

University of Maryland College Park



Request for Proposal (RFP) No. 84134-A For Solar Energy Power Purchase Agreement Project Sunburst

Issue Date:	<u>July 22, 2010</u>
Deadline for Questions:	<u>July 30, 2010</u>
Proposal Due Date:	<u>August 17, 2010 3:00 P.M.</u>

WARNING: Contractors who have received this document from a source other than eMaryland Marketplace should visit the State's eMaryland Marketplace (eMM) web site and register as a Vendor. The University uses this web site to post solicitations and all solicitation amendments. The University does not maintain a Proposers/Bidders list.

Contractors who fail to register with and obtain solicitation information from eMM assume complete responsibility in the event that they do not receive all solicitation information prior to the closing date.

Contractors are cautioned not to make changes to any of the terms and conditions in this solicitation. Doing so may render a Contractor's proposal unacceptable and subject to rejection. Questions and comments may be addressed to the point of contact identified in Section A-1, Item 9 of this document.

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PART I – THE SCHEDULE
SECTION A-1 – SOLICITATION / CONTRACT FORM

1. CONTRACT NUMBER	2. SOLICITATION NUMBER 84134-A	3. TYPE OF SOLICITATION NEGOTIATED (RFP)	4. DATE ISSUED July 22, 2010	5. REQUISITION NUMBER
6. ISSUED BY UNIVERSITY OF MARYLAND DEPARTMENT OF PROCUREMENT AND SUPPLY 0410A SERVICE BUILDING COLLEGE PARK, MARYLAND 20742			7. ADDRESS PROPOSAL TO University of Maryland Department of Procurement & Supply Attn.: RFP Number: 84134-A 0410A Service Building College Park, Maryland 20742	

SOLICITATION

8. Sealed proposals in original plus number of copies specified in Section A-2, Subsection D for furnishing the supplies or services in the Schedule will be received at the location specified in Item 7 (if no location is specified in Item 7, then the location specified in Item 6) until the date and time specified in Section A-2, Subsection E.

CAUTION – LATE Submissions, Modifications, and Withdrawals; see Section A-2, Subsection F entitled "Late Proposals". All offers are subject to all terms and conditions contained in this solicitation.

9. FOR INFORMATION CALL	A. NAME Joseph F. Vogel	B. TELEPHONE (NO COLLECT CALLS)		C. E-MAIL ADDRESS jfvogel@umd.edu	D. FAX NUMBER 301-405-3011
		AREA CODE 301	NUMBER 405-2898		

OFFER (Must be fully completed by Contractor)

10. In compliance with the above, the undersigned agrees, if this offer is accepted within the time period specified in Section A-2, Subsection G, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

11. ACKNOWLEDGEMENT OF AMENDMENTS

The Contractor acknowledges receipt of all amendments to the SOLICITATION.

This contract incorporates the Solicitation/Request for Proposal and any amendments thereto, as well as Contractor's proposal and amendments thereto. In the event of a discrepancy between the terms of this contract, including amendments and modifications made thereto, and Contractor's proposal and amendments thereto, the discrepancy shall be resolved by giving precedence in the following order:

- a) This Contract, including the Solicitation/Request for Proposal and amendments and modifications made thereto
- b) Contractor's proposal, including amendments and modifications made to the proposal.

This contract, including the documents incorporated by reference and any negotiated changes prior to contract award, contains the entire agreement of the parties and supersedes all prior agreements and understandings, oral or otherwise, between the parties.

12. NAME, ADDRESS AND FEI NUMBER OF CONTRACTOR			13. CONTRACTOR REMIT-TO ADDRESS		14. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Print or Type)	
15. TELEPHONE NUMBER			16. SIGNATURE		17. OFFER DATE	
AREA CODE	NUMBER	EXT.				

AWARD (To be completed by University)

18. ACCEPTED AS TO ITEMS LABELED	19. AMOUNT	20. FRS ACCOUNT NUMBER
21. ADMINISTERED BY (If other than Item 6)		
22. NAME OF PROCUREMENT OFFICER (Type or Print)	23. UNIVERSITY OF MARYLAND (Signature of Procurement Officer)	24. AWARD DATE

IMPORTANT – Award will be made on this Form or by other authorized official written notice.

Section A-2 -- Instructions, Conditions and Notices to Contractors

A. ISSUING OFFICE

The sole point of contact at the University of Maryland, College Park (hereinafter “University” or “University of Maryland”) for purposes of this Request for Proposal (RFP) is the Issuing Office. The location of the Issuing Office is contained in Part I, Section A-1, Item 6 of this document. Point of contact information is listed in Part I, Section A-1, Items 9(a) through 9(d) of this document.

B. PRE-PROPOSAL CONFERENCE

There will be no pre-proposal conference held for this solicitation.

C. QUESTIONS

Each Contractor is responsible for reading carefully and understanding fully the terms and conditions of this RFP. All contact between Contractors and the University will be formally made at scheduled meetings or in writing through the Issuing Office. Requests for clarification or additional information must be made in writing to the Procurement Officer and received at the Issuing Office no later than **July 30, 2010**. Such requests should contain the following: **“QUESTIONS: RFP #84134-A”**. Only written communications relative to the procurement shall be considered. Hard copy, facsimile and electronic mail are acceptable methods for submission of questions. It is incumbent upon the Contractor to verify University receipt of their questions.

All questions will be answered in writing. Both questions and answers will be distributed, without identification of the inquirer(s), to all Contractors who are on record with the Procurement Officer as having received this RFP. No oral communications can be relied upon for proposal purposes.

To the extent that a question causes a change to any part of this RFP, an amendment shall be issued addressing such.

D. SUBMISSION OF PROPOSALS

Proposals must be:

- (1) submitted in the format set forth herein,
- (2) made in the official name of the firm or individual under which Contractor's business is conducted (including the official business address),
- (3) signed by a person duly authorized to commit Contractor to the proposal,
- (4) submitted in envelopes clearly marked with the assigned RFP number,
- (5) separated into Phase I – Qualifications; if selected in Phase I, Phase II Technical and Financial volumes, and
- (6) addressed to the Procurement Officer identified in Section A-1, Item 9 and sent to the address shown in Section A-1, Item 7.

The Contractor must submit one (1) original (marked "original") and four (4) copies of Phase I – Qualifications. If selected in Phase I, Contractor(s) must submit one (1) original (marked “original”)

and four (4) copies of Phase II - Technical volume and Phase II - Financial volume sealed under separate cover. Commingling of technical and financial information or failure to submit the two volumes **separately** and sealed may result in the proposal being deemed **NON-ACCEPTABLE** and thereby rejected. The volumes, which contain original documents, should be clearly identified as the **ORIGINAL Technical or the ORIGINAL Financial Volume**.

E. CLOSING DATE

Technical Qualification Proposals must arrive at the location identified in Section A, Item 7 of this document on or before August 17, 2010, 3:00 p.m. EST/EDT as applicable, in the format set forth herein.

Contractors mailing proposals should allow sufficient mail delivery time to insure timely receipt by the Issuing Office. Proposals, amendments to proposals, or requests for withdrawal of proposals arriving after the closing time and date shall not be considered. There shall be no public opening of the proposals. The names of Contractors will not be released until after award.

F. LATE PROPOSALS

Any proposal, request for withdrawal, or modification of a proposal including a Best and Final Offer (BAFO) that is not received at the designated location, time and date set forth herein will be considered late and shall not be considered. Delivery of the proposal to the specified location by the prescribed time and date is the sole responsibility of the Contractor. Exceptions may be authorized, at the sole discretion of the Procurement Officer, when the reason for the late proposal, late request for withdrawal, late modification of a proposal or BAFO is due to the action or inaction of the University. A record of the late proposal, request for withdrawal, modification of a proposal or BAFO shall be made in the appropriate procurement file.

G. DURATION OF PROPOSAL OFFER

Proposals shall be valid for a minimum of 120 days following the closing date of this RFP. If an award is not made during that period, the proposal shall automatically extend for another 120 days, unless the Contractor gives specific written notice to the Procurement Officer at least 15 days before the expiration of the then current 120 day period. Proposals shall automatically renew for an additional 120 days until such time as an award is made or proper written notice is given to the University of Contractor's intent to withdraw its proposal. By submission of a proposal, Contractor guarantees that its offer shall be firm for the period specified above.

H. AMENDMENTS TO THE RFP

If it becomes necessary to revise any part of this RFP, notice of the revision will be given in the form of an amendment to Contractors who are on record with the Procurement Officer as having received this RFP. All amendments shall become a part of this RFP. Each Contractor must acknowledge receipt of amendments, and the failure of a Contractor to acknowledge any amendment shall not relieve the Contractor of the responsibility for complying with the terms thereof.

I. ALTERNATE PROPOSALS

Alternate proposals shall not be allowed or accepted, nor will they be considered, for this solicitation.

J. ECONOMY OF PREPARATION

Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Contractor's offer and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.

K. UNABLE TO PROPOSE

If Contractor is unable or unwilling to submit a proposal in response to the requirements, Contractor must indicate such in writing to the Procurement Officer on or before the proposal due date. Hard copy, facsimile and electronic mail are acceptable. Please include a brief explanation of the rationale for non-submission of a proposal.

L. PUBLIC INFORMATION ACT NOTICE

Contractors shall specifically identify those portions of their proposals that they deem to contain confidential, proprietary information or trade secrets and shall provide specific justification, with respect to each separate portion identified, why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland.

In order for such claims of confidentiality to be considered, Contractors must clearly identify and provide individual justification for each and every section that is claimed to contain confidential, proprietary information or trade secrets. It is **NOT** sufficient to preface your proposal with a proprietary statement, or to use a page header or footer that arbitrarily marks some or all pages as confidential. General claims of confidentiality or similar blanket designations shall not be effective.

M. TWO PHASE PROPOSAL

The selection procedure for this procurement requires an independent evaluation of the Contractor Qualifications in Phase I and then in Phase II the technical and financial proposals for each project site identified in Attachment 3. This separation allows for evaluation of technical proposals on their technical merit only. Consequently, Contractor shall submit its Phase II proposal in two separately sealed volumes as indicated below. No pricing information is to be included in the technical proposal.

See Part IV, Section L for additional details pertaining to the evaluation process.

1. PHASE I- - QUALIFICATIONS

This volume should be prepared in a clear and concise manner with pages numbered. The Qualifications proposal shall not contain any price information. The Qualification proposal must contain the following sections:

A. Financial Status

- i. Ability to Finance Project:
Description of ability of Contractor to obtain project financing within 30 days of contract award. Contractor must identify a minimum of three previously completed projects within the past five years that were financed successfully and length of time required to receive financing. Indicate the percentage of equity being provided by Contractor or an affiliate of Contractor. Contractor shall identify any projects in the last five years that it was awarded, but failed to obtain financing per the requirements of the contract or were delayed longer than 60 day.
- ii. Legal Proceedings:
List all legal or administrative proceedings involving your firm currently pending or concluded adversely within the last five years which relate to procurement performance of any public or private contracts. In addition to the information requested, the case name, docket number and decision, as well as the issues in the case, should be provided.
- iii. Performance Bond and Insurance:
List the name of the agent or bonding/insurance company that will be providing the bond/policy for the installation of the system(s). A separate bond shall be established equal to the amount of any ARRA funds applied to the system(s) for the duration of the ARRA terms and conditions. The bond must be in a form satisfactory to the State of Maryland; underwritten by a surety company authorized to do business with the State of Maryland. List current bonding/insurance capacity and maximum length of term for bond/policy. Acceptable surety includes: a guaranty from a guarantor acceptable to State with an investment grade rating from S&P and/or Moody's or a letter of credit from a US bank acceptable to State with ratings of A- or higher from S&P and/or A3 from Moody's.

B. Past Performance

Include a brief description of at least three (3) completed and operational solar PV projects in the past five years with at least one project a minimum of 300kW. The description of past projects should include the following information and be a maximum of two pages per project:

- i. Project name
 - ii. Location
 - iii. Contact Information
 - iv. Project installed capacity in kWdc; annual capacity factor for last three years (state by year of operation.)
 - v. Brief physical description of project to include equipment manufacture, model, etc. and how the technology used may be applicable to the proposed sites in Attachment 3.
 - vi. Brief discussion of any challenges and how they were overcome.
-

- vii. Detailed description of start-up and acceptance testing.

C. Prior Experience

- i. Identify and include resumes of top five (5) key team members and their combined experience with designing, installing, and operating similar sized solar installations. Outline roles, responsibilities and overall qualifications including organization chart that illustrates reporting structure of key members.
- ii. List total capacity (in kWdc) of PV systems by project, placed into commercial operation within last five (5) years by Contractor in addition to the projects identified in Item B. above. Larger projects will be weighted more favorably than smaller projects.
- iii. History of past projects that the key team members have successfully implemented within the last ten (10) years. Contractor(s) who can demonstrate consistent performance in similar projects by key team members will be given preference.
- iv. Identify any subcontractors the firm intends to employ in the execution of the project and prior work experience with these subcontractors. While subcontractors are expected to be a part of this project, the Contractor should demonstrate substantial ownership of development, design, installation, operation and maintenance of the project.
- v. Identify specific roles and responsibilities of subcontractors and their experience in performing similar work

D. References

Proposals shall include at least three recent (within past five years) references for power purchase agreements for solar power projects. References may include the contacts identified for the projects identified in Item B. above. Provide the customer's contact name, title, address, phone numbers and email addresses.

The University reserves the right to take any or all of the following actions: to reject a proposal based on an unsatisfactory reference, to contact any person or persons associated with the referenced sites, to request additional references, to contact organizations known to have used in the past or currently using the services supplied by the Contractor or the Contractor's subcontractors, to contact independent consulting firms for additional information about the Contractor or the Contractor's subcontractors, and to visit any or all of the reference sites for demonstrations.

2. PHASE II – VOLUME I, TECHNICAL PROPOSAL

The information/items specified herein must be addressed in the technical proposals under Phase II. The proposal must expressly indicate that it satisfies each point of the RFP requirements and specifications, reference Section C. Simple YES or NO responses to stated requirements are insufficient. Rather, the Contractor must describe in detail how the proposed products and/or services meet or exceed the stated requirements. Additionally, the Contractor must explain any exception or deviation from the requirements.

Contractors are urged to read the specifications very carefully and to submit their questions, in writing, by the due date for questions. Misinterpretation of specifications by the Contractor shall not relieve the Contractor of responsibility to accurately address the requirements of this RFP or to perform the contract, if awarded.

3. PHASE II - VOLUME II, FINANCIAL PROPOSAL

This volume consists of and must contain the following items. Contractors shall not include any technical information or specifications in the financial volume. If such are included in the financial volume, they may not be evaluated by the technical evaluation committee.

a. SIGNED ORIGINALS OF SECTION A-1

Contractors must complete Items 11, 12, 13, 14, 15, 16 and 17 of the Solicitation / Contract Form (Section A-1) of this document and include TWO signed originals as part of Contractor's financial proposal, in the original Financial Volume. Failure to submit these signed documents may cause the Contractor's proposal to be rejected, at the sole discretion of the University.

b. PRICING SECTION

This volume shall be in accordance with Section B – Pricing.

c. PROPOSAL AFFIDAVIT

Contractors must complete and sign the Proposal Affidavit. A copy of this Proposal Affidavit is included in Section K.

d. CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Contractors must complete and sign this affidavit. A copy of this affidavit is included in Section K.

e. FEDERALLY-FUNDED AFFIDAVIT

All proposals must be in compliance with American Reinvestment and Recovery Act of 2009, Public Law 111-5 (ARRA or Recovery Act), federal regulations and ARRA implementing guidance from the federal government and the MEA, as may be revised and updated from time to time (collectively “ARRA Requirements”). See Attachment 5 – ARRA Requirements.

f. FINANCIAL VIABILITY

The University reserves the right to require, during proposal evaluation, that the Contractor provide a copy of its most current Annual Report or audited Statement of Financial Condition to include a

Balance Sheet, Income Statement and Cash Flow Statement or other acceptable financial information. These documents may be relied on in any determination regarding Contractor financial responsibility.

g. MINORITY BUSINESS ENTERPRISE (MBE) PARTICIPATION AND ASSOCIATED FORMS

Contractors must complete and submit, as part of their financial proposal, the MBE forms contained in Section K. All forms shall be completed as instructed. Failure to submit the required forms will render a proposal not susceptible for award and cause it to be rejected.

h. NOTICES INFORMATION

Contractors must complete Section G.5 and submit this information as part of their financial proposal.

N. CANCELLATION OF THE RFP

The University may cancel this RFP, in whole or in part, or reject all proposals submitted in response to the RFP when such action is determined to be fiscally advantageous to the University and/or the State or otherwise in the best interest of the University and/or the State.

O. ORAL PRESENTATIONS

The University will not require individual oral presentations for Phase I – Qualifications. Contractors may be required to make individual presentations to the University Evaluation Committee, or its designated representatives, in order to clarify their Technical and Financial proposals in Phase II. If the University determines that such presentation is needed, the Issuing Office will schedule a time and place for oral presentations. Contractor is required to make the oral presentation within five (5) workdays after request by the University. Each Contractor should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as its qualifications to furnish the specified products and services. Notwithstanding the possibility of a request for an oral presentation, Contractors shall not rely on the possibility of such a request and shall submit a complete and comprehensive written response to this solicitation.

P. SOLICITATION, PROPOSAL ACCEPTANCE, AWARD AND DISCUSSIONS

This RFP creates no obligation on the part of the University to award a contract or to compensate Contractors for proposal preparation expenses. The University reserves the unilateral right to cancel this solicitation at any time and to accept or reject any and all proposals, in whole or in part, received in response to this RFP; the unilateral right to award a contract in whole or in part; to award a contract to one Contractor; to waive or permit cure of minor irregularities; and to conduct discussions with Contractors in any manner necessary to serve the best interest of the University.

Discussions may be conducted with those Contractors who submit proposals initially judged by the Procurement Officer to be reasonably susceptible of being selected for award. However, the University reserves the right to award a contract based upon the proposals received without further discussions.

Q. EVIDENCE OF RESPONSIBILITY

Prior to the award of a contract pursuant to this RFP, the Procurement Officer may require Contractor to submit such additional information bearing upon Contractor's ability to perform the contract as the Procurement Officer deems appropriate. The Procurement Officer may also consider any information otherwise available concerning the financial, technical, and other qualifications or abilities of the Contractor.

R. ELECTRONIC FUNDS TRANSFER (EFT) –(Applies to contracts expected to exceed \$200,000)

By submitting a response to this solicitation, the Offeror agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller's Office grants an exemption. The selected Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds Registration Request Form, which may be found on the following website: <http://compnet.comp.state.md.us/gad/vendorinfo/eft/default.asp>

Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

See Payment of University Obligations clause in PART II, Contract Clauses, Section I for additional information.

S. FORMATION OF AGREEMENT/CONTRACT WITH SUCCESSFUL CONTRACTOR

The Power Purchase agreement, Attachment 4, must be executed within 7 calendar days of notice of intent to award. If selected Contractor fails to execute the PPA within this time, the award will be withdrawn and the Proposal Bond forfeited.

This RFP and resulting PPA shall be governed by the University System of Maryland Procurement Policies and Procedures, and University of Maryland Procurement Policies and Procedures. These policies and procedures may be viewed at the following web site: www.purchase.umd.edu. From the main menu, select the category "Policies and Procedures".

T. DEBRIEFING OF UNSUCCESSFUL PROPOSORS

A debriefing of an unsuccessful proposer shall be conducted upon written request submitted to the Procurement Officer within ten (10) days of the date on which the proposer knew, or should have known, its proposal was unsuccessful. The debriefing shall be limited to a discussion of the proposer's unsuccessful proposal. The debriefing will be oral and shall provide information on areas in which the proposal was deemed weak or insufficient. The debriefing may NOT include discussion of a competing offeror's proposal or discussion, thoughts, notes or ranking from an individual evaluation committee member. A summarization of the procurement officer's rationale for the selection may be given. Debriefings shall be conducted at the earliest feasible time.

Section B – Pricing

Firms shall submit their proposal for pricing on Attachment 1, Price Proposal Form. The price proposal form is to be completed in full for each project site and will be incorporated in the resulting Power Purchase Agreement (PPA), Attachment 4. Contractor(s) should clearly identify any assumed annual escalation rates or system output degradation on the Price Proposal Form. The Price Proposal Form consists of three pricing scenarios listed in Columns A, B, and C, with one sheet for each project. Prices should assume that Federal ARRA funds are available up to a maximum of \$1000 per installed kWdc. The University reserves the right to determine which project location (Comcast Center or Severn Building) the ARRA funds will be applied up to a maximum of \$630,000. The maximum ARRA funds available for Coppin State University is \$500,000. Contractor shall comply with all Special Terms and Conditions for the Federal ARRA-Funded Grants in Attachment 5.

Additionally, a Purchase Price should be identified for the end of year ten (10) in the event the Buyer elects to purchase the solar equipment and terminate the PPA. This Purchase Price does not reflect an obligation to buy nor does it serve as a basis for calculating damages under a termination or default. An estimated cost for labor and installation shall also be provided in order to calculate MBE requirements.

The Price Proposal consists of three energy charge requests:

- Column A: Price per kWh **excluding** Renewable Energy Credits
- Column B: Price per kWh **including** Renewable Energy Credits beginning in Year **1**
- Column C: Price per kWh **including** Renewable Energy Credits beginning in Year **6**

If requested, the price proposal form may be made available in electronic form. At a minimum, firms must submit a printed copy of their price proposal. Blanks on the price proposal form will be interpreted as zero (0) and no price will be allowed for that item.

Section C – Description/Specifications/Statement of Work

1.0 Background

In July 2007, Governor O'Malley announced the EmPower Maryland initiative which challenged us to reduce the State consumption of energy by 15% per capita by 2015. The University is proceeding to lead by example through energy conservation. This RFP issued by the University will be used to assist all participating institutions (referred to as "Buyer") within the University System of Maryland (USM) in their efforts to reduce our consumption of fossil fuel energy by implementing on-site renewable energy projects.

The University is soliciting proposals for the installation of solar energy systems at several locations. The installations will be funded in part through a grant administered by the Maryland Energy Administration which requires that the system(s) be operational by April 1, 2011. A short list of qualified contractors will be selected from the first phase of the technical evaluation and invited to submit a detail technical proposal and price proposal.

2.0 Objectives

There are two specific purposes for this solicitation. Phase I is to select a short list of Contractor(s) who have the capability to develop and implement comprehensive solar photovoltaic projects. Phase II will allow Contractor(s) selected in Phase I to submit technical and price proposals for individual University sites. A separate Contractor may be selected for each University site or one Contractor may be selected for all sites. Upon final approvals, the University will enter into a Purchase Power Agreement with the selected Contractor(s) to design, build, operate, maintain, and finance these individual projects at the selected University sites.

- 2.1 The University is issuing this Request for Proposals (RFP) to establish a list of qualified firms to:
 - 2.1.1 Provide and develop solar photovoltaic projects.
 - 2.1.2 Provide all necessary engineering feasibility studies for the proposed project.
 - 2.1.3 Provide design and engineering calculations for all aspects of the installation of proposed systems.
 - 2.1.4 Provide installation of the complete solar photovoltaic system, including all mechanical, electrical, structural, etc. for a complete and finished product.
 - 2.1.5 Provide operation and maintenance for the life of the installation
 - 2.1.6 Provide metering and monitoring of energy production, use and costs.

- 2.2 The University intends to solicit detailed technical proposals from all short-listed Contractor(s) selected under Phase I of this RFP for individual project sites as identified by the University. The short listed Contractor(s) may submit Phase II Technical and Financial Proposals for one, some or all of the identified sites.
- 2.3 Upon final award, the selected Contractor(s) have 7 calendar days to execute the PPA. Upon execution of the PPA, the Contractor(s) will have up to 45 calendar days to complete the design and start construction of work, unless otherwise approved by the procurement officer.

2.4 Estimated Timeline

Issue date	July 21, 2010
RFP Questions Deadline	July 30, 2010
Phase I Technical Qualifications due	August 17, 2010
Selection of Short Listed Contractors	August 30, 2010
Technical and Financial Proposals Due	October 4, 2010
Board of Regents Approval	To Be Determined
Contractor(s) Awarded	October 30, 2010
Purchase Order and executed PPA	November 7, 2010
Finalize Design & Construction Commencement	November 30, 2010
System Operational	April 1, 2011

3.0 Work Scope

- 3.1 The Attachment 4, Power Purchase Agreement, will be executed between the selected Contractor and the University will enter into an agreement for the identified solar installation(s). The Contractor will be expected to provide services to the University for these specific solar installation(s). Under this arrangement, the Contractor designs, builds, owns, operates, and maintains the PV system(s) as well as sells the generated electricity and RECS (if applicable) to the University. The University reserves the right to award all projects to one Contractor; individual projects to different Contractors; or not make any awards.
- 3.2 A list of three (3) sites proposed for solar PV systems under the proposed Power Purchase Agreement is included below. The sites listed vary in size and setting. Additional information pertaining to the individual sites is in Attachment 3. The Comcast Center and Coppin State locations have been selected under the State's Project Sunburst solar grant program. The Severn Building has been selected as an alternative backup site to Comcast Center.

University of Maryland, College Park – Comcast Center
University of Maryland, College Park – Severn Building (formerly Washington Post)

Coppin State University – multiple building sites

- 3.3 The University requests that the Contractor target project completion dates of April 1, 2011. Proposers should demonstrate how this goal will be accomplished and what milestones need to be met in order to meet the completion date.

4.0 Deliverables

- 4.1 Deliverables shall be considered those tangible resulting work products which are to be delivered to the University, such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings and reports. 100% Construction Drawings produced shall require a stamp by a Maryland Licensed Professional Engineer, in the pertinent area of expertise. All deliverables and resulting work products from this contract will become the property of the University. The above listing shall be considered the minimum.
- 4.2 Design reviews are required at the following stages of development with a turn around time of five days for the University review:
- 4.2.1 Schematic Design
 - 4.2.2 Design Drawings
 - 4.2.3 100% Construction Drawings
- 4.3 Results of structural and roof inspections.
- 4.4 Manuals and Drawings—Three (3) sets of site-specific operation, maintenance, equipment and parts manuals for each installed PV system.
- 4.5 Signed copies of warranty and guarantee agreements.
- 4.6 Performance security.
- 4.7 Upon final award and prior to construction, the Contractor shall submit for each awarded site the following documentation:
- (a) System description.
 - (b) Equipment details and descriptions.
 - (c) Plans with PV system layout, including racking, module placement, conduit raceways, conduit sizes, modules spacing, etc.
 - (d) Single line diagrams indicating system layout and all required connections to the utility, specifying the inverter models and ratings.
 - (e) Maryland Licensed Professional Engineer verification that the system will meet wind-load, seismic, and structural requirements.
 - (g) Electrical grid interconnection and approved Net Metering Agreement with the local utility.
 - (h) Controls, monitors and instrumentation.
 - (i) Web based monitoring.
 - (j) Mounting details and appropriate certification. Proposals for

- ballasted mounting will be considered on a case by case basis.
- (k) System manuals and proposed preventative maintenance program.
 - (l) Project guarantee: The Contractor shall provide how the following guarantee/warranties will be implemented.
 - (1) All exposed quick-connect wiring shall be warranted against UV degradation for 20 years.
 - (2) All metals used in the construction of the system including, but not limited to, PV modules and array support structures shall be warranted against degradation for 20 years.
 - (3) All PV Modules, invertors and roof penetrations shall be warranted for the 20 year PPA term.
 - (m) Interconnection Agreement and the Certificate of Public Convenience and Necessity (CPCN) application.

Section D - Packaging and Marking

NOT USED

Section E – Installation, Inspection and Acceptance

The following inspection, testing and acceptance requirements are incorporated herein:

- A. The Contractor shall supply and install all equipment required to interconnect the PV system(s) to each University's electrical distribution system, as well as to the University's electrical distribution network and utility system. The Contractor shall fulfill all applications, studies and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Contractor. The Contractor shall determine whether a distribution system upgrade will be necessary as a result of installing the electrical interconnection and the anticipated load. If it is determined that the PV system will trigger new distribution system upgrades and significant expense, then the Contractor is not obligated to install the solar PV system. However, the Contractor and the University will consider these unexpected costs and determine if there is mutual benefit in reconsidering or modifying the project. If so, the University reserves the right to negotiate with the Contractor to modify the terms and conditions of the contract. Any anticipated upgrades shall be identified in the Technical Proposal.
- B. The Contractor shall hire electrical contractor licensed by the State of Maryland to perform all electrical installations and connections to University's electrical distribution system, as well as to the University's electrical distribution networks and utility systems. Obtain rough-in and final electrical inspections by a University electrical inspector or by an approved third party electrical inspector if a University inspector is not available.
- C. The Contractor shall comply with the University's Basic Electrical Requirements as well as read and sign off on requirements to follow University's Electrical Safety Program.
- D. During the system start-up, the University reserves the right to observe and verify each system's performance. Procedural information shall be provided that will be needed for emergency and/or shut down conditions that occur during the contract period. All testing shall be at the Contractor's expense. The University shall have the right to observe testing and confirm testing at its cost if it is deemed necessary. Required commissioning and acceptance test services include:
 - Start up the solar PV system until it achieves a delivery of at least 80% of the expected average hourly production for the applicable month as indicated in Attachment 2, Expected Annual Energy Production, over five consecutive days with a minimum 4-hour production period each test day.
 - Successful registration for the SRECs with the Maryland Public Service Commission as well as the Interconnect Agreement and CPCN waiver.
 - Provide electrical inspection certificate by a University approved third party electrical inspector as required.
- E. The University will only accept the system in its entirety upon verification of performance and operational testing periods. There will be no partial acceptance of the system. Payment under terms of the Power Purchase Agreement will only commence upon complete system acceptance by the University.

Section F - Deliveries or Performance

The following delivery or performance requirements are incorporated herein:

1. Not Used
2. When installation is required as part of this contract, the Contractor shall be responsible for removal of all packing materials.
3. The following delivery or performance schedule shall apply hereunder:

Any and all materials, equipment and services required under this solicitation are to be delivered, installed and rendered such that the complete system is operational by April 1, 2011.

Section G - Contract Administration Data

1. **Roles of the University of Maryland Program Manager and Procurement Officer**

The Procurement Officer is the University of Maryland's authorized representative for all pre-contract matters related to this contract. Additionally, throughout the duration of the contract, the Procurement Officer shall be the only individual with authority to modify any provisions of this contract including, without limitation, the statement of work, pricing or any other sections.

The University of Maryland Program Manager (Joan Kowal at 301-405-5004) and designated staff shall be the principal interface on behalf of the University of Maryland for post-award technical matters, and shall have the authority to explain and provide further details regarding the University of Maryland's expectations concerning the work to be performed hereunder and/or the items to be provided herein. The Program Manager and designated staff shall have no authority to modify any provisions of this contract.

2. **Invoicing**

The Contractor shall provide the following invoicing services. Invoices shall reflect the price structure spelled out in Section B. Throughout the duration of any resultant contract, the Contractor shall provide one paper copy and one electronic copy of each invoice. The invoice must contain the following minimum information:

- a. Invoice Number
- b. Invoice Date
- c. The word ORIGINAL printed on the original paper copy of the invoice.
- d. The full company or corporate name and address; payment address if it differs from corporate address.
- e. The full nine (9) digit Federal Tax Identification number (for U.S. Contractors only) or Social Security Number.
- f. Purchase order number and/or contract number.
- g. Start and end date of service period
- h. Total kWhs delivered for service period
- i. Applicable Energy Rate for service period
- j. Total Energy charge for service period

Direct invoices to the following for UMCP:

University of Maryland
Attn.: Facilities Management
1600 Service Building
College Park, MD 20742

Direct invoices to the following for Coppin State University

Robert Underwood
Director of Facilities Management
2500 West North Avenue

Baltimore, MD 21216
Office: (410) 951-4231
Fax: (410) 951-3777
Email: runderwood@coppin.edu

Any invoice that is unclear, illegible or does not conform to these specific requirements shall be returned to the Contractor for re-issuance.

3. Schedule of Payments

Not applicable.

4. Assignment

No part of the work specified herein may be assigned or transferred to another Contractor without the prior written authorization of the Procurement Officer.

5. Notices

Notices under this RFP shall be in writing and shall be considered effective upon personal delivery to the individual listed below or five calendar days after deposit in any U.S. mailbox, first class and addressed to the other party as follows:

For the University of Maryland:

Joseph F. Vogel, C.P.M.
Procurement & Supply
University of Maryland
0410 Service Building
College Park, MD 20742
Telephone: 301-405-2898
Facsimile: 301-314-3011
Email: jfvogel@umd.edu

For Proposer: (please complete the following)

Telephone: _____
Facsimile: _____
Email: _____

Section H - Special Contract Requirements

1. Term of Contract

The contract term shall be twenty (20) years commencing on the initial delivery date as defined in Attachment 4, Power Purchase Agreement.

2. Insurance Requirements

The Contractor shall defend, indemnify and save harmless the University System of Maryland, its officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the errors, omissions and performance or non-performance by the Contractor, employees or agents, of the work covered by this contract. The University shall not assume any obligation to indemnify, hold harmless or pay attorneys' fees that may arise from or in any way be associated with the performance or operation of this agreement.

The Contractor shall secure, pay the premiums for, and keep in force until the expiration of this contract, including any renewal thereof, adequate insurance as provided below, such insurance to specifically include liability assumed by the Contractor under this contract. The amounts of insurance coverage specified below shall be the minimum amount of available insurance to satisfy claims; a policy which allows the costs associated with investigating, management or defense of any claim, or any other cost incurred by the insured or the insurance carrier, to be deducted from the policy limits is not acceptable.

- a. Commercial General Liability Insurance including all extensions-
\$2,000,000 each occurrence;
\$2,000,000 personal injury;
\$2,000,000 products/completed operations;
\$2,000,000 general aggregated
- b. Workmen's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland. Contractors that do not maintain an office in Maryland are to provide Workmen's Compensation Insurance and Unemployment Insurance to the levels required by the laws of the State where they conduct their business.
- c. Not Used.
- d. If automotive equipment is used in the operation, automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.
- e. Products liability insurance, if not included in the Comprehensive, with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident.

All policies for liability protection, bodily injury or property damage must specifically and expressly name the University System of Maryland as an insured with respect to operations under the contract and premises occupied by the Contractor. With respect to the Contractor's liability for bodily injury or property damage under the items above, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.

Each insurance policy shall contain the following endorsement: "It is understood and agreed that the Insurance Company shall notify the Procurement Officer in writing forty-five (45) days in advance of the effective date of any reduction in or cancellation of this policy." A certificate of each policy of insurance shall be furnished to the Procurement Officer. With the exception of Workmen's Compensation, upon the request of the Procurement Officer a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished. A certificate of insurance for Workmen's Compensation together with a properly executed endorsement for cancellation notice must always be furnished. The requested Certificates and Policies shall be delivered as directed by the Procurement Officer. Notices of policy changes shall be furnished to the Procurement Officer.

All required insurance coverages must be acquired from insurers registered to do business in the State of Maryland and acceptable to the University. The insurers must have a policyholders' rating of "A-" or better, and a financial size of "Class VII" or better in the latest edition of Best's Insurance Reports.

3. Parking

If at any time Contractor shall be on the premises of the University of Maryland, then Contractor is responsible for acquiring a valid University of Maryland parking permit, obeying all parking regulations, and paying all fines assessed for violations of parking regulations. Contractor is responsible for ensuring this clause is included in Contractor's agreements with subcontractors.

4. Minority and Disadvantaged Business Enterprise (MBE) Notice

MBE firms are encouraged to respond to this solicitation.

5. Order of Precedence (within this RFP)

In the event of a discrepancy within Sections A through L of this RFP, such discrepancy shall be resolved by giving precedence in the following order:

- a) Executed Power Purchase Agreement
- b) Section H – Special Contract Requirements
- c) Section C – Description/Specifications/Statement of Work
- d) Remaining Sections of Part I (Sections A, B, D, E, F and G)

- e) Part II – Contract Clauses (Section I)
- f) Part III – List of Documents, Exhibits and Other Attachments (Section J)
- g) Part IV – Representations and Instructions (Section K and Section L)

Section 1.3 of the PPA outlines the final Contract documents.

6. Proposal Bond and Performance Security Requirements

At the time of submittal of Phase II, Technical and Financial Proposals, Contractor(s) shall be required to include a proposal bond in the amount of twenty-five thousand dollars (\$25,000) in a form acceptable to the University to cover the University's cost and expenses in the event that a Power Purchase Agreement is not executed within 7 calendar days of final award notification. This requirement is in addition to the provision of Security Requirements under Section 15 of the PPA. If the Contractor(s) does not provide the proposal bond with the Phase II Technical and Financial Proposals, it will be deemed unacceptable and will be rejected.

Performance Security is due at the time of PPA execution and can be a Letter of Credit or Parent Guarantee as required by Section 15 of the PPA.

PART II - CONTRACT CLAUSES

Section I - Contract Clauses

1. Scope of Work

The Scope of Work is defined in Section C of this document.

2. Compensation and Method of Payment

Total compensation is shown in Section A, Item 20 of this document. Method of payment is defined in Section G, Subsections 2 and 3 of this document.

3. Contract Term

The contract term is defined in Section H, Subsection 1 of this document.

4. University Work Rules

Employees and agents of Contractor shall, while on the premises of the University, comply with all University rules and regulations. Contractor shall acquaint itself with conditions governing the delivery, receiving and storage of materials at the work site if applicable to this work, as not to interfere with University operations. Contractor shall not stop, delay, or interfere with University work schedule without the prior approval of the University's specified representative.

5. Harmony

Contractor shall be entirely responsible for working in harmony with all others on the work site when Contractor is working on University premises.

6. Clean Up

Contractor agrees to clean up on a daily basis and shall at all times keep the building and premises clean of dirt, trash and debris arising out of the operation of the contract. If Contractor fails to clean up and remove such dirt, trash and debris from the job site, the University may arrange for same at Contractor's expense. Upon the completion of the work, Contractor agrees to remove promptly all implements, surplus materials and debris if applicable when it is working on the University premises.

7. Independent Contractor

It is understood and agreed that the Contractor is an independent contractor of the University and not an employee. The University shall not withhold income taxes, social security, or any other sums from the payments made to the Contractor hereafter. If the Contractor employs additional persons in the performance of this contract, those persons shall in no way be considered employees of the University, but rather they shall be employees or contractors of the Contractor, and the Contractor bears full responsibility for compensating those persons.

8. Truth-In-Negotiation Certification

Not applicable.

9. Multi-Year Contracts Contingent Upon Appropriations

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

10. Variations in Estimated Quantities

The pricing shall remain firm and fixed at the dollar amounts or discount levels indicated in Section B for the duration of the contract. Quantity estimates are provided for informational purposes only and the University shall not be held to them. Any variation between actual quantities purchased hereunder and estimated quantities provided shall not entitle the Contractor to any type of equitable adjustment.

11. Liquidated Damages

Not applicable.

12. Specifications

All materials, equipment, supplies or services shall conform to Federal and State laws and regulations, and to the specifications contained herein.

13. Cost and Price Certification

Not Used

14. Delays and Extensions of Time

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

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

15. Suspension of Work

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

16. Payment of University Obligations

Payments to the Contractor pursuant to this contract shall be made no later than thirty (30) days after the University's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, are prohibited. Electronic funds transfer (EFT) will be used by the State to pay Contractor(s) for Contracts with a value over \$200,000 and any other State payments due Contractor(s) unless the State Comptroller's Office grants Contractor(s) an exemption.

17. Delivery and Acceptance

Delivery shall be made in accordance with the solicitation specifications. The University, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The University unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The University reserves the right to test any materials, equipment, supplies or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to, or on the date specified in the bid or proposal. Any material or service that is defective or fails to meet the terms of the solicitation specifications will be rejected. Rejected materials or services shall be promptly replaced or re-performed, at the direction of the University. The University reserves the right to purchase replacement materials or services in the open market. Contractors failing to promptly replace materials or re-perform services lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

18. Non-Hiring of Officials and Employees

No official or employee of the State of Maryland whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall, during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

19. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation (added effective October 1, 2001) or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract except a subcontract for standard commercial supplies or raw material; and (c) to post in conspicuous places accessible to employees and applicants for employment, notices setting forth the substance of this section.

20. Financial Disclosure

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

NOTE: The financial disclosure form is available under "Public Disclosures" on the following web site:
www.sos.state.md.us

21. Political Contribution Disclosure

The Contractor shall comply with the provisions of Article 33, Sections 14-101 through 14-104, Annotated Code of Maryland, which require that every person that enters into contracts, leases, or other agreements with the State, a county, a municipal corporation or other political subdivision of the State, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Administrative Board of Election laws 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 Administrative Board of Election Laws:

- (1) prior to purchase, completion or execution of any sale or any lease or contract by the University, and shall cover the preceding two calendar years; and
- (2) if the contribution is made after the completion of a sale or purchase, or execution of a lease or contract, then, twice a year, throughout the contract term, on (1) February 5, to cover the 6-month period ending January 31; and (2) August 5, to cover the 6 month period ending July 31.

NOTE: The political contribution disclosure form is available as "Title 14" under "Campaign Finance and Campaign Fund Reporting" under the "Forms" heading of the following web site:

www.elections.state.md.us

22. Disputes

- (1) This contract is subject to the University System of Maryland (USM) Procurement Policies and Procedures, and the University of Maryland Procurement Policies and Procedures.
- (2) Except as otherwise provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this section.
- (3) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this section. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this section.
- (4) Within thirty days of when the basis of the claim is known or should have been known, whichever is earlier, the claim shall be made in writing and submitted to the Procurement Officer for decision in consultation with the Office of the Attorney General, as appropriate.
- (5) When a claim cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- (6) The Contractor, at the discretion of the Procurement Officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.
- (7) The Procurement Officer shall render a written decision on all claims within 180 days of receipt of the Contractor's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the Procurement Officer shall notify the Contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the University.
- (8) The Procurement Officer's decision shall be final and conclusive unless the Contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

(9) Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the Procurement Officer's decision.

23. Termination for Convenience

(1) The performance of work under this contract may be terminated by the University in whole or in part, in accordance with this section, whenever the University shall determine that such termination is in the best interest of the University or the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

(2) After receipt of a Notice of Termination, and except as otherwise directed by the Procurement Officer, the Contractor shall:

- (a) stop work as specified in the Notice of Termination;
- (b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;
- (c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (d) assign to the University, in the manner, at times, and to the extent directed by the Procurement Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the University shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Procurement Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this section;
- (f) transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the Procurement Officer,
 - (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and
 - (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University;
- (g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Procurement Officer, any property of the types referred to in (f) above; provided, however, that the Contractor
 - (i) may not be required to extend credit to any purchaser, and
 - (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Procurement Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Procurement Officer may direct;
- (h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (i) take any action that may be necessary, or as the Procurement Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of

the Contractor and in which the University has or may acquire an interest. The Contractor shall submit to the Procurement Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Procurement Officer, and may request the University to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the University shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the Procurement Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

(3) After receipt of a Notice of Termination, the Contractor shall submit to the Procurement Officer his termination claim, in the form and with certification prescribed by the Procurement Officer. This claim shall be submitted promptly but in no event later than one (1) year from the effective date of termination, unless one or more extensions in writing are granted by the Procurement Officer, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. However, if the Procurement Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Procurement Officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Procurement Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(4) Subject to the provisions of paragraph (3), the Contractor and the Procurement Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this section, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this section, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Procurement Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this section, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

(5) In the event of the failure of the Contractor and the Procurement Officer to agree as provided in paragraph (4) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this section, the Procurement Officer shall pay to the Contractor the amounts determined by the Procurement Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):

(a) for completed supplies or services accepted by the University (or sold or acquired as provided in paragraph (2) (g) above) and for which payment has not theretofore been made, a sum equivalent to

the aggregate price for the supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(b) the total of-

- (i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;
- (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2) (e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or Contractors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (g) above); and
- (iii) a sum, as profit on (i) above, determined by the Procurement Officer to be fair and reasonable; provided, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(c) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the University shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (5) (a) and (b) (i) above, the fair value, as determined by the Procurement Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the University or to a buyer pursuant to paragraph (2) (g).

(6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with USM Procurement Policies and Procedures in effect on the date of this contract.

(7) The Contractor shall have the right of appeal, under the section of this contract entitled "Disputes," from any determination made by the Procurement Officer under paragraph (3), (5), or (9) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the Procurement Officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the University shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Procurement Officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.

(8) In arriving at the amount due the Contractor under this section there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which the University may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any

materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this section, and not otherwise recovered by or credited to the University.

(9) If the termination hereunder be partial, the Contractor may file with the Procurement Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this section shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Procurement Officer.

(10) The University may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Procurement Officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this section, such excess shall be payable by the Contractor to the University upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the Procurement Officer by reason of the circumstances.

(11) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under this contract, preserve and make available to the University at all reasonable times at the office of the Contractor but without direct charge to the University, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Procurement Officer, reproductions thereof.

24. Termination for Default

(1) The University may, subject to the provisions of paragraph (3) below, by written notice of default to the Contractor, terminate the contract in whole or in part in any one of the following circumstances: (a) If the Contractor fails to perform within the time specified herein or any extension thereof, or (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Procurement Officer may authorize in writing) after receipt of notice from the Procurement Officer specifying such failure.

(2) In the event the University terminates this contract in whole or in part as provided in paragraph (1) of this section, the University may procure substitute performance upon terms and in whatever manner the Procurement Officer may deem appropriate, and the Contractor shall be liable to the University for

any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this section.

(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the University in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

(4) If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this section, or that the default was excusable under the provisions of this section, the rights and obligations of the parties shall, if the contract contains a section providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to such section. If, after notice of termination of this contract under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this section, and if this contract does not contain a section providing for termination for convenience of the University, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a claim as defined in the section of this contract entitled "Disputes".

(5) If this contract is terminated as provided in paragraph (1) of this section, the University, in addition to any other rights provided in this section, may require the Contractor to transfer title and deliver to the University, in the manner, at the times, and to the extent, if any, directed by the Procurement Officer, (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the University; and the Contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the Contractor in which the University has an interest. Payment for completed supplies delivered to and accepted by the University shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the University and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Procurement Officer; failure to agree to such amount shall be a claim as defined in the section of this contract entitled "Disputes". The University may withhold from amounts otherwise due the Contractor hereunder such sum as the Procurement Officer determines to be necessary to protect the University against loss because of outstanding liens or claims of former lien holders.

(6) The rights and remedies of the University provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(7) As used in paragraph (3) of this section, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

25. Arrearages

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

The proposer is also informed that the Comptroller (per State Finance and Procurement Article §7-222) may not, except under the conditions specified therein, issue a warrant for payment to a person if the person owes \$50 or more to the State, a unit of the State government, or any governmental entity under the control of the State. Therefore, applications for payment submitted by a contractor and approved by the University for payment may not be processed by the Comptroller for payment to the contractor if an arrearage in excess of \$50 exists.

26. Compliance with Laws

The Contractor hereby represents and warrants that: **A.** It is qualified to do business in the state of Maryland and that it will take such actions as, from time to time hereafter, may be necessary to remain so qualified; **B.** It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this contract; and **C.** 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.

27. Retention of Records

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

28. Tax Exemption

The State is generally exempt from Federal Excise Taxes, Maryland Sales and Use Taxes, District of Columbia Sales Taxes and Transportation Taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

29. Registration

Pursuant to §7-201 et seq. of the Corporation and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State of Maryland shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201 before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall register with the Department of Assessments and Taxation.

NOTE: The registration form is available as "Combined Registration Application" under the "Businesses" heading of the following web site:

www.marylandtaxes.com

Questions about this requirement may be sent to the Department of Assessment and Taxation at Charterhelp@dat.state.md.us and a response should be forthcoming within 24 hours.

30. EPA Compliance

Materials, supplies, equipment or services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable.

31. Occupational Safety and Health Act

All materials, supplies, equipment, or services supplied as a result of this contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

32. Maryland Law Prevails

The provisions of this contract shall be governed by the laws of Maryland

33. Software Licensing

Not Applicable

34. MUCITA

The Maryland Uniform Computer Information Transactions Act (MUCITA), Maryland Code Annotated [Commercial Law] 21-101 through 21-816, does not govern this Agreement, except to the extent that section 21-104(2) of the Act applies. The parties further agree that this Agreement shall be governed by the common law of Maryland relating to written agreements and Maryland statutes other than MUCITA which may apply.

35. Applicability of Federal Laws

If Federal contract and/or grant funds are utilized in any manner in the performance of this contract, then the University reserves the right to bind Contractor to all applicable clauses of the Federal Acquisition Regulation (FAR) and other FAR supplements, as well as all applicable provisions of the Office of Management and Budget (OMB) Circular A-110. Contractor agrees to promptly complete and return to the University any related forms and/or affidavits as may be required.

36. Protests and Claims

Any protest regarding the award of this contract or claim arising out of this contract shall be administered in accordance with the University System of Maryland Procurement Policies and Procedures, Section X - Protests and Claims. Detail is available by accessing the following web site: www.purchase.umd.edu Click on this web site, then select the category "Policies and Procedures", followed by "USM Procurement Policies and Procedures".

37. Intellectual Property

Work for Hire. Contractor understands and agrees that any and all materials and deliverables that are subject to copyright protection that are developed in connection with the performance of this contract (Works) shall constitute a work for hire as that term is defined in the Copyright Act of 1976, as amended. As a result, all right, title and interest in and to all such Works shall belong exclusively to the University, including without limitation all copyrights and other intellectual property rights therein. If for any reason a Work is not deemed to be a work for hire, Contractor hereby grants, transfers, sells and assigns, free of charge, exclusively to the University, all title, rights and interest in and to said Work, including all

copyrights and other intellectual property rights. The Contractor further agrees to execute and deliver to the University a confirmatory grant and assignment of all rights in and to Works and to execute any other proper document the University deems necessary to ensure the complete and effective transfer of all rights in Works to the University.

University Ownership of Deliverables and Related Materials. In accordance with the preceding paragraph, Works developed for the University in connection with this contract are the exclusive property of the University. Contractor agrees to deliver all Works to the University upon completion of the order. Works include but are not limited to editorial drafts, original copy, photographs, proofs, corrected proofs, camera-ready boards and similar editorial materials and all negatives, flats, engravings, photostats, drawings and other production materials. Contractor shall be responsible for delivering all Works to the University no later than fifteen (15) working days from the date of final contract deliverables. In the event the Contractor fails to return all such materials by this deadline and the University desires to use Works again, Contractor shall provide the University with equivalent materials, at its own expense, or reimburse the University, in full, for the cost of developing equivalent materials.

Intellectual Property Warranty and Indemnification. The Contractor represents and warrants that any materials or deliverables, including all Works, provided under this contract are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If deliverables, materials or Works provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, University shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or Works as a means of remedying any claim of infringement in addition to any other remedy available to the University under law or equity. Contractor further agrees to indemnify and hold harmless the University, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any materials, deliverables, supplies, equipment, services or Works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this contract, University shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

38. E-Maryland Marketplace

All vendors interested in conducting business with the University of Maryland must register at: www.emarylandmarketplace.com <http://www.emarylandmarketplace.com/>. Registration is free. eMarylandMarketplace™ is the State of Maryland's Internet-based procurement system. Registered vendors can access bid solicitations and receive email notification when new solicitations are posted.

PART III - LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS

Section J - List of Attachments

The below requirements are incorporated herein.

Attachment 1	Price Proposal Form
Attachment 2	Expected Annual Energy Productions
Attachment 3	Site Descriptions
Attachment 4	Power Purchase Agreement
Attachment 5	ARRA Requirements
Attachment 6	General Terms and Conditions
Exhibit 1	Form of Letter of Credit

PART IV - REPRESENTATIONS AND INSTRUCTIONS

Section K - Representations, Certifications, and Other Statements of Contractors

UNIVERSITY OF MARYLAND PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. 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, or any of its employees directly involved in obtaining or performing contracts with public bodies (as is defined in Section 16-101(f) of the State Finance and Procurement Article of the Annotated Code of Maryland), has been convicted of, or has had probation before judgment imposed pursuant to Article 27, Section 641 of the 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):

C. 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, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(a) Been convicted under state or federal statute of a criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract, fraud, embezzlement, theft, forgery, falsification or destruction of records, or receiving stolen property;

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

(c) 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 arising out of the submission of bids or proposals for a public or private contract;

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

(e) 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 subsection (a), (b), (c), or (d) above;

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

(g) 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 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):

D. 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, or any of its employees directly involved in 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):

E. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows:

(you must indicate the reasons why the affirmations cannot be given without qualification):

F. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

G. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

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

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

H. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

I. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and represent that, the above business will comply with the provisions of Article 33, Sections 14-101 through 14-104 of the Annotated Code of Maryland, which require 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 under which the person receives in the aggregate \$100,000 or more shall file with the Secretary of State of Maryland certain specified information to include disclosure of political contributions in excess of \$500 to a candidate for elective office in any primary or general election.

J. 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 meaning when used in this certification.

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

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business' policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by J(2)(b), above;
- (h) Notify its employees in the statement required by J(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 J(2)(h)(ii), above, or otherwise receiving actual notice of a conviction:

(j) Within 30 days after receiving notice under J(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 J(2)(a)--(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in J(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 21.08.06.

K. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

Name: _____

Address: _____

(If not applicable, so state).

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

L. CONTINGENT FEES

I FURTHER AFFIRM THAT:

Contractor has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of the contract.

M. Repealed

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

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

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

Contractor's Federal Employer Identification Number (FEIN): _____

CONFLICT OF INTEREST INFORMATION

A. Each solicitation that will result in the selection of a Contractor who will assist a unit in the formation, evaluation, selection, award, or execution of a State contract shall provide notice of the requirement of this regulation.

B. "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.

C. "Person" has the meaning stated in COMAR 21.01.02.01B (64) and includes a bidder, offeror, Contractor, consultant or subcontractor or subconsultant 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 or offer is made.

D. If the Procurement Officer makes a determination prior to award that facts or circumstances exist giving rise or which could in the future give rise to a conflict in interest, the procurement officer may reject a bid or offer under COMAR 21.06.02.03B.

E. After award the State may terminate the contract, in whole or in part, if it deems such termination necessary to avoid an actual or potential conflict of interest. If the Contractor knew or reasonably could have been expected to know of an actual or potential conflict of interest prior to or after award and did not disclose it or misrepresented relevant information to the Procurement Officer, the State may terminate the contract for default, institute proceedings to debar the Contractor from further State contracts, or pursue such other remedies as may be permitted by law or the contract.

F. A conflict of interest may be waived if the Procurement Officer, with approval of the agency head or designee, determines that waiver is in the best interest of the State. The determination shall state the reasons for the waiver and any controls that avoid, mitigate, or neutralize the conflict of interest.

G. Each bidder or offeror responding to a solicitation that will result in the selection of a Contractor who will assist a unit in the formation, evaluation, selection, award, or execution of another State contract shall provide the affidavit and disclosures set forth in Subsection H of this regulation to the Procurement Officer with the bid or offer and such other times as may be required by the Procurement Officer.

H. The affidavits and disclosures required by Subsection G of this regulation shall be in substantially the same form as follows:

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

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, Contractor, consultant, or subcontractor or subconsultant 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 or offer is made.

C. The bidder or 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 (explains in detail--attach sheets if necessary):

E. The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the bidder or offeror will 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 or 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 Contractor 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)

MINORITY BUSINESS ENTERPRISE (MBE) PARTICIPATION

3 Minority Business Enterprise (MBE) Participation

PURPOSE

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

MBE GOALS AND SUB GOALS

An overall MBE subcontract participation goal of 15% (Fifteen Percent) of the total construction and installation dollar amount, including any future contract modifications, has been established for this procurement.

By submitting a response to this solicitation, the bidder or offeror agrees that this dollar amount of the contract will be performed by MBEs, certified by the Maryland Department of Transportation (MDOT), as specified. **ONLY MDOT certified MBEs may be included in the MBE Participation Schedule. No other MBE certifications are acceptable.**

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

If an MDOT certified MBE firm included in the MBE Participation Schedule becomes unavailable at any time before execution of the contract, the contractor shall notify the Procurement Officer in writing immediately, describing the desired change and the contractor's efforts to substitute another MDOT certified MBE to perform the work. After the date of contract execution, any desired changes must have the prior written approval of the Agency Head, and the Procurement Officer must issue a formal contract modification authorizing the change.

SOLICITATION AND CONTRACT FORMATION

- ◆ A bidder or offeror must include with its bid or offer:
 - (1) A completed Certified MBE Utilization and Fair Solicitation Affidavit (MBE Attachment A) whereby the bidder or offeror acknowledges the certified MBE participation goal, commits to make a good faith effort to achieve the goal, and affirms that MBE subcontractors were treated fairly in the solicitation process.
 - (2) A completed MBE Participation Schedule (MBE Attachment B) whereby the bidder or offeror responds to the expected degree of MBE participation as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of submission. The bidder or offeror shall specify the price and/or the percentage of contract value associated with each MBE subcontractor identified on the MBE Participation Schedule.

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

- ◆ Within 10 working days from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.
 - (1) Outreach Efforts Compliance Statement (MBE Attachment C)
 - (2) MBE Subcontractor Project Participation Statement of Intent to Subcontract (MBE Attachment D)
 - (3) If the apparent awardee believes a waiver (in whole or in part) of the overall MBE goal or of any sub goal is necessary, it must submit a fully documented MBE Waiver Request (MBE Attachment E) and MBE Unavailability Form (MBE Attachment F) that comply with COMAR 21.11.03.11.
 - (4) Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

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

CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

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

MBE ATTACHMENTS

Submit with Bid or Offer

- A. Certified MBE Utilization and Fair Solicitation Affidavit
- B. MBE Participation Schedule

Submit within 10 Working Days of Notification of Apparent Awardee

- C. Outreach Efforts Compliance Statement
- D. MBE Subcontractor Project Participation Statement of Intent to Subcontract
- E. MBE Waiver Request (if applicable)
- F. MBE Unavailability Form (if applicable)

***Monthly Payment Reports that are required by Prime Contractor and MBE Subcontractor(s) will be provided to Prime Contractor upon or following contract award as attachments G (MBE Subcontractor Monthly Payment Report) and H (Prime Contractor MBE Monthly Payment Report).**

Contractor Assistance

Contractors seeking personal assistance in locating minority business enterprises or to answer questions about the MBE requirement in this solicitation are encouraged to contact:

Ms. Victoria Leatherwood
MBE Liaison Officer
University of Maryland
Department of Procurement and Supply
2113- R Chesapeake Building
College Park, Maryland 20742
Telephone: (301) 405-5850
Fax: (301) 314-9565
E-Mail: vleather@umd.edu

Contractors who have questions concerning the MBE certification process, need assistance with State of Maryland MBE Directory searches, or have questions about specific vendor information, may also contact:

Maryland Department of Transportation
Minority and Disadvantaged Business Enterprise (MBE) Program
7201 Corporate Center
Hanover, MD 21076
In State: (410) 865-1269
Toll Free: 1-800-544-6056

On-line assistance in locating minority business enterprises:

The State of Maryland Minority Business Enterprise Directory published by the Maryland Department of Transportation at www.marylandtransportation.com is updated nightly. To utilize the search feature, click on the category “Minority/Disadvantaged Business Enterprise” followed by “MBE/DBE Directory.”

MBEs Recently Used by the University of Maryland System is generally updated monthly at www.purchase.umd.edu. The University System of Maryland encourages the utilization of all qualified MDOT certified MBEs. This list was created to answer the prime contractor’s inquiry regarding who has done business with the University of Maryland. It is for information only and is not an endorsement or recommendation. To utilize the search feature, click on the category “Minority Business Program,” followed by “MBE Vendors Recently Used”

**CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION
AFFIDAVIT**

This document must be included with the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

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

1. I acknowledge the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent and, if specified in the solicitation, sub goals of _____ percent for MBEs classified as African American-owned and _____ percent for MBEs classified as women-owned. I have made a good faith effort to achieve this goal.

OR

After having made a good faith effort to achieve the MBE participation goal, I conclude I am unable to achieve it. Instead, I intend to achieve MBE participation of _____ percent and request a waiver of the remainder of the goal. Within 10 business days of receiving notice that our firm is the apparent low bidder or the apparent awardee, I will submit a written waiver request that complies with COMAR 21.11.03.11. I acknowledge that the MBE subcontractors/suppliers listed in the MBE Participation Schedule will be used to accomplish the percentage of MBE participation that I intend to achieve.

2. I have identified the specific commitment of certified MBEs by completing and submitting an MBE Participation Schedule with the bid or proposal.
3. I understand that if I am notified that I am the apparent awardee, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.
 - Outreach Efforts Compliance Statement (Attachment C)
 - MBE Subcontractor Project Participation Statement of Intent to Subcontract (Attachment D)
 - MBE Waiver Request (if applicable) (Attachment E)
 - MBE Unavailability Form (if applicable) (Attachment F)
 - Any other documentation required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

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

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

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

_____ Bidder/Offeror Firm Name	_____ Signature of Authorized Representative
_____ Address	_____ Printed Name, Title
_____ City, State, Zip	_____ Phone
	_____ Fax
	_____ E-Mail
	_____ Date

Submit this MBE Affidavit with Bid or Offer

MBE PARTICIPATION SCHEDULE

This document must be included with the bid or offer. If the bidder or offeror fails to submit this form with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

Prime Contractor (Firm Name, Address, Phone)	Project Name
Solicitation Number	Total Contract Amount \$
List Information for Each Certified MBE Subcontractor/Supplier on this Project	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	

USE ATTACHMENT B CONTINUATION PAGE AS NEEDED

SUMMARY

TOTAL MBE PARTICIPATION: _____ % \$ _____

Bidder/Offeror Firm Name

Signature of Authorized Representative

Date

Printed Name, Title

Submit this MBE Participation Schedule with Bid or Offer

MBE Attachment B

Page ____ of ____

MBE PARTICIPATION SCHEDULE (continued)

List Information for Each Certified MBE Subcontractor/Supplier on this Project	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	
Minority Firm Name	MBE Certification Number & Classification
Work to be Performed/NAICS or SIC Codes	
Dollar Amount or Percentage of Total Contract	

OUTREACH EFFORTS COMPLIANCE STATEMENT

In conjunction with the bid or offer submitted in response to Project Name

_____, Solicitation No. _____, I state the following:

1. Bidder/ Offeror identified opportunities to subcontract in these specific work categories:

2. Attached to this form are copies of written solicitations (with bidding instructions) used to solicit certified MBEs for these subcontract opportunities.

3. Bidder/Offeror made the following attempts to contact personally the solicited MBEs:

4. ☐ Bidder/Offeror assisted MBEs to fulfill or to seek waiver of bonding requirements.
(DESCRIBE EFFORTS)

- ☐ This project does not involve bonding requirements.

5. ☐ Bidder/Offeror did/did not attend the pre-bid conference
☐ No pre-bid conference was held.

Bidder/Offeror Firm Name

Signature of Authorized Representative

Date

Printed Name, Title

Submit this Outreach Statement within 10 Working Days of Notification of Apparent Awardee

MBE Attachment D

**MBE SUBCONTRACTOR PROJECT PARTICIPATION STATEMENT OF
INTENT TO SUBCONTRACT**

SUBMIT ONE FORM FOR EACH CERTIFIED MBE LISTED IN THE MBE PARTICIPATION SCHEDULE

Provided that _____ is awarded the contract in
Prime Contractor Name
conjunction with _____, Solicitation No. _____, it and
Project Name
_____, MDOT Certification No. _____, intend
Subcontractor Name
to enter into a contract by which Subcontractor shall: (describe work, include NAICS/SIC codes)

Agreed upon Subcontract \$ Amount _____

- ☐ No bonds are required of Subcontractor
☐ The following amount and type of bonds are required of Subcontractor:

Signature of Authorized Representative
of Prime Contractor

Signature of Authorized Representative
of Subcontractor

Printed Name, Title

Printed Name, Title

Address

Address

Phone

Phone

Fax

Fax

E-Mail

E-Mail

Date

Date

**Submit this Intent to Contract within 10 Working Days of Notification of Apparent
Awardee**

MBE Attachment E

MBE WAIVER REQUEST

PROJECT NAME

SOLICITATION NO.

If, for any reason, the apparent successful bidder or offeror is unable to achieve the contract goal for each certified MBE classification specified as having a subcontract goal or the overall MBE contract goal, the bidder or offeror may request, in writing, a waiver to include the following:

1. Attach a detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs, including the work to be performed by each MBE classification if any MBE sub goal has been specified, in order to increase the likelihood of achieving the stated goal;
2. Attach a detailed statement of the efforts made to contact and negotiate with certified MBEs, and if appropriate, by certified MBE classification, including:
 - a. The names, addresses, dates, telephone numbers, MDOT MBE Certification No., and classification of certified MBEs contacted, and
 - b. A description of the information provided to certified MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;
3. As to each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, attach a detailed statement of the reasons for this conclusion;
4. If applicable, include an MBE Unavailability Form (Attachment F) for each unavailable MBE firm offered an opportunity to bid on the above project, include the reasons they are unavailable and, if possible, the MBE firm's signature.
5. Include Attachment C which is the record of the apparent successful bidder's or offeror's compliance with the outreach.
6. If the request for a waiver is for a certain MBE classification with an overall MBE goal, the bidder or offeror shall demonstrate reasonable efforts to meet the overall MBE goal with other MBE classification or classifications.

Overall MBE goal ____% I request a waiver in the amount of ____% and commit to achieving a ____% overall MBE goal.

If applicable, sub goal of ____% women-owned businesses. I request a waiver in the amount of ____% and commit to achieving a ____% women-owned MBE goal.

If applicable, sub goal of ____% African American-owned businesses. I request a waiver in the amount of ____% and commit to achieving a ____% African American-owned MBE goal.

Bidder/Offeror Firm Name

Signature of Authorized Representative

Date

Printed Name, Title

If Applicable, Submit this MBE Waiver Request within 10 Working Days of Notification of Apparent Awardee

MBE UNAVAILABILITY FORM

PRIME CONTRACTOR _____	
PROJECT NAME _____	SOLICITATION NO. _____
CONTACTED CERTIFIED MINORITY BUSINESS	
MBE FIRM _____	MDOT MBE NO. _____
SEEKING TO OBTAIN A BID FOR	
WORK/SERVICES NEEDED _____	NAICS OR SIC CODES _____
SAID MBE FIRM, TO THE BEST OF MY KNOWLEDGE AND BELIEF, IS UNAVAILABLE FOR WORK/SERVICES IN RELATION TO THE ABOVE PROJECT, OR IS UNABLE TO PREPARE A BID FOR THE FOLLOWING REASON(S):	
REASON(S) _____	MBE FIRM NAME _____
REASON(S) _____	IF POSSIBLE, SIGNATURE OF MBE FIRM AUTHORIZED REPRESENTATIVE _____
	PRINTED NAME & TITLE _____
	DATE _____
I HEREBY CERTIFY THAT THE ABOVE MINORITY BUSINESS ENTERPRISE WAS OFFERED AN OPPORTUNITY TO BID ON THE ABOVE PROJECT BY THE ABOVE PRIME CONTRACTOR. THIS STATEMENT IS A TRUE ACCOUNT OF WHY THE ABOVE MBE FIRM DID NOT SUBMIT A BID ON THE ABOVE PROJECT	
PRIME CONTRACTOR FIRM NAME _____	
SIGNATURE OF AUTHORIZED REPRESENTATIVE _____	DATE _____
PRINTED NAME & TITLE _____	

If Applicable, Submit this Unavailability Form with any MBE Waiver Request, for Each MBE that is Not Available to Perform, within 10 Working Days of Notification of Apparent Awardee

Section L - Evaluation Factors for Award

A. EVALUATION COMMITTEES

The Procurement Officer shall establish separate technical and financial evaluation committees to review and rate the proposals. The financial evaluation committee may be composed of the Procurement Officer and any other individuals appointed by the Procurement Officer. The technical evaluation committee shall be composed of other individuals appointed by the Procurement Officer.

B. ACCEPTABILITY OF PROPOSALS:

The Procurement Officer shall determine which contractors have met the basic requirements of the RFP. Failure to comply with any mandatory requirement will normally disqualify a contractor's proposal. The Procurement Officer shall have the sole authority to determine whether any deviation from the requirements of this RFP is substantial in nature. The Procurement Officer may waive or permit to be cured minor irregularities or minor informalities in proposals that are immaterial or inconsequential in nature, whenever it is determined to be in the University's best interest. In addition, the Procurement Officer may reject in whole or in part any and all proposals if such is in the University's interest, and may reject proposals that are outside the competitive range financially, without performing a technical evaluation. The University may accept other than the lowest priced offer. The Procurement Officer may conduct discussions with contractors in any manner deemed necessary to best serve the interests of the University. The Procurement Officer may limit the competitive range to firms highly rated technically by the University for purposes of efficiency. The University reserves the right to make an award to more than one contractor or to split an award among contractors.

C. PHASE I - QUALIFICATION EVALUATIONS:

A transmittal letter must accompany the Qualification submittal. 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 Contractor to the services and requirements as stated in this RFP. Only one transmittal letter is needed and it does not need to be bound with the technical proposal.

The Qualification Evaluation Committee shall conduct its evaluation of the technical and financial merit of the Contractor in accordance with the requirements and specifications of the solicitation. The evaluation committee will create a short list based on the technical ranking determination based on the criteria outlined below in decreasing order of importance. (See Section A-2, M for detailed submittal requirements.)

1. Financial Status
2. Past Performance
3. Prior Experience
4. References

D. PHASE II – DETAILED TECHNICAL PROPOSAL EVALUATIONS

Only those Contractors selected in Phase I may submit proposal(s) for one, two or all three of the projects listed in Attachment 3. The Contractors must satisfy and explicitly respond to ALL the requirements and specifications, including a detailed explanation of how each item listed in the requirements and specifications is to be met for each proposal submitted. Each submittal shall contain the following sections and the contents as described below. The items listed below are in order of importance.

1. Detailed description of the system to be installed taking into consideration the proposed installation site, available solar resource, installation costs, aesthetics, structural limitations, roof condition and other relevant factors.
2. Detailed description of the technology selected for the specific project site and rationale. Equipment details if known.
3. Describe the monitoring systems that the Contractor will use to verify system performance. Describe the metering and verification methodology and frequency to determine PV energy production.
4. Provide a timeline showing important milestones to achieve operational status by April 1, 2011.
5. Description of documents/drawings to be submitted to Buyer after installation of project.
6. Renewable Energy Credits (REC) certification process planned and previous experience with obtaining an outside buyer for the RECs if not purchased by the Buyer.
7. Contractor is to demonstrate the ability to obtain all needed permits and licenses to operate and maintain such facility in compliance with all local, state and federal regulations.

The Committee may request oral presentations for this phase (II) of the solicitation. The oral presentation, if held, will be considered to be part of the Contractor's technical proposal. Eligible firms will be notified of time and date. If necessary, separate instructions regarding the conduct of oral presentations will be issued. The Committee may request additional technical assistance from any source. Industry standard references may be used during the evaluation process.

E. FINANCIAL EVALUATION:

The separate financial volume will be distributed to the financial evaluation committee. This information will then be used to establish a financial ranking. Information from the price proposal sheet(s) contained in Section B will be used to compute the total price.

F. BASIS OF AWARD:

Financial rankings of proposals will be combined with the corresponding technical ranking to determine a final ranking for each proposal. **Technical merit will have greater weight than price.** The more closely proposals are ranked technically, the more important price will become. The Procurement Officer will recommend contract award to the responsible contractor or contractors whose proposal is (are) determined to provide overall best value to the University, considering the evaluation factors in this RFP, and price.

Recommended contract awards, if any, resulting from this RFP, will be subject to appropriate State approvals.

G. NEGOTIATION:

The University has the right to accept the best proposal as submitted, without discussion or negotiation. Contractors should therefore not rely on having a chance to discuss, negotiate and/or adjust their proposals.

Contractor(s) who submit proposals initially judged by the Procurement Officer to be reasonably susceptible of being selected for award may be asked to discuss their proposals with the University to facilitate arrival at a contract most advantageous to the University. If the Procurement Officer determines that discussion is in the best interest of the University, the Procurement Officer will advise contractors in the competitive range to submit a best and final offer for consideration after discussions are held.

However, discussions may not be conducted if the Procurement Officer determines either that discussions are not in the best interests of the University or that discussions need not be conducted: (a) with respect to prices that are fixed by law or regulation, although consideration shall be given to competitive terms and conditions; (b) because the time of delivery or performance does not permit discussions; or (c) because it can be demonstrated clearly from the existence of adequate competition or accurate prior price experience with the particular item that acceptance of an initial offer without negotiation would result in a fair and reasonable price.