an electricity auction for at least 3 different government entities within the past 5 years; at least one of which must have been conducted using the software platform that is proposed for this contract.

## **SECTION 2 – CONSULTANT REQUIREMENTS: SCOPE OF WORK**

### **2.1 Summary Statement**

- 2.1.1 The purpose of this Request for Proposals (RFP) is to solicit sealed proposals from highly qualified consulting firms to provide energy procurement and consulting services for Maryland Stadium Authority and the Camden Yards Sports Complex. CYSC includes Oriole Park at Camden Yards (“OPCY”), the Warehouse at Camden Yards (“WH”), Camden Station (“CS”) and M&T Bank Stadium (“MT”).
- 2.1.2 MSA intends to make a single award as a result of this RFP.
- 2.1.3 An Offeror, either directly or through its subconsultant (s), must be able to provide all services and meet all of the requirements requested in this solicitation. The successful Offeror (the Consultant) shall remain responsible for Contract performance regardless of subconsultant participation in the work.
- 2.1.4 The resulting contract shall have an initial term of three (3) years, with the MSA retaining the option to renew the contract for two (2) additional one (1) year terms.

### **2.2 Background and Purpose**

- 2.2.1 It is anticipated that the firm will advise MSA and assist with the procurement of a new electric energy supplier that provides the best value to MSA and the Camden Yards Sports Complex (CYSC) located in Baltimore, Maryland
- 2.2.2 MSA has 5 electricity accounts averaging a total 30,000,000 kWh annually. The off/on peak load is reflective of the major sporting events held at Oriole Park at Camden Yards and M&T Bank Stadium. MSA’s current energy supplier agreement extends through June 30, 2018 or the 30<sup>th</sup> day upon written notice by MSA.

### **2.3 Scope of Work - Requirements**

- 2.3.1 **Pre Energy Procurement.** The Consultant shall:
- provide its expertise and market information to MSA for the duration of the energy supplier agreement.
  - review MSA’s current supplier agreements and advise MSA of the findings.
  - review the market and MSA’s usage profile to determine the best procurement method that will result in the best value energy supplier for MSA.
  - prepare market forecasts and pricing models to assist MSA in determining the best procurement method.
  - provide MSA with an analysis of green/renewable energy options.
  - create and manage a procurement strategy that will result in the best value to MSA.

- draft energy supplier RFP requirements for MSA. MSA will be the main point of contact during the RFP process in consulting with the consultant.
- prequalify all energy suppliers to verify they meet all Federal, State, and local laws, are financially stable, and can provide appropriate services to MSA. The vendor prequalification requirements shall be in consultation with MSA.
- negotiate all supplier legal agreements in consultation with MSA.

### **2.3.2 Energy Procurement.**

- Should an auction be the selected procurement method, the consultant shall host the auction using their software platform at MSA's offices. The software platform shall be real time, online, and create an audit trail of all auction actions.
- The audit trail will be the property of MSA with both hard copy and electronic records being given to MSA.
- The Consultant will analyze the bids and recommend to MSA the best value bid.
- The Consultant will perform up to 2 additional auctions should the previous auction, for whatever reason not be in the best interest of MSA.
- Should an auction not be the method selected, the Consultant shall manage the selected procurement method in consultation with MSA.

### **2.3.3 Post Energy Procurement.** The Consultant:

- will assist MSA in finalizing the agreements with the energy suppliers.
- will address all issues should they arise in transitioning energy suppliers.
- shall audit all electric accounts for the first 3 months to verify the billing is in accordance with the energy supplier agreement.

### **2.3.4 Fee**

The Consultant will assume all upfront risk without upfront costs to MSA. Under no circumstances will MSA be required to compensate the Consultant for services rendered regardless of whether a supply contract is executed or not by MSA.

The Consultant's fee will be based upon a usage. The Consultant will be compensated by the successful supplier at a cost per kWh over the life of the contract. The Consultant shall acknowledge the fee provisions and provide a cost per kWh as part of the financial proposal.

MSA will include payment and reporting terms between energy suppliers and the Consultant in the supply solicitation to be issued at a later date.



## **2.4 Standard of Performance**

### 2.4.1 Standard of Performance

- 2.4.1.1 The selected Consultant shall perform the professional services with all respects in accordance with those usual and customary standards of professional aptitude, skill diligence which, at the time of performance of the services, commonly are followed by Consultants of the highest quality and stature in the performance of the same or similar services.
- 2.4.1.2 The Consultant shall be responsible for the provision of all services whether provided by the Consultant or his Consultants, agents, representatives or employee or others on behalf of the Consultant.

## **SECTION 3 – CONSULTANT REQUIREMENTS: GENERAL REQUIREMENTS**

### **3.1 Insurance Requirements**

3.1.1 The Consultant and its subconsultant shall maintain Commercial General Liability Insurance or its equivalent, for bodily injury and property damage, including loss of use. It is preferred that coverage be provided on an “occurrence” basis. If “claims made” forms are submitted, the requirements noted after section “G” must be met. Such Commercial General Liability policy shall include the following extensions:

3.1.1.1 It is preferred that the general aggregate limit apply separately to this contract;

3.1.2 Premises/Operations;

3.1.3 Actions of Consultant;

3.1.4 Products/completed Operations to be maintained for two (2) years after completion of the contract;

3.1.5 Contractual liability assumed under this contract;

3.1.6 Personal injury liability including coverage for offenses related to employment, and for offenses assumed under this contract (delete any standard employment and contractual exclusions if contained in the personal injury coverage section).

3.1.7 Insurance which will pay for liabilities arising out of accidents involving the ownership, operation, maintenance or use of any owned, hired, or non-owned motor vehicles, uninsured motorist’s insurance and automobile contractual liability.

**NOTE: INSURANCE MUST BE ON A PRIMARY BASIS. CONTRACTUAL REQUIREMENTS MUST BE CLEARLY INDICATED ON CERTIFICATE OR BY ENDORSEMENTS.**

3.1.8 The Consultant and its subconsultant(s) shall maintain Worker’s Compensation Insurance as required by Maryland law.

3.1.9 The coverages listed above shall be written for not less than the following limits of liability. Limits can be furnished by a combination of primary and excess (umbrella) policies.

Commercial General Liability Insurance including all extensions –  
\$2,000,000 each occurrence;  
\$2,000,000 personal injury;  
\$4,000,000 products liability;  
\$4,000,000 general aggregate;

Professional Liability –  
\$5,000,000 per claim and aggregate

Business Automobile Liability -  
\$1,000,000 each accident

Excess/Umbrella Liability Policy -  
\$5,000,000

Worker's Compensation Insurance – statutory requirements. Employers liability insurance - \$1,000,000 each accidental injury; and \$1,000,000 each employee, \$1,000,000 policy limit for disease.

- 3.1.10 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until forty-five (45) days prior written notice has been given to MSA.
- 3.1.11 No acceptance and/or approval of any insurance by MSA shall be construed as relieving or excusing the Energy Procurement and Consulting Services Consultant, or the surety or bond, if any, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.
- 3.1.12 **NAMED ADDITIONAL INSUREDS.** MSA, Baltimore Orioles Limited Partnership, Baltimore Ravens Limited Partnership and the State of Maryland (including their elected or appointed officials, agents and employees) are to be named as additional insured under all coverages except Worker's Compensation, and the certificates of insurance (or certified policies, if requested) must so indicate through inclusion of appropriate endorsement. **Coverage afforded under this paragraph shall be primary to any other insurance or self-insurance, whether or not such other insurance or self-insurance is stated as primary, excess or contingent, as respects the above additional insured, their elected and appointed officials, agents and employees.**
- 3.1.13 Insurance coverages required herein shall be in force throughout the Contract term. Should the Consultant fail to provide acceptable evidence of current insurance within ten (10) days of receipt of written notice at any time during the Contract term, MSA shall have the absolute right to terminate the Contract without any further obligation to the Consultant, and the Consultant shall be liable to MSA for the entire additional cost of procuring substitute performance and the cost of performing the incomplete portion of the Contract at the time of termination.
- 3.1.14 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering service exclusion that would preclude MSA from supervising or inspecting the operations of the Consultant as the end result.
- 3.1.15 The Consultant shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of agents or subconsultant and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Consultant shall be as fully responsible to MSA for the acts and omissions of the subconsultant and of persons employed by them as it is for acts and omissions of persons directly employed by the Consultant.
- 3.1.16 **TORT CLAIMS ACT.** It is agreed that the Consultant and its insurers will not raise or use, in the adjustment of claims or in the defense of suits against MSA, any immunity of the insured from tort liability (including Maryland Tort Claims Act), including any limitation of liability, unless requested by MSA.
- 3.1.17 The Consultant shall furnish subconsultants' certificates of insurance to MSA upon request.

## 3.2 Intentionally Omitted

## 3.3 Invoicing

- 3.3.1 The Consultant may submit invoices for properly performed services on a monthly basis during the contract period. The invoices shall contain the complete Consultant's FEIN or social security number, MSA Contract Number, Purchase Order Number, MSA location Name (street address), amount of work broken down into the unit cost(s) as indicated on the financial proposal form. Failure to do so may result in delay of payment.
- 3.3.2 Undisputed invoices will be paid within thirty (30) days of receipt by MSA's Accounts Payable Office. Please keep in mind that Maryland Stadium Authority is exempt from Maryland Sales and Use Taxes, therefore taxes shall not be added to the invoices.
- 3.3.3 All Invoices must be submitted to [invoices@mstad.com](mailto:invoices@mstad.com). All invoices shall contain the following address:
- Maryland Stadium Authority  
333 West Camden Street, Suite 500  
Baltimore, Maryland 21201
- 3.3.4 Vendor payments can take up to 30 business days. Vendor may check the status of payment by registering on General Accounting Division of Comptrollers website at:  
[http://compnet.comp.state.md.us/General\\_Accounting\\_Division](http://compnet.comp.state.md.us/General_Accounting_Division)
- If you do not see your payment, you may fill out the request form on MSA's website at [www.mdstad.com](http://www.mdstad.com) under "Account Payable" and it will be researched.
- 3.3.5 In addition to any other available remedies, if, in the opinion of the Procurement Officer or his designee, the Consultant fails to perform in a satisfactory and timely manner, the Procurement Officer or his designee may refuse or limit approval of any invoice for payment, and may cause payments to the Consultant to be reduced or withheld until the Consultant meets performance standards established by the Procurement Officer or his designee.
- 3.3.6 An amount will not be deemed due and payable if:
- 3.3.6.1 The amount invoiced is inconsistent with the Contract.
- 3.3.6.2 The proper invoice has not been received as indicated above.
- 3.3.6.3 The invoice or performance under the Contract is in dispute, or the Consultant has failed to otherwise comply with the provisions of the Contract related to such amount.
- 3.3.6.4 The items or services invoiced have not been accepted.
- 3.3.7 Electronic funds transfer will be used by the State to pay Consultant for this Contract and any other State payments due Consultant unless the State Comptroller's Office grants Consultant an exemption.

### 3.4 Intentionally Omitted.

### 3.5 Damages

#### 3.5.1 Intentionally Omitted

#### 3.5.2 Direct Damages.

3.5.2.1 MSA may deduct for direct damages sustained as a result of Consultant's failure to perform as required under this Contract.

#### 3.5.3 Payment Adjustments.

3.5.3.1 MSA shall notify the Consultant of each payment adjustment due to the imposition of liquidated or direct damages.

3.5.3.2 MSA shall provide the Consultant with such evidence as MSA determines is adequate to justify each adjustment.

3.5.3.3 If the Consultant does not agree with the adjustment or the action taken to obtain the adjustment, the Consultant's sole remedy to resolve the issue is as provided in Article 12 (Disputes) of this Contract.

### 3.6 Substitution of Personnel

#### A. Continuous Performance of Key Personnel

Unless substitution is approved per paragraphs B-D of this section, key personnel shall be the same personnel proposed in the Consultant's Technical Proposal, which will be incorporated into the Contract by reference. Such identified key personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key personnel may not be removed by the Consultant from working under this Contract, as described in the RFP or the Consultant's Technical Proposal, without the prior written approval of the Contract Monitor.

If the Contract is task order based, the provisions of this section apply to key personnel identified in each task order proposal and agreement.

#### B. Definitions

For the purposes of this section, the following definitions apply:

**Extraordinary Personal Circumstance** – means any circumstance in an individual's personal life that reasonably requires immediate and continuous attention for more than fifteen (15) days and that precludes the individual from performing his/her job duties under this Contract. Examples of such circumstances may include, but are not limited to: a sudden leave of absence to care for a family member who is injured, sick, or incapacitated; the death of a family member, including the need to attend to the estate or other affairs of the deceased or his/her dependents; substantial damage to, or destruction of, the individual's home that causes a major disruption in the individual's normal living circumstances; criminal or civil proceedings against the individual or a family member; jury duty; and military service call-up.

**Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Consultant’s Technical Proposal.

**Sudden** – means when the Consultant has less than thirty (30) days’ prior notice of a circumstance beyond its control that will require the replacement of any key personnel working under the Contract.

C. Key Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of staff substitution described in paragraph D of this section.

1. The Consultant shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute key personnel have qualifications at least equal to those of the key personnel for whom the replacement is requested.
2. The Consultant shall provide the Contract Monitor with a substitution request that shall include:
  - A detailed explanation of the reason(s) for the substitution request;
  - The resume of the proposed substitute personnel, signed by the substituting individual and his/her formal supervisor;
  - The official resume of the current personnel for comparison purposes; and
  - Any evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution. In addition, the Contract Monitor and/or other appropriate State personnel involved with the Contract may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Consultant in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a requested key personnel replacement.

D. Replacement Circumstances

1. Voluntary Key Personnel Replacement

To voluntarily replace any key personnel, the Consultant shall submit a substitution request as described in paragraph C of this section to the Contract Monitor at least fifteen (15) days prior to the intended date of change. Except in a circumstance described in paragraph D.2 of this clause, a substitution may not occur unless and until the Contract Monitor approves the substitution in writing.

2. Key Personnel Replacement Due to Vacancy

The Consultant shall replace key personnel whenever a vacancy occurs due to the sudden termination, resignation, leave of absence due to an Extraordinary Personal Circumstance, Incapacitating injury, illness or physical condition, or death of such personnel. (A termination or resignation with thirty (30) days or more advance notice shall be treated as a Voluntary Key Personnel Replacement as per Section D.1 of this section.)

Under any of the circumstances set forth in this paragraph D.2, the Consultant shall identify a suitable replacement and provide the same information or items required under paragraph C of this section within fifteen (15) days of the actual vacancy occurrence or from when the Consultant first knew or should have known that the vacancy would be occurring, whichever is earlier.

### 3. Key Personnel Replacement Due to an Indeterminate Absence

If any key personnel has been absent from his/her job for a period of ten (10) days due to injury, illness, or other physical condition, leave of absence under a family medical leave, or an Extraordinary Personal Circumstance and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Consultant shall identify a suitable replacement and provide the same information or items to the Contract Monitor as required under paragraph C of this section.

However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor, at the option and sole discretion of the Contract Monitor, the original personnel may continue to work under the Contract, or the replacement personnel will be authorized to replace the original personnel, notwithstanding the original personnel's ability to return.

### 4. Directed Personnel Replacement

- a. The Contract Monitor may direct the Consultant to replace any personnel who are perceived as being unqualified, non-productive, unable to fully perform the job duties due to full or partial Incapacity or Extraordinary Personal Circumstance, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, agency, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph 4.b. If after such remediation the Contract Monitor determines that the personnel performance has not improved to the level necessary to continue under the Contract, if at all possible at least fifteen (15) days notification of a directed replacement will be provided. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the personnel with less than fifteen (15) days' notice, the Contract Monitor can direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.

In circumstances of directed removal, the Consultant shall, in accordance with paragraph C of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

- b. If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor shall give written notice of any personnel performance issues to the Consultant, describing the problem and delineating the remediation requirement(s). The Consultant shall provide a written Remediation Plan within ten (10) days of the date of the notice and shall implement the Remediation Plan immediately upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Consultant shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.

Should performance issues persist despite the approved Remediation Plan, the Contract Monitor will give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the key personnel at issue.

Replacement or substitution of personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.

## SECTION 4 – PROCUREMENT INSTRUCTIONS

### **4.1 Pre-Proposal Conference**

- 4.1.1 A pre-proposal teleconference will be held at the time and date indicated on the Key Information Summary Sheet. Participating in the pre-proposal teleconference is not mandatory, but all interested companies are encouraged to participate in order to facilitate better preparation of their proposals.
- 4.1.2 The pre-proposal teleconference will be summarized in writing. As promptly as is feasible subsequent to the pre-proposal conference, the attendance record and pre-proposal summary will be distributed via the same mechanism described for amendments and questions.
- 4.1.3 In order to assure adequate accommodations for the pre-proposal teleconference, please e-mail the Pre-Proposal Teleconference Response Form (Attachment A) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, please call the Procurement Officer no later than five (5) business days prior to the pre-proposal teleconference. The MSA will make reasonable efforts to provide such special accommodation.

Please visit & join the meeting space from your computer, tablet, or smartphone.

<https://www.gotomeet.me/mdstad/pre-proposal-conference-for-energy-procurement-and-consulting-services>

[Use your microphone and speakers \(VOIP\) for audio. You'll sound best with a headset.](#)

[Join the conference call.](#)  
[1-866-684-5887](tel:1-866-684-5887) | [7262188602](tel:7262188602)

### **4.2 eMaryland Marketplace**

Each Offeror is requested to indicate its eMaryland Marketplace (eMM) vendor number in the Transmittal Letter (cover letter) submitted at the time of its Proposal submission to this RFP.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the MSA website ([www.mdstad.com](http://www.mdstad.com)) and possibly 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 eMM. **For this solicitation, the summary of the Pre-Proposal Conference, addenda, and other solicitation-related information will not be posted on eMM. Information will be emailed to known vendors.**

In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

### **4.3 Questions**

- 4.3.1 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 conference.) Questions to the Procurement Officer shall be submitted via e-mail to the e-mail address provided. Please identify in the subject line the Solicitation Number and Title. Questions, both oral and written, will also be accepted from prospective Offerors participating in the Conference. If possible and appropriate, these questions will be answered at the Conference.



4.3.2 Questions will also be accepted subsequent to the Pre-Proposal Conference and should be submitted to the Procurement Officer (see above email address) in a timely manner prior to the Proposal due date. **Questions are requested to be submitted by the date on the Key Information Summary page.** The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors that are known to have received a copy of the RFP in sufficient time for the answer to be taken into consideration in the Proposal.

#### **4.4 Procurement Method**

This Contract will be awarded in accordance with the Competitive Sealed Proposals method under MSA's Procurement Policies and Procedures.

#### **4.5 Proposals Due (Closing) Date and Time**

4.5.1 Proposals, in the number and form set forth in Section 5 "Proposal Format," must be received by the Procurement Officer no later than the date and time listed on the Key Information Summary Sheet in order to be considered.

4.5.2 Requests for extension of this date or time shall not be granted. Offerors mailing Proposals should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer.

4.5.3 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the Proposals due time and date.

4.5.4 **Proposals delivered by e-mail or facsimile shall not be considered.**

4.5.5 Companies not responding to this solicitation are requested to submit the "Notice to Offerors/Bidders/Consultants" form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

#### **4.6 Multiple or Alternate Proposals**

Multiple or alternate Proposals will not be accepted

#### **4.7 Economy of Preparation**

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

#### **4.8 Public Information Act Notice**

An Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., State Government Article, Title 10, Subtitle 6. (Also, see RFP Section 5.4.2.2 "Claim of Confidentiality"). This confidential and/or

proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal. 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.

#### **4.9 Award Basis**

The Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the MSA, considering price and evaluation factors set forth in this RFP, for providing the goods and services as specified in this RFP. See RFP Section 5 for further award information.

#### **4.10 Oral Presentation**

Offerors may be required to make oral presentations to MSA representatives. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal and are binding if the Contract is awarded. The Procurement Officer will notify Offerors of the time and place of oral presentations.

#### **4.11 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 180 days following the closing date for submission of proposals, best and final offers (if requested), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

#### **4.12 Revisions to the RFP**

If it becomes necessary to revise this RFP before the due date for Proposals, MSA shall endeavor to provide addenda to all prospective Offerors that were sent this RFP or which are otherwise known by the Procurement Officer to have obtained this RFP. In addition, addenda to the RFP will be emailed to the known offerors or potential subcontractors. It remains the responsibility of all prospective Offerors to check with the Procurement Officer for any addenda issued prior to the submission of Proposals. Addenda made after the due date for Proposals will be sent only to those Offerors that submitted a timely Proposal and that remain under award consideration as of the issuance date of the addenda.

Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal (see RFP Section 5.4.2.3). Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice. Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum.

#### **4.13 Cancellations**

MSA 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 the 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 MSA. MSA also reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

#### **4.14 Incurred Expenses**

MSA will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, in providing a demonstration, or in performing any other activities related to submitting a Proposal in response to this solicitation.

#### **4.15 Protest/Disputes**

Any protest related to this RFP shall be subject to the provisions of MSA's Procurement Policies and Procedures.

#### **4.16 Offeror Responsibilities**

The selected Offeror shall be responsible for all products and services required by this RFP. All subconsultants must be identified and a complete description of their role relative to the Proposal must be included in the Offeror's Proposal.

If an Offeror that seeks to perform or provide the services required by this RFP is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

#### **4.17 Intentionally Omitted**

#### **4.18 Mandatory Contractual Terms**

By submitting a Proposal in response to this RFP, an Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached herein as **Attachment H**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **A Proposal that takes exception to these terms may be rejected (see RFP Section 5.4.2.4).**

#### **4.19 Proposal Affidavit**

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

#### **4.20 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 as **Attachment I** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of proposed Contract award. This Contract Affidavit will also be required to be completed by the Consultant prior to any Contract renewals, including the exercise of any options or modifications that may extend the Contract term. For purposes of completing Section "B" of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a "foreign" business.

#### **4.21 Compliance with Laws/Arrearages**

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all Federal, State, and local laws applicable to its activities and obligations under the Contract.

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.

#### **4.22 Verification of Registration and Tax Payment**

4.22.1 Before a business entity can do business in the State it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. The SDAT website is <http://sdatcert3.resiusa.org/ucc-charter/>.

4.22.2 It is strongly recommended that any potential Offeror complete registration prior to the due date for receipt of Proposals. An Offeror's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

#### **4.23 False Statements**

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

4.23.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

4.23.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

4.23.3 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.

#### **4.24 Payments by Electronic Funds Transfer**

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$100,000. The selected Bidder/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, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at: [http://comptroller.marylandtaxes.com/Government\\_Services/State\\_Accounting\\_Information/Static\\_Files/APM/gadx-10.pdf](http://comptroller.marylandtaxes.com/Government_Services/State_Accounting_Information/Static_Files/APM/gadx-10.pdf)

#### **4.25 Prompt Payment Policy**

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs (GOMA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subconsultants on non-construction procurement contracts. The Consultant must comply with the prompt payment requirements outlined in this RFP. Additional information is available on GOMA's website at: [http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs\\_000.pdf](http://goma.maryland.gov/Legislation%20Docs/PROMPTPAYMENTFAQs_000.pdf)

#### **4.26 Electronic Procurements Authorized**

- A. Unless otherwise prohibited by law, the MSA may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bs/>), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., § 1.30 "Payments by Electronic Funds Transfer") and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
  1. The Procurement Officer may conduct the procurement using eMM, e-mail, or facsimile to issue:
    - (a) the solicitation (e.g., the IFB/RFP);
    - (b) any amendments;
    - (c) pre-Bid/Proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or Bid/Proposal to any Bidder/Offeror or potential Bidder/Offeror;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any Bid protest or Contract claim.
  2. A Bidder/Offeror or potential Bidder/Offeror may use e-mail or facsimile to:
    - (a) ask questions regarding the solicitation;
    - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
    - (c) submit a "No Bid/Proposal Response" to the solicitation.

3. The Procurement Officer, the Contract Monitor, and the Consultant may conduct day-to-day Contract administration, except as outlined in Section E of this subsection utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:

1. submission of initial Bids or Proposals;
2. filing of Bid Protests;
3. filing of Contract Claims;
4. submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications, etc.); or
5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Consultant or Bidder/Offeror be provided in writing or hard copy.

F. Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

#### **4.27 Minority Business Enterprise Goals**

No MBE goal established for this procurement.

#### **4.28 Intentionally Omitted**

#### **4.29 Conflict of Interest Affidavit and Disclosure**

Bidders/Offerors shall complete and sign the Conflict of Interest Affidavit and Disclosure (Attachment F) and submit it with their Bid/Proposal. All Bidders/Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Consultant's personnel who perform or control work under this Contract and each of the participating subconsultant personnel who perform or control work under this Contract shall be required to complete agreements substantially similar to Attachment F Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

#### **4.30 Taxes – Responsibility for Payment, Exemption, Forms to be Filed, etc.**

The Consultant is responsible for, and by submitting a proposal, agrees to pay all retail sales, income, real estate, sales and use, transportation and special taxes applicable to and assessable against any materials, equipment, processes and operations incident to or involved in the work. The Consultant is responsible for ascertaining and acquainting himself with such taxes and making all necessary arrangements to pay.

#### **4.31 Tax Exemption**

The State is generally exempt from federal excise taxes, and District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Where a Consultant is required to furnish and install material in the construction or improvement of real property in the performance of a Contract, the Consultant shall pay the Maryland sales tax applicable to such material and the State's exemption does not apply.

## **SECTION 5 – PROPOSAL FORMAT**

### **5.1 Two Part Submission**

Offerors shall submit Proposals in separate volumes:

- a) Volume I – TECHNICAL PROPOSAL
- b) Volume II – FINANCIAL PROPOSAL

### **5.2 Proposals**

- 5.2.1 The Technical Proposal and Financial Proposal shall be submitted in a sealed package to the Procurement Officer (see RFP Key Information Summary Sheet) prior to the date and time for receipt of Proposals (see RFP Key Information Summary Sheet “Proposals Due (Closing) Date and Time”). It is preferred, but not required, that the name, email address, and telephone number of the Offeror be included on the outside of the package. Each submission shall contain an unbound original, so identified, and four (4) bound copies.
- 5.2.2 An electronic version (flash drive or CD) of the Technical Proposal in Microsoft Word format must be enclosed with the original Technical Proposal. An electronic version (flash drive or CD) of the Financial Proposal in Microsoft Word or Microsoft Excel format must be enclosed with the original Financial Proposal. The flash drive or CD must be labeled on the outside with the RFP title and number and name of the Offeror.
- 5.2.3 A second electronic version of the Technical and Financial Proposal in searchable Adobe .pdf format shall be submitted on flash drive or CD for Public Information Act (PIA) requests. This copy shall be redacted so that confidential and/or proprietary information has been removed (see Section 4.8 “Public Information Act Notice”).
- 5.2.4 Beginning with Tab B (see RFP Section 5.4.2.3), all pages of both Proposal volumes shall be consecutively-numbered from beginning (Page 1) to end (Page “x”). The Title Page, Table of Contents, and any Claim of Confidentiality (Tabs A and A-1; see RFP Sections 5.4.2.1 and 5.4.2.2), should be numbered using small Roman numerals (ex. i, ii, iii, iv, v, etc).
- 5.2.5 Proposals and any modifications to Proposals will be shown only to MSA employees, members of the Evaluation Committee, or other persons deemed by MSA to have a legitimate interest in them.

### **5.3 Delivery**

Offerors may either mail or hand-deliver Proposals.

- 5.3.1 U.S. Postal Service deliveries, any Proposal that has been received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. If an Offeror chooses to use the U.S. Postal Service for delivery, the MSA recommends that it use Express Mail, Priority Mail, or Certified Mail only as these are the only forms for which both the date and time of receipt can be verified by MSA. It could take several days for an item sent by first class mail to make its way by normal internal mail to the procuring unit and an Offeror using first class mail will not be able to prove a timely delivery at the mailroom.

5.3.2 Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror. For any type of direct (non-mail) delivery, an Offeror is advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery.

5.3.3 After receipt, a Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals will be open to inspection only after the Procurement Officer makes a determination recommending the award of the Contract.

## **5.4 Technical Proposal**

**Note: No pricing information is to be included in the Technical Proposal. Pricing information is to be included only in the Financial Proposal.**

### **5.4.1 Format of Technical Proposal**

Inside a sealed package described in Section 5.2 “Proposals,” the unbound original, seven (7) copies, and the electronic version shall be provided. The RFP sections are numbered for ease of reference. Section 5.4.2 sets forth the order of information to be provided in the Technical Proposal, e.g., Section 5.4.2.1 “Title and Table of Contents,” Section 5.4.2.2 “Claim of Confidentiality,” Section 5.4.2.3 “Transmittal Letter,” Section 5.4.2.4 “Executive Summary,” etc. In addition to the instructions below, responses in the Offeror’s Technical Proposal should reference the organization and numbering of Sections in the RFP (ex. “Section 5.2.1 Response . . . ; “Section 5.2.2 Response . . . ,” etc.). This Proposal organization will allow MSA and the Evaluation Committee (see RFP Section 5.1) to “map” Offeror responses directly to RFP requirements by Section number and will aid in the evaluation process.

5.4.2 **The Technical Proposal** shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

#### **5.4.2.1 Title Page and Table of Contents (Submit under TAB A)**

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. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

#### **5.4.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1)**

Any information which is claimed to be confidential is to be noted by reference and included after the Title Page and before the Table of Contents, and if applicable, also in the Offeror’s Financial Proposal. An explanation for each claim of confidentiality shall be included (see Section 4.8 “Public Information Act Notice”). The entire Proposal should not be given a blanket confidentiality designation. Any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal.

#### **5.4.2.3 Transmittal Letter (Submit under TAB B)**

A Transmittal Letter shall accompany the Technical Proposal. The purpose of this letter is to transmit the Proposal and acknowledge the receipt of any addenda. The Transmittal Letter should be brief and signed by an individual who is authorized to commit the Offeror to the services and requirements as stated in this RFP. The Transmittal Letter should include the following:

- Name and address of the Offeror;
- Name, title, e-mail address, and telephone number of primary contact for the
- Offeror;



- Solicitation Title and Solicitation Number that the Proposal is in response to;
- Signature, typed name, and title of an individual authorized to commit the Offeror to its Proposal;
- Federal Employer Identification Number (FEIN) of the Offeror, or if a single individual, that individual's Social Security Number (SSN);
- Offeror's eMM number;
- Acceptance of all State RFP and Contract terms and conditions (see Section 4.18); if any exceptions are taken, they are to be noted in the Executive Summary (see Section 5.4.2.4); and
- Acknowledgement of all addenda to this RFP.

**5.4.2.4 Executive Summary (Submit under TAB C)**

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled "Executive Summary." The Summary shall identify the Service Category(ies) and Region(s) for which the Offeror is proposing to provide services (if applicable). In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see RFP Section 4.16 for more information).

The Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (Attachment H), or any other 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 the Offeror has taken no exceptions to the requirements of this RFP, the Contract (Attachment H), or any other attachments, the Executive Summary shall so state.

**5.4.2.5 Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB D)**

The Scope of Work, Section 2 of this RFP provides Offerors with information on the desired outcome of this solicitation. Offerors shall provide a work plan of how it will achieve the requirements of the RFP including but not limited to; a description of personnel assigned to the project, schedule, and auction software.

Identify if Offeror has taken any exception to the terms of the solicitation. Please note that any exception to a requirement, term, or condition may result in having the proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

The Consultant shall describe their supplier vetting process and the number of suppliers currently registered to bid on the auction platform.

**5.4.2.6 Offeror Experience, Capabilities (Submit under TAB E)**

Offerors should include information on past experience with similar projects. Offerors shall describe their experience and capabilities through a response to the following:

- a. An overview of the Offeror's experience providing services similar to those required by this RFP. This description should include:
  - A summary for each service provided, and outcome.

- The number of years the Offeror has provided these services.
  - The name of the client organization; the name, title and telephone number of point-of-contact for the client organization. A minimum of three (3) references shall be provided.
- b. Describe the availability of the Offeror to perform the work as described in the RFP, including the flexibility to dedicate staff to these efforts during the period of the contract.
- c. The Consultant shall provide resumes of key personnel directly involved with this RFP.
- **Note:** The Consultant must have conducted an electricity auction for at least 3 different government entities within the past 5 years; at least one of which must have been conducted using the software platform that is proposed for this contract.
- d. Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:
- (i) The State contracting entity;
  - (ii) A brief description of the services/goods provided;
  - (iii) The dollar value of the contract;
  - (iv) The term of the contract;
  - (v) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
  - (vi) 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 used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

#### **5.4.2.7 Subconsultants (Submit under TAB F)**

The Offeror shall provide a complete list of all subconsultants that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE subconsultant goal, if applicable. This list shall include a full description of the duties each subconsultant will perform and why/how each subconsultant was deemed the most qualified for this project. See Sections 5.4.2.6 and 5.4.2.7 for additional Offeror requirements related to subconsultants.

#### **5.4.2.8 Legal Action Summary (Submit under TAB H)**

This summary shall include:

- a. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- b. A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- c. A description of any judgments against the Offeror within the past five (5) years, including the case name, court case docket number, and what the final ruling or determination was from the court; and

- d. In instances where litigation is on-going and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.

#### **5.4.2.9 Economic Benefit Factors (Submit under TAB I)**

The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of this contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A(3).

Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.

Offerors shall identify any performance guarantees that will be enforceable by the state if the full level of promised benefit is not achieved during the Contract term.

As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Consultant shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.

Please note that in responding to this section, the following do not generally constitute economic benefits to be derived from this Contract:

- a. generic statements that the State will benefit from the Offeror's superior performance under the Contract;
- b. descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under this Contract; or
- c. tax revenues from Maryland based employees or locations, other than those that will be performing, or used to perform, work under this Contract.

Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded this Contract.

Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:

- The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subconsultants, suppliers and joint venture partners. Do not include actual fees or rates paid to subconsultants or information from your Financial Proposal;
- The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels. If no new positions or subcontracts are anticipated as a result of this Contract, so state explicitly;
- Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
- Subcontract dollars committed to Maryland small businesses and MBEs; and

- Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

#### 5.4.2.10 **Additional Required Technical Submissions (Submit under TAB J)**

5.4.2.10.1 The following documents shall be completed, signed, and included in the Technical Proposal, under TAB K that follows the material submitted in response to Section 5.4.2.

- a. Completed Proposal Affidavit (**Attachment C**).
- b. Completed Conflict of Interest Affidavit and Disclosure (**Attachment F**) \*see Section 4.29.
- d. Completed Certification Regarding Investment Activities in Iran (**Attachment J**)
- e. Completed Certification Regarding Israel (**Attachment K**).

## **5.5 Financial Proposal**

The Offeror shall submit an original unbound copy, four (4) copies, and an electronic version in Microsoft Word or Microsoft Excel of the Financial Proposal on its letterhead. The Financial Proposal shall contain the proposed amount to be reimbursed by the winning supplier(s) at a cost per KWh over the term of the contract for any accounts awarded as a result of the services provided by the Offeror in accordance with Section 2.3.4 of this RFP..

## **SECTION 6 – EVALUATION COMMITTEE, EVALUATION CRITERIA, AND SELECTION PROCEDURE**

### **6.1 Evaluation Committee**

Evaluation of Proposals will be conducted by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The MSA reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

### **6.2 Technical Proposal Evaluation Criteria**

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any subcriteria within each criterion have equal weight.

- 6.2.1 Adequacy of the Work Plan to provide the proposed services, to complete all deliverables required under this RFP, and the ability to complete all deliverables within the required timeframes.
- 6.2.2 Experience and qualifications of the Offeror, with specific emphasis on similar projects.
- 6.2.3 Experience and qualifications of the specific personnel to be assigned to the project, with specific emphasis on similar projects.
- 6.2.4 Economic Benefit to State of Maryland.

### **6.3 Financial Proposal Evaluation Criteria**

All Qualified Offerors will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted in the Financial Proposal.

### **6.4 Reciprocal Preference**

Although Maryland law does not generally authorize procuring units to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland Consultants. Therefore, COMAR 21.05.01.04 permits procuring units to apply a reciprocal preference in favor of a Maryland resident business under the following conditions:

- The Maryland resident business is a responsible Offeror;
- The most advantageous offer is from a responsible Offeror whose principal office or principal operations through which it would provide the services required under this RFP is in another state;
- The other state gives a preference to its resident businesses through law, policy, or practice; and
- The Maryland resident 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 resident businesses.

## **6.5 Selection Procedures**

### **6.5.1 General**

The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method under MSA's Procurement Policies and Procedures. The Competitive Sealed Proposals method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, MSA may conduct discussions with any or all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, MSA reserves the right to make an award without holding discussions and to develop a short-list of the most qualified firms at any time during the technical evaluation process.

### **6.5.2 Best and Final Offer (BAFO)**

When in the best interest of MSA, the Procurement Officer may permit Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). MSA may make an award without issuing a request for a BAFO.

### **6.5.3 Award Determination**

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to MSA. In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors.

## **6.6 Documents Required upon Notice of Recommendation for Contract Award**

Upon receipt of a Notification of Recommendation for Contract Award, the following documents shall be completed, signed if applicable with original signatures, and submitted by the recommended awardee within five (5) Business Days, unless noted otherwise. Submit three (3) copies of each of the following documents:

- a. Contract (**Attachment H**),
- b. Contract Affidavit (**Attachment I**),
- c. copy of a current Certificate of Insurance with the prescribed limits set forth in Section 3.1 "Insurance Requirements," listing the State of Maryland and the Maryland Stadium Authority as an additional insured, if applicable; \*see **Section 3.1**.

## **RFP ATTACHMENTS**

### **ATTACHMENT A – Pre-Proposal Conference Response Form**

It is requested that this form be completed and submitted as described in Section 4.1 by those potential Offerors that plan on attending the Pre-Proposal Conference.

### **ATTACHMENT B –Intentionally Omitted**

### **ATTACHMENT C – Proposal Affidavit**

This Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT D –Intentionally Omitted**

### **ATTACHMENT E –Intentionally Omitted**

### **ATTACHMENT F – Conflict of Interest Affidavit and Disclosure**

This form must be completed and submitted with the Technical Proposal.

### **ATTACHMENT G –Intentionally Omitted.**

### **ATTACHMENT H – Contract**

This is the sample contract used by MSA. It is provided with the RFP for informational purposes and is not required to be submitted at Proposal submission time. Upon notification of recommendation for award, a completed contract will be sent to the recommended awardee for signature. The recommended awardee must return to the Procurement Officer two (2) executed copies of the Agreement within five (5) Business Days after receipt. Upon Contract award, a fully-executed copy will be sent to the Consultant.

### **ATTACHMENT I – Contract Affidavit**

This Attachment must be completed and submitted by the recommended awardee to the Procurement Officer within five (5) Business Days of receiving notification of recommendation for award.

### **ATTACHMENT J –Certification Regarding Investment Activities in Iran**

This Attachment must be completed and submitted with the Technical Proposal.

### **ATTACHMENT K – Certification Regarding Boycott of Israel.**

This Attachment must be completed and submitted with the Technical Proposal.

**ATTACHMENT A – PRE-PROPOSAL CONFERENCE RESPONSE FORM**

**Solicitation Number MSA Project No. 18-040**

**ENERGY PROCUREMENT AND CONSULTING SERVICES**

A Pre-Proposal Tele-Conference will be held at **11:00 a.m. on January 9, 2018**. Please return this form by January 8, 2018, advising whether or not you plan to attend.

Please visit & join the meeting space from your computer, tablet, or smartphone.

<https://www.gotomeet.me/mdstad/pre-proposal-conference-for-energy-procurement-and-consulting-services>

[Use your microphone and speakers \(VOIP\) for audio. You'll sound best with a headset.](#)

[Join the conference call.](#)

[1-866-684-5887](tel:1-866-684-5887) | [7262188602](tel:7262188602)

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

John Samoryk  
Maryland Stadium Authority  
333 West Camden Street  
Baltimore, MD  
Email: (jsamoryk@mdstad.com)  
Fax #: (410-333-1888)

Please indicate:

\_\_\_\_\_ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

\_\_\_\_\_ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 “Pre-Proposal Tele-Conference”):

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name of Firm (please print)



**ATTACHMENT C – PROPOSAL AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_(title) and duly authorized representative of \_\_\_\_\_(name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

**B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION**

The undersigned Offeror hereby certifies and agrees that the following information is correct: In preparing its Proposal on this project, the Offeror has considered all Proposals submitted from qualified, potential subconsultants 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, subconsultant, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, 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 Proposal submitted by the Offeror on this project, and terminate any contract awarded based on the Proposal. As part of its Proposal, the Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Offeror discriminated against subconsultants, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Offeror agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

**B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES**

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

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

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

**B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES**

The undersigned Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, § 14-605, Annotated Code of Maryland, which provides that a person may not:

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

- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1)-(5) of this regulation.

**C. AFFIRMATION REGARDING BRIBERY CONVICTIONS**

I FURTHER AFFIRM THAT:

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

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of 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 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;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
- (a) §7201, Attempt to Evade or Defeat Tax;
  - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
  - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,
  - (d) §7206, Fraud and False Statements, or
  - (e) §7207, Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286, Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and
    - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
    - (i) Made the finding; and
    - (ii) Decision became final; or
  - (b) The finding was:
    - (i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) 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):

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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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**G. SUBCONTRACT AFFIRMATION**

I FURTHER AFFIRM THAT:

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

**H. AFFIRMATION REGARDING COLLUSION**

I FURTHER AFFIRM THAT:

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

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

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

**I. CERTIFICATION OF TAX PAYMENT**

I FURTHER AFFIRM THAT:

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

**J. CONTINGENT FEES**

I FURTHER AFFIRM THAT:

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

**K. CERTIFICATION REGARDING INVESTMENTS IN IRAN**

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

- (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and
- (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

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

**L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)**

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

**M. I FURTHER AFFIRM THAT:**

Any claims of environmental attributes made relating to a product or service included in the Proposal are consistent with the Federal Trade Commission’s Guides for the Use of Environmental Marketing Claims as provided in 16 C.F.R. §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

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

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

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

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

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

**SUBMIT THIS AFFIDAVIT WITH PROPOSAL**

**ATTACHMENTS D – INTENTIONALLY OMITTED**

**ATTACHMENT E – INTENTIONALLY OMITTED**



**ATTACHMENT F – CONFLICT OF INTEREST AFFIDVIT AND DISCLOSURE**

**Reference COMAR 21.05.08.08**

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder/Offeror, Consultant, Consultant, or subconsultant or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

C. The Bidder/Offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder/Offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder/Offeror shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder/Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Consultant shall continue performance until notified by the procurement officer of any contrary action to be taken.

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)

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

**ATTACHMENT G – INTENTIONALLY OMITTED**

## ATTACHMENT H – CONTRACT

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_ 2018 by and between \_\_\_\_\_ and the MARYLAND STADIUM AUTHORITY, (hereinafter referred to as MSA) and \_\_\_\_\_ (hereinafter referred to as Consultant).

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 “Bid” means the Consultant’s Bid dated \_\_\_\_\_.
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contract Monitor” means the MSA employee identified in Section 1.6 of the IFB as the Contract Monitor.
- 1.4 “Consultant” means \_\_\_\_\_ whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_.
- 1.5 “MSA” means the Maryland Stadium Authority.
- 1.6 “RFP” means the Request for Proposal for Energy Procurement and Consulting Services, Solicitation #18-040, and any addenda thereto issued in writing by the MSA.
- 1.7 “Procurement Officer” means the MSA employee identified in Section 1.5 of the IFB as the Procurement Officer.
- 1.8 “State” means the State of Maryland.

### 2. Scope of Contract

- 2.1 The Consultant shall provide deliverables, programs, goods, and services specific to the Contract for Energy Procurement and Consulting Services awarded in accordance with Exhibits A-C listed in this section and incorporated as part of this Contract. 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 IFB including exhibits, attachments, addenda, if any;  
Exhibit B – The Consultant’s Technical and Financial Proposal.

- 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 IFB. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Consultant 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 Consultant’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 Consultant 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 Consultant 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 Consultant from proceeding with the Contract as changed.

2.3 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all required approvals are obtained.

#### 2.4 Change Order Mark-Up

2.4.1 The mark-up allowable to the Consultant for combined overhead and profit for work performed solely by the Consultant with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Consultant's costs, excluding those items which may be included in overhead.

2.4.2 (a) The mark-up allowable to a Subconsultant for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the subconsultant's overhead and five percent (5%) for the subconsultant's profit, based upon the subconsultant's costs of labor, materials, and equipment.

(b) For work performed by a Subconsultant solely with his own forces, the Consultant is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the subconsultant's materials, equipment, and labor.

2.4.3 The cost of Supervisory Personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.

### 3. **Period of Performance.**

3.1 The term of this Contract begins on the earlier to occur of: (a) the issuance of a Notice to Proceed; or (b) the date the Contract is signed by the Executive Director, following any required approvals of the Contract, including approval by the Authority, if such approval is required. The Contract shall terminate three (3) after the effective date. MSA shall retain the right to renew the contract for two (2) additional terms of one (1) year each.

3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract shall survive expiration or termination of the Contract.

### 4. **Consideration and Payment**

This will be a 100% usage-based fee structure. Fees will be based on the scope of services provided in this RFP as well as any account usage data that is either provided by MSA or data that is gathered directly by the Consultant. The Consultant will be reimbursed by the winning supplier(s) at a \$ per kWh or other applicable fee rate over the life of the contract for all accounts awarded as a result of services provided. Fees paid by suppliers will be based on the amount of actual energy usage. MSA will include payment and reporting terms between energy suppliers and the Consultant Vendor in the supply solicitation to be issued at a later date.

## **5. Rights to Records**

- 5.1 The Consultant 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 Consultant for purposes of this Contract shall be the sole property of the MSA and shall be available to the MSA at any time. The MSA shall have the right to use the same without restriction and without compensation to the Consultant other than that specifically provided by this Contract.
- 5.2 The Consultant 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 made for hire for the State, the Consultant 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 Consultant shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Consultant with respect to all data delivered under this Contract.
- 5.4 The Consultant shall not affix any restrictive markings upon any data, documentation, or other materials provided to the MSA hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination of the Contract, the Consultant, at its own expense, shall deliver any equipment, software or other property provided by the MSA to the place designated by the Procurement Officer.

## **6. Exclusive Use**

The MSA shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Consultant in connection with this Contract. If any material, including software, is capable of being copyrighted, the MSA shall be the copyright owner and Consultant may copyright material connected with this project only with the express written approval of the MSA.

## **7. Patents, Copyrights, and Intellectual Property**

- 7.1 If the Consultant furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to, or a trade secret of, another, the Consultant shall obtain the necessary permission or license to permit the MSA to use such item or items.
- 7.2 The Consultant will defend or settle, at its own expense, any claim or suit against the MSA alleging that any such item furnished by the Consultant infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party’s patent, trademark, service mark, trade secret, or copyright, the Consultant will defend the MSA against that claim at Consultant’s expense and will pay all damages, costs, and attorneys’ fees that a court finally awards, provided the MSA: (a) promptly notifies the Consultant in writing of the claim; and (b) allows Consultant to control and cooperates with Consultant in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Consultant become, or in the Consultant’s opinion are likely to become, the subject of a claim of infringement, the Consultant will, at its option and expense: (a) procure for the MSA the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially

complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidential or Proprietary Information and Documentation**

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH ACT, and the Maryland Medical Records Act and the implementation of regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Consultant'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.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

## **9. Loss of Data**

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

## **10. Indemnification**

- 10.1 The Consultant shall hold harmless and indemnify the MSA, the Baltimore Orioles Limited Partnership ("Orioles"), and the Baltimore Ravens Limited Partnership ("Ravens"), their agents and employees 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 Consultant or its subconsultants under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Consultant shall indemnify the MSA against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the MSA, the Orioles and/or Ravens, and their respective employees. .
- 10.3 The MSA has no obligation to provide legal counsel or defense to the Consultant or its subconsultants in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Consultant or its subconsultants as a result of or relating to the Consultant's performance under this Contract.
- 10.4 The MSA has no obligation for the payment of any judgments or the settlement of any claims against the Consultant or its subconsultants as a result of or relating to the Consultant's performance under this Contract.
- 10.5 The Consultant shall immediately notify the Procurement Officer of any claim or suit made or filed against the Consultant or its subconsultants regarding any matter resulting from, or relating to, the Consultant's obligations under the Contract, and will cooperate, assist, and consult with the MSA in the defense or investigation of any

claim, suit, or action made or filed against the MSA as a result of, or relating to, the Consultant's performance under this Contract.

10.6 This Section 10 shall survive termination of this Contract.

## **11. Non-Hiring of Employees**

No official or employee of the MSA, as defined under Md. Code Ann., State Government Article, § 15-102, 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 MSA, become or be an employee of the Consultant or any entity that is a subconsultant on this Contract.

## **12. Disputes**

Pending resolution of a claim, the Consultant 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 Consultant must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Consultant must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **13. Maryland Law**

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

13.2 The Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.

13.3 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **14. Nondiscrimination in Employment**

The Consultant 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 subconsultants to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## **15. Contingent Fee Prohibition**

The Consultant 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.

## **16. 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 MSA's rights or the Consultant's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Consultant and the MSA from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Consultant shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. MSA shall notify the Consultant 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.

**17. Termination for Cause**

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

**18. Termination for Convenience**

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

**19. Delays and Extensions of Time**

The Consultant agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays, interruptions, interferences, 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 Consultant, including but not restricted to, acts of God, acts of the public enemy, acts of MSA in either its sovereign or contractual capacity, acts of another Consultant in the performance of a contract with the MSA, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subconsultants or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Consultant or the subconsultants or suppliers.

**20. Suspension of Work**

The MSA unilaterally may order the Consultant 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 MSA.

**21. Pre-Existing Regulations**

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, § 11-206, 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.



## **22. Financial Disclosure**

The Consultant shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, 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 thirty (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.

## **23. Political Contribution Disclosure**

The Consultant shall comply with Md. Code Ann., Election Law Article, §§ 14-101 through 14-108, 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: (a) 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 (b) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (i) February 5, to cover the six (6) month period ending January 31; and (ii) August 5, to cover the six (6) month period ending July 31.

## **24. Documents Retention and Inspection Clause**

The Consultant and subconsultants shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by MSA hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the MSA, including the Procurement Officer or 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, the Consultant shall provide assistance to the MSA, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

## **25. Compliance with Laws**

The Consultant hereby represents and warrants that:

- 25.1 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;
- 25.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any MSA 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;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **26. Cost and Price Certification**

By submitting cost or price information, the Consultant certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Bid/Proposal.

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 Consultant furnished cost or price information which, as of the date of its Bid/Proposal, was inaccurate, incomplete, or not current.

**27. Subcontracting; Assignment**

The Consultant may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Consultant assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer provided, however, that a consultant may assign monies receivable under a contract after due notice to the MSA. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The MSA shall not be responsible for fulfillment of the Consultant's obligations to its subconsultants.

**28. Liability**

- 28.1 For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Consultant shall be liable as follows:
- a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 of this Contract;
  - b. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - c. For all other claims, damages, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Consultant's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the MSA is not immune from liability for claims arising under Section 10.

**29. Intentionally Omitted.**

**30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, Consultant represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Consultant 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 subconsultants, vendors, suppliers, or commercial customers, nor shall Consultant retaliate against any person for reporting instances of such discrimination. Consultant shall provide equal opportunity for subconsultants, 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. Consultant 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 Consultant 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.
- 30.2 The Consultant shall include the above Commercial Nondiscrimination clause, or similar clause approved by the MSA, in all subcontracts.

30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Consultant under Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Consultant agrees to provide within sixty (60) days after the request a complete list of the names of all subconsultants, vendors, and suppliers that Consultant has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Consultant on each subcontract or supply contract. Consultant further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Consultant 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.

### **31. Prompt Pay Requirements**

31.1 If the Consultant withholds payment of an undisputed amount to its subconsultant, the MSA, at its option and in its sole discretion, may take one or more of the following actions:

- a. Not process further payments to the consultant until payment to the subconsultant 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 subconsultant 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.

31.2 An "undisputed amount" means an amount owed by the Consultant to a subconsultant 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 Consultant and subconsultant, due to be distributed to the subconsultant; 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.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MSA, concerning a withheld payment between the Consultant and a subconsultant 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 MSA and the consultant in any other proceeding; or
- c. Result in liability against or prejudice the rights of the MSA.

### **32. Intentionally Omitted**

### **33. Contract Monitor and Procurement Officer**

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

**34. Novation or Change of Name**

A. No Assignment

An MSA contract is not transferable, or otherwise assignable, without the written consent of the procurement officer and approval of the Executive Director provided, however, that a Consultant may assign monies receivable under a contract after due notice to the MSA.

B. Recognition of a Successor in Interest Novation

When in the best interest of the MSA, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- a) The transferee assumes all of the transferor’s obligations;
- b) The transferor waives all rights under the contract as against the MSA; and
- c) Unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

C. Change of Name

When a consultant requests to change the name in which it holds a contract with the MSA, the procurement officer, upon receipt of a document indicating the change of name (for example, an amendment to the articles of incorporation of the corporation) may enter into an agreement with the requesting Consultant to effect the change of name contingent upon the approval of the Executive Director. The agreement changing the name specifically shall indicate that no other terms and conditions of the contract are changed.

**35. 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 MSA:

John F. Samoryk  
 Maryland Stadium Authority  
 333 West Camden Street, Suite 500  
 Baltimore, Maryland 21201

If to the Consultant:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

CONSULTANT

MARYLAND STADIUM AUTHORITY

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT I – CONTRACT AFFIDAVIT**

**A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) and that I possess the legal authority to make this affidavit on behalf of the business for which I am acting.

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

**I FURTHER AFFIRM THAT:**

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

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

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

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

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

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

**C. FINANCIAL DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

**D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION**

**I FURTHER AFFIRM THAT:**

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

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

#### I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

#### F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 2018, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

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

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

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





**ATTACHMENT K – CERTIFICATION REGARDING ISRAEL**

1. The undersigned certifies that, in accordance with Executive Order 01.01.2017.25:

(i) It is not engaging in a boycott of Israel; and

(ii) will, for the duration of this contract, refrain from a boycott of Israel.

Or;

2. The undersigned is unable make the above certification due to the following activities:

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Signature: \_\_\_\_\_

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

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

## APPENDIX 1 - Abbreviations and Definitions

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

- a. **Authority** – The MSA members.
- b. **Baltimore Orioles Limited Partnership**
- c. **Baltimore Ravens Limited Partnership.**
- d. **Intentionally Omitted.**
- e. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
- f. **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us).
- g. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment H**.
- h. **Contract Administrator (CA)** – The MSA representative for this Contract that is primarily responsible for Contract Administration functions, including issuing written direction, compliance with terms and conditions, monitoring this Contract to ensure compliance with the terms and conditions of the Contract and to assist the Consultant in achieving on budget/on time/on target (e.g., within scope) completion of the Contract requirements. MSA may change the CA at any time by written notice to the Consultant.
- i. **Contract Commencement** - The date the Consultant is authorized to proceed with the work following any required approvals of the Contract, including approval by the Authority or Board of Public Works, if such approval is required.
- j. **Contract Monitor (CM)** – The MSA representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE compliance, and achieving completion of the Contract on budget, on time, and within scope.
- k. **Consultant** – The selected Offeror that is awarded a Contract by MSA.
- l. **eMM** – eMaryland Marketplace (see RFP Section 4.2).
- m. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- n. **MSA** – Maryland Stadium Authority.
- o. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B(54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- p. **Normal Business Hours** - Normal business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday.
- q. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date.

- r. **Offeror** – An entity that submits a Proposal in response to this RFP.
- s. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the MSA for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (Attachment H), including being the only MSA representative who can authorize changes to the Contract. MSA may change the Procurement Officer at any time by written notice to the Consultant.
- t. **Procurement Policies and Procedures** – Procurement Policies and Procedures means the rules adopted by the Authority that govern the procurement process that is to be followed by MSA. The Procurement Policies and Procedures are available for review on MSA’s website at [www.mdstad.com](http://www.mdstad.com).
- u. **Proposal** – As appropriate, either or both of an Offeror’s Technical or Financial Proposal.
- v. **Request for Proposals (RFP)** – This Request for Proposals issued by MSA, Solicitation Number MSA 18-040, including any addenda.
- w. **State** – The State of Maryland.
- x. **Technical Proposal** – An Offeror response to the Scope of Work requirements of this RFP. An Offeror Technical Proposal will be determined to be acceptable or not acceptable prior to opening the Financial Proposals.
- y. **Total Proposal Price** - The Offeror’s total proposed price for services in response to this solicitation, included in the Financial Proposal with Attachment B – Price Form, and used in the financial evaluation of Proposals (see RFP Section 5.3).