

BRCPC

Baltimore Regional Cooperative Purchasing Committee

Visit our web site at <http://baltometro.org>

**REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT**

REVISED Due Date: 05/03/11, Time: 2:00 PM
AMENDMENT NO. 01
DATED: 04/25/11

Direct all questions to the lead agency:

Stephen P. Myer, Senior Buyer
Phone: (410) 887-3884
Email: smyer@baltimorecountymd.gov
BALTIMORE COUNTY, MARYLAND
Office of Budget and Finance
Purchasing Division
400 Washington Avenue, Room 148
Towson, Maryland 21204-4665

Amendments to solicitations often occur prior to bid opening and sometimes within as little as 48 hours prior to bid opening. It is the potential vendor's responsibility to frequently visit the Purchasing web site to obtain amendments once they have downloaded a solicitation.

All original and duplicate bids and other attachments, related documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

BIDDER CHECKLIST

- Have you signed your bid?
- Have you signed the Procurement Affidavit?
- Have you filled out all applicable forms?
- Have you returned the original? (and required duplicate copies when required?)
- Have you signed and returned amendments?
- Have you included the bid bond, if required?

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT**

AMENDMENT NO. 01

1. The bid opening date and time are changed to **Tuesday, May 3, 2011 at 2:00 p.m.**
2. The following firms attended the pre-proposal conference on April 12, 2011:

SAIC
Mondre Energy, Inc.
Avalon Energy Services
Blue Heron Environmental Services
EnerNOC
Any Ty Me Solutions
Think Box Group
3. The current contractor for energy consulting services is EnerNOC, Inc. The contract prices are as follows:

1.	Energy Consulting Services, BRCPC Electricity Accounts	\$15,066.00 per month
2.	Energy Consulting Services, BRCPC Natural Gas Accounts	\$4,675.00 per month

4. Attached to this solicitation amendment are the following documents:

MBE/WBE Participation Summary
Executive Order of June 4, 2009
Form A
Form B
Form C

Please refer to Section 8.4.1 on page 26. These forms were omitted from the original bid solicitation in error.

5. On page 25, change the date under Section 4.3 to May 3, 2011.
6. The actual usage for both electricity and natural gas for BRCPC for FY2010 is as follows:

Electricity:	1,363,029 MWh,	\$125,119,239.00
Natural Gas DRS Pool:	1,431,446 DTh,	\$12,453,158.00
Natural Gas Daily Metered:	654,129 DTh,	\$5,906,421.00

7. On page 34, under Paragraph 3.2 of the Sample Contract, change the number of renewal years to "nine (9)."

8. The following questions were asked by prospective offerors:

Question 1: Is the current contractor eligible to compete for this next contract?

Answer 1: Yes.

Question 2: What is the reason that the BRCPC group is issuing the RFP at the current time?

Answer 2: The current contract expires in November, 2011.

Question 3: Section 2.3.6 requires that the contractor attend all meetings as requested by the BRCPC entities? Historically, how many meetings have been requested per year?

Answer 3: At least twelve (12) for the monthly Energy Board meetings. There are numerous other requests by either the BRCPC group or the individual BRCPC jurisdictions during each contract year.

Question 4: Is a local office (in Baltimore or in Maryland) a requirement or strongly favorable feature to bid on this RFP?

Answer 4: This is not a requirement but due to the need to be available for local meetings, this is a practical recommendation for the successful offeror.

Question 5: Is there an MBE and/or a WBE requirement and if so, what is the % requirement? Will a respondent be penalized if they don't use an MBE or WBE as part of their proposal?

Answer 5: There is no MBE/WBE subcontractor participation requirement for this contract, however, those offerors who can achieve MBE/WBE subcontractor participation will score higher for that evaluation criteria (see Section 8.4.1 on page 26).

Question 6: Please provide an explanation and an example in Section 15.3 on Page 28 so that this section can be better understood. Does this Section 15.3 relate to the same new entity as Section 13.1 on Page 27 or are they referencing different situations? Section 15.3 references Section 17.4. What page is Section 17.4 found in this bid solicitation or do you mean Section 16.4?

Answer 6: Any jurisdiction that joins the BRCPC group for either electricity procurements or natural gas procurements pays an initiation fee at the end of the first year of \$25,000.00. The Contractor invoices the new entity for the fee and then credits all of the existing BRCPC member jurisdictions collectively \$25,000.00 on their next invoice. Each BRCPC member jurisdiction is invoiced for the monthly fees in proportion to their share of the energy load. The initiation fee credit will be credited to each existing member in the same fashion. Also, the addition of new member jurisdictions will change the load share and the proportional monthly fee.

Question 7: Are the required proposal forms and affidavits available in editable electronic format?

Answer 7: Only PDF format.

Question 8: Would BRCPC be willing to consider putting a cap and floor on the annual number of hours delivered by the winning bidder in order to limit the risk premium associated with providing unlimited hours and service as referenced in Section 15.1 of the RFP?

Answer 8: No.

Question 9: In the price proposal (Price Sheet Page 1 of 1), are bidder's to include a price per unit for each jurisdiction separately or one monthly price for all participating jurisdictions and accounts for each commodity in aggregate? As an example, if we were to bid \$1.00 for Baltimore County Government for electricity per month would we list \$1 in the Price Proposal or \$23 which corresponds to all 23 participating jurisdictions for electricity?

Answer 9: One monthly price for all participating jurisdictions.

- Question 10: Section 7.3 (Deliveries) specifies that each participating jurisdiction reserves the right to levy a per diem charge to the successful bidder for each day the goods or services are not delivered in accordance with the delivery schedule. Please provide examples or boundaries as to how this levy has been implemented in similar projects.
- Answer 10: This requirement refers to recovering actual damages if the Contractor fails to perform. To date, this requirement has never had to be exercised with the current Contractor.
- Question 11: According to Section 12.1 (Termination), each participating jurisdiction may terminate its contract upon giving at least thirty (30) days written notice. Is there a maximum threshold of how many jurisdictions may opt out? The loss of participating members may increase the cost of administering the program for remaining participants. An example would be the cost of exiting from a specific supply or hedge agreement. Would these costs be considered as "reasonable" under the terms described in 12.1?
- Answer 11: There is no maximum threshold for participating jurisdictions terminating the contract for convenience, however, if many jurisdictions wished to terminate for convenience, then most likely the BRCPC group in its entirety would be terminating for convenience because it no longer needs these services. Reasonable costs do not apply to hedge purchases under this contract. They would only apply to the transactional energy contracts.
- Question 12: There are 3,750 accounts as part of the BRCPC purchasing consortium. How will the reporting and strategy development be developed? On the aggregate (for the whole BRCPC consortium) or will there be more discrete reporting requirements. This question applies to the type of analysis discussed in 2.3 where it asks for "... all necessary market analysis..."
- Answer 12: Energy procurement strategies are developed for the BRCPC group as a whole. The BRCPC group reviews and approves all strategies.
- Question 13: Will each member (or group of members) of the BRCPC have a single point of contact for acceptance criteria, or will each member have that independent authority?
- Answer 13: There is a single point of authority for approval of hedge purchases based on the Contractor's recommendation. All procurement strategies and policies are recommended by the Contractor and voted and approved by each BRCPC representative on the Energy Board and then the majority of the BRCPC group membership.
- Question 14: Can BRCPC share their goals regarding hedging strategies (50/50 hedge, 70/30 hedge, etc) and any budget numbers available associated with their current contract?
- Answer 14: Hedge strategies are as follows:
Electricity On Peak: 80%
Natural Gas Commodity and Basis: 90%
- Question 15: Can BRCPC share with what type of blocks they purchased in the past and how much they have been paying on average in \$/kWh over the past year?
- Answer 15: The last three (3) hedge purchases for electricity were for 25MW each, round the clock, at the Western Hub for \$44.40 MWh, \$46.00 MWh, and \$41.85 MWh. The last natural gas commodity hedge purchases were made in February for the following weighted average prices:
38 contracts for both pools at \$6.535 Dth
31 contracts for both pools at \$6.056 Dth
40 contracts for both pools at \$5.634 Dth

9. All other terms and conditions remain the same.

BALTIMORE COUNTY, MARYLAND MBE/WBE PARTICIPATION SUMMARY

Executive Order: Minority business enterprises and women business enterprises (MBE/WBE) shall have the maximum opportunity to participate in the performance of contracts financed in whole, or in certain circumstances, in part with County funds. Accordingly, on June 4, 2009, the County Executive adopted the attached Executive Order addressing MBE/WBE participation in County contracts.

Each Contract: The County shall establish a minimum MBE/WBE participation amount for each contract, as applicable.

Bidder Responsibility: The bidder shall ensure that MBE/WBE participation occurs in accordance with the contract requirements and the County Executive's Executive Order. All bidders shall ensure that MBE/WBE have the maximum opportunity to compete for and perform County contracts, as applicable. Baltimore County, Maryland, and/or its bidders and contractors shall not discriminate on the basis of race, color, national origin, disability or sex in the award and performance of any County contract.

APPROVED MBE/WBE LISTINGS

Published compilations of approved and certified MBE/WBE, contractors, subcontractors, material suppliers, etc. include:

1. BALTIMORE COUNTY MINORITY AND WOMEN BUSINESS ENTERPRISE DIRECTORY (PRISM):
<http://www.baltimorecountymd.gov/Agencies/fairpractices/minoritybusiness/directory.html>
2. DIRECTORY OF MINORITY BUSINESS ENTERPRISE (MDOT):
http://mbe.mdot.state.md.us/directory/search_select.asp
3. MINORITY BUSINESS DIRECTORY OF THE CITY OF BALTIMORE:
<http://cityservices.baltimorecity.gov/mwboo/>

BIDDER'S ACTIONS

Seeking Commitments: The bidder will seek commitments by subcontract or otherwise from MBE/WBE for supplies and/or services, any combined value of which equals or exceeds the required percentage of MBE/WBE participation for the County contract.

Expenditures for Materials and Supplies: A bidder may count toward its MBE/WBE contract requirements, all expenditures for materials and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBE/WBE assumes the actual and contractual responsibility for the provision of the materials and supplies.

Information to be Supplied: All bidders shall submit the following information to the County at the time of bid submission:

1. The name of an employee designated as the bidder's liaison to the County's Office for Fair Practices.
2. The following forms shall be completed and submitted
 - Certified MBE/WBE Utilization and Fair Solicitation Affidavit (**Form A**): from among those names appearing in the Approved MBE/WBE Listings (excepting Federal Highway Administration projects, which exclusively require MBE/WBE approved and certified by the Maryland Department of Transportation Certification Committee);
 - A MBE/WBE Participation (**Form B**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.
 - A MBE/WBE Disclosure and Participation Statement (**Form C**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.

- If applicable, MBE/WBE Subcontractor Unavailable Certificate (**Form D**) completed and signed by the prime contractor and MBE/WBE for each MBE/WBE listed on the Form.
 - If applicable, MBE/WBE Outreach Efforts - Compliance Statement (**Form E**) completed and signed by the Bidder.
 -
3. For DPW contracts, if the bidder intends to fulfill the MBE/WBE requirements by use of a joint venture, he/she must submit a Joint Venture Disclosure Affidavit (**Form D-EEO-006-A** and **B** showing the extent of MBE/WBE participation. If a bidder intends to use a MBE/WBE joint venture as a subcontractor to meet its MBE/WBE requirements, the affidavit must be submitted through the bidder by the proposed subcontractors and signed by all parties.
 4. If the bidder's proposed MBE/WBE participation does not meet the MBE/WBE contract requirements, information sufficient to demonstrate that the bidder has made every effort to meet the requirements must be submitted. (See DETERMINATION OF BID RESPONSIVENESS hereafter)

RECORDS AND REPORTS

Records to be Kept: The bidder must keep such records as are necessary to determine compliance with its MBE/WBE utilization requirements:

1. The MBE/WBE and non-minority contractors, type of work being performed, actual values of work and services.
2. Documentation of all correspondence, contacts, telephone calls, etc., to obtain MBE/WBE services for the contract.
3. All prime contractors and MBE/WBE sub-contractors are required to report monthly to the County through an online system called PRISM. If the contractor cannot submit his/her report on time, he/she will notify the County MBE/WBE office and request additional time to submit the report. Failure of the contractor to report in a timely manner may result in a finding of noncompliance. The County in its sole discretion and/or upon written request may require additional reports regarding MBE/WBE.

Retaining Records: All MBE/WBE records must be retained for 3 years following the expiration or any earlier termination of the contract and shall be available for inspection and photocopying by the County.

Investigation and Notification: Whenever the County believes the bidder, contractor, or any subcontractor may not be operating in compliance with the MBE/WBE requirements, the County may, in its sole discretion, conduct an investigation. If the County finds the bidder, contractor, or any subcontractor is not in compliance with the MBE/WBE requirements, the County may exercise any and all rights and remedies available to the County, under the contract, at law or equity, as deemed applicable and appropriate by the County in its sole discretion.

DETERMINATION OF BID RESPONSIVENESS

Request for Deviation: If the bidder is unable to procure from MBE/WBE's (by subcontract or otherwise), supplies and services, any combined value of which equals the required percentage of the total value of the contract, the bidder shall request, in writing, a deviation or waiver of the contract requirements. To obtain such a waiver, the bidder must submit the following information at the time bids are due:

The request for waiver request shall include (1) a signed unavailability statement (Form D) executed by all MBEs and WBEs that the bidder solicited for participation and (2) Outreach Efforts/Compliance Statement (Form E) that demonstrates the bidder's good faith efforts to comply with the contract requirements, including copies of solicitation documentation to all potential subcontractors:

Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder contacted each MBE/WBE; and

Telephone logs containing names, addresses, dates, telephone numbers, work to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.

Bid Rejection/Liquidated Damages/Contract Breach: For Purchasing contracts, the apparent low bidder's failure to provide a responsive MBE/WBE Plan as required by the solicitation may result in the bidder being deemed non-responsive and the County's rejection of the bid. FOR DPW CONTRACTS, (a) THE SOLICITATION, INCLUDING BUT NOT LIMITED TO THIS MBE/WBE PARTICIPATION SUMMARY AND ALL RELATED COUNTY MBE/WBE DOCUMENTS, AND (b) THE BID RESPONSE SHALL COLLECTIVELY OVERRIDE, CONTROL AND GOVERN OVER Section GP 7.29 of the February 2000 Baltimore County Department of Public Works' Standard Specifications for Construction and Materials. For DPW contracts, the apparent low bidder's failure to provide a responsive MBE/WBE Plan in the bidder's response as required by (a) described above, may result in the Director of the Department of Public Works' determination that the bid is non-responsive and recommendation to reject the bid as non-responsive despite the bidder being the apparent low bidder. For DPW contracts, if the County awarded the contract to the apparent low bidder who provided a responsive MBE/WBE Plan, but, if after said award and before execution of Contract Documents, the apparent low bidder fails to comply with the MBE/WBE Plan as required in (a) and (b) above, such failure may result in the Director of the Department of Public Works' recommendation to annul the award and forfeiture of the bidder's Proposal Guaranty to the County, not as a penalty, but as liquidated damages sustained. In such case, the County may proceed as it determines to be in its best interest, including but not limited to, the Notice of Award may be made to the next lowest responsive and responsible bidder or the work may be re-advertised.

After execution of each and any applicable County contract, in the event a contractor becomes aware it may or will fail to fulfill the applicable MBE/WBE requirements and/or may or will deviate from the contractor's bid response/contract terms, the contractor shall promptly advise the County of this in writing. Thereafter, the County will determine what action or remedy, if any, is appropriate on a case-by-case, contract by contract, basis. For example, such contractor failure may result in (i) a breach for which the County determines it is appropriate to declare a contract default and thereafter take further action and/or remedy as deemed appropriate by the County in its sole discretion, or (ii) a contract breach upon which the County may elect take no further action if deemed appropriate by the County in its sole discretion, or (iii) if mutually agreeable to the County and the contractor, such revision shall be documented via a contract amendment, executed by legally authorized representatives of the County and the contractor as described below in "Approval Required for Changes", or (iv) other actions or remedies as deemed appropriate by the County. Each action and/or remedy described above is at the sole discretion of the County.

Cooperation in Reviews: The bidder will cooperate with the County in any reviews of the contractor's procedures and practices with respect to MBE or WBE firms, which the County may from time to time conduct in its sole discretion.

Approval Required for Changes: Any and all changes to the contractor's use of MBE/WBE subcontractors during the contract term must be mutually agreeable to the County and the contractor and shall be documented via a contract amendment, executed by legally authorized representatives of the County and the contractor.

Other: If the documents used to determine the contractor's efforts, achievement of, and/or the status of an MBE/WBE requirement or fulfillment thereof contain false, misleading or misrepresenting information, the contractor may be declared in breach of the contract and/or the County may take any and all actions and/or remedies available to the County under the contract, at law, or in equity. If an MBE/WBE is disqualified by any public entity, including but not limited to, Baltimore City, the State or MDOT, at any time after award or during the term of the contract, the County may, in its sole discretion, take any action or no action, as deemed appropriate by the County, including but not limited to, review of each situation on a case-by-case basis, require the prime contractor to promptly submit for County approval, the contractor's plans for fulfilling the required MBE/WBE participation under the contract, and/or request such detail and additional information as the County, in its discretion deems appropriate.



EXECUTIVE ORDER

USE OF MINORITY BUSINESS ENTERPRISES AND WOMEN'S BUSINESS ENTERPRISES IN COUNTY CONTRACTS

WHEREAS, Baltimore County, Maryland recognizes the important contributions made by Minority Business Enterprises and Women's Business Enterprises to the overall economic health of the region; and

WHEREAS, it is the goal of this Administration to provide maximum opportunities for Minority Business Enterprises and Women's Business Enterprises to participate in all phases of procurement in the county, including construction, purchases of goods and services, architectural and engineering agreements, consultant contracts and other professional service agreements;

NOW, THEREFORE, it is this 4th day of June, 2009, by the County Executive of Baltimore County, Maryland, ordered that the March 5, 2004 Executive Order, Utilization of Minority Business Enterprises and Women's Business Enterprises in County Contracts, is hereby repealed and replaced by the following:

SECTION 1. DEFINITIONS.

In this Executive Order, the following words have the meanings indicated:

(A) (1) "Discretionary dollars" means dollars spent in county procurements from county capital funds and county operating funds.

(2)(I) "Discretionary dollars" does not include dollars spent on procurements or classes of procurements for which the county is not able to control or influence the utilization of MBE or WBE firms.

(II) These procurements are likely to include or involve:

- (a) other governmental or quasi-governmental agencies;
- (b) utilities;
- (c) proprietary items;
- (d) emergency procurements; and
- (e) operating grants to arts entities.

(B) "Minority Business Enterprise" or "MBE" means a business enterprise that is owned, operated and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American) who have at least 51% ownership and in which the minority group members have operational and managerial control, interest in capital, and earnings commensurate with their percentage of ownership.

(C) "Women's Business Enterprise" or "WBE" means a business enterprise that is owned, operated, and controlled by one or more women who have at least 51% ownership and in which the women have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

(D) "Waiver" means an adjustment to the MBE/WBE goals established by the Procurement Review Group for a solicitation that may be requested by a bidder at the time of bid submission.

SECTION 2. MINORITY AND WOMEN'S BUSINESS ENTERPRISE GOALS.

(A) An overall goal of 15% of the cumulative total of all discretionary dollars spent in a fiscal year of county procurements is to be awarded to and/or performed by MBE and WBE firms.

(B) All county offices and departments shall make good faith efforts to equitably use the services of MBE and WBE firms.

(C) The Office of Fair Practices and Community Affairs (hereinafter "Office of Fair Practices") shall submit to the County Executive an annual written report on the efforts made in accordance with this section.

(D) All contracts or other agreements between Baltimore County and other governmental agencies, quasi-governmental agencies, developers, or any other parties, involving the provision of discretionary dollars from or through the county for the purpose of contracting with such entities to acquire and build, renovate, rehabilitate, demolish or otherwise perform a public works function shall include provisions regarding participation by MBE firms and WBE firms consistent with this Executive Order.

SECTION 3. PROCUREMENT REVIEW GROUP

(A)(1) There is a Procurement Review Group that, at a minimum, shall consist of at least one representative from:

- (I) The Office of Budget and Finance;
- (II) The Department of Public Works; and
- (III) The Office of Fair Practices.

(2) The Chairman of the Procurement Review Group may request the presence and participation (without voting rights) of representatives from other agencies.

(B) The representative from the Office of Fair Practices shall serve as the Chairman of the Procurement Review Group.

(C) (1) The Procurement Review Group shall review bid solicitations involving discretionary dollars to determine whether opportunities exist for MBE or WBE participation or both MBE and WBE participation.

(2) The Procurement Review Group may make recommendations for dividing total requirements of a solicitation into smaller contracts or shorter terms to allow maximum MBE or WBE participation or both MBE and WBE participation.

(3) (I) The Procurement Review Group may recommend that the minimum MBE or WBE participation or both MBE and WBE participation in an individual procurement or class of procurements be more or less than the 15% overall goal established in Section 2, as appropriate.

(II) Any recommendation that the minimum MBE or WBE participation or both MBE and WBE participation in an individual procurement or class of procurements be more or less than the 15% goal established in Section 2 shall be reasonable and shall reflect the number of willing and able firms available to perform the items of work to be subcontracted.

(D) (1) The Procurement Review Group may adopt rules of procedure for the conduct of its business.

(2) The rules may include:

(I) rules and standards for evaluating and determining MBE and WBE goals for solicitations;

(II) rules for evaluating requests for waivers; and

(III) refinements to the definition of "discretionary dollars."

(E) The Procurement Review Group shall meet regularly as determined by the Chairman.

SECTION 4. SOLICITATIONS - OPPORTUNITIES.

In accordance with the recommendations of the Procurement Review Group, the Office of Budget and Finance and the Department of Public Works shall:

(1) To the extent practicable and consistent with other provisions of this Executive Order, take the steps outlined in this Section to ensure that MBE firms and WBE firms have maximum opportunity to participate on county contracts;

(2) Use best practices (which may include, but not be limited to, use of the county website, advertisement in newspapers, and other media outlets) to notify MBE and WBE firms of bid solicitations in accordance with Section 6 (Formal Bid Procedure) of the Purchasing Manual;

(3) Inform all prospective bidders of the county's policy concerning MBE and WBE participation during the solicitation phase of the bid process; and

(4) To the extent practicable, divide total requirements of a solicitation into smaller contracts or shorter terms to allow maximum MBE and WBE participation.

SECTION 5. AGENCY RESPONSIBILITIES.

(A) It shall be the responsibility of the Office of Fair Practices to ensure that county offices and departments adhere to the procedures and provisions of this Executive Order.

(B) The Office of Fair Practices shall:

(1) Post a list of certified MBE and WBE subcontractors on the county website;

(2) On request, provide a list of certified MBE and WBE subcontractors to prospective bidders; and

(3) Assume primary responsibility for reviewing, on a continuing basis, all aspects of the use of Minority Business Enterprises and Women's Business Enterprises in county contracts to assure that the purpose of this Executive Order is being achieved.

(C) The Department of Public Works shall:

(1) Post lists of pre-qualified consultants and contractors on the county website; and

(2) On request, provide a list of pre-qualified consultants and/or contractors to MBE and WBE subcontractors.

(D) The Office of Fair Practices and the Office of Budget and Finance shall jointly:

(1) Assist county offices and departments in identifying qualified certified MBE and WBE firms ready and able to provide services, equipment, materials and supplies to the county;

(2) If applicable, attend pre-bid meetings and bid openings to provide information to prospective bidders about the county's policy with respect to MBE and WBE participation;

(3) Review MBE and WBE participation plans submitted by general contractors to determine whether goals are being achieved;

(4) Provide outreach services to MBE and WBE firms by working closely with the Department of Public Works; and

(5) Provide periodic reports to the County Executive and County Council.

SECTION 6. BID REQUIREMENTS.

(A) (1) All bidders shall submit a list of all subcontractors contacted in preparation of their bid package or proposal.

(2) The list shall include the service to be performed, bid amount, and the race/ethnicity/gender of the business owner(s).

(B) (1) All bidders shall submit a list of all subcontractors to be used on a county contract in the bid package.

(2) This list shall include all subcontractors (both MBE/WBE and non-MBE/WBE) used, the service to be performed, the total amount to be paid, and the race/ethnicity/gender of the owner.

(C) Bidders (including certified MBE/WBE prime consultants and general contractors) shall make a good faith effort to meet the goals established in a bid for a project.

(D) Subject to subsection (E) of this Section, a bidder shall be deemed non-responsive if:

(1) The bidder does not comply with Subsections (A), (B), and (C) of this Section; or

(2) The bidder does not meet the goal established by the Procurement Review Group.

(E) (1) If a bidder is unable to comply with the goals established in a bid for a project, the bidder may submit a request for a waiver at the time of bid submission.

(2) The request for waiver shall include documentation that demonstrates the bidder's good faith efforts to comply with the goals, including:

(I) Signed unavailability statements from all MBEs and WBEs that the bidder solicited for participation; and

(II) Copies of solicitation documentation to all potential subcontractors, including:

(a) Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder contacted each; and

(b) Telephone logs containing names, addresses, dates, telephone numbers, work to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.

SECTION 7. CERTIFICATION.

In calculating the county's success in achieving the goals established in this Executive Order, the county may include the following:

(1) On contracts that have MBE/WBE subcontracting requirements, only the participation by subcontractors certified by the Maryland Department of Transportation or Baltimore City's Minority Business Office Certification shall be counted;

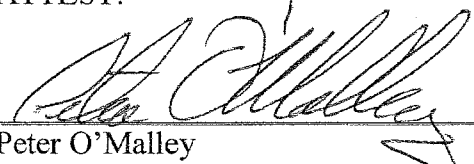
(2) For contracts by the Office of Budget and Finance, contracts with non-certified prime contractors who certify their status as an MBE/WBE under oath or Prime contractors certified by any jurisdiction as an MBE/WBE shall be counted toward the MBE/WBE participation; and

(3) For Public Works contracts, only prime consultants and general contractors certified by Maryland Department of Transportation or Baltimore City's Minority Business Office Certification programs shall be counted toward the MBE/WBE participation.

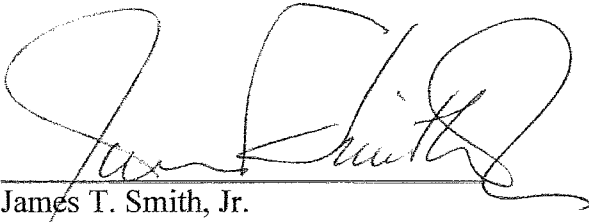
SECTION 8. EFFECTIVE DATE.

This Executive Order shall take effect on the day it is signed by the County Executive and shall continue in effect until changed by another Executive Order.

ATTEST:




Peter O'Malley
Chief of Staff to the County Executive



James T. Smith, Jr.
County Executive

Reviewed for legal form and sufficiency
and approved for execution



Office of the County Attorney Date 6-4-09

PROSPECTIVE BIDDERS

If the solicitation includes a MBE/WBE **subcontracting** goal, you **MUST** demonstrate “**Good Faith**” effort either by:

1. If you meet the goal, complete and sign FORMS A, B and C. **NOTE: Form C MUST** be completed and signed by both the prime and the MBE/WBE subcontractor.

OR

2. If you are unable to meet any portion of the goal, you **MUST:**
 - a. Complete and sign FORM A indicating if you are requesting a full or a partial waiver
 - b. Complete and sign FORMS D and E **accompanied with the supporting documentation. NOTE: FORM D MUST** be completed and properly signed **by both** the Prime **AND the MBE/WBE subcontractor(s)** that were not available.

Reminder: This applies to ALL certified and non-certified firms serving as prime contractors.

BALTIMORE COUNTY, MARYLAND
Certified MBE/WBE Utilization and Fair Solicitation Affidavit
(FORM A)

**This document must be completed and submitted with Bid/Proposal to Baltimore County.*

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

* * * * *

I acknowledge the overall goal of _____% for certified MBE- and WBE-owned businesses.

or to be split as:

- _____% for certified MBE-owned businesses and
- _____% for certified WBE-owned businesses

I have made a good-faith effort to achieve this MBE/WBE requirement. If awarded the contract, I will comply with this MBE/WBE contract requirement and will continue to use my best efforts to increase MBE/WBE participation during the contract term.

PLEASE CHECK ONE BOX (EITHER 1, 2, OR 3)

NOTE: ANY INCONSISTENCY BETWEEN THIS FORM AND FORM B MBE/WBE PARTICIPATION MAY RENDER A BID NON-RESPONSIVE AND THE COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

1 Prime contractor has met the MBE/WBE contract requirements for this solicitation and contract. I submit the MBE/WBE Participation Form B and Form C, along with this Affidavit, which details how the prime contractor will achieve the contract requirements.

or

2 After having made a good-faith effort to achieve the MBE/WBE requirements, the prime contractor can only achieve partial success. I submit the MBE/WBE Participation Form B, Form C, Form D and Form E along with this Affidavit, which details how the prime contractor will partially achieve the contract requirements.

I request a partial waiver and will meet the following MBE/WBE participation goals:

- Partial waiver of MBE/WBE subcontract participation subgoals, if applicable:
 - _____% for certified MBE-owned businesses and
 - _____% for certified WBE-owned businesses.

or

3 After having made a good faith effort to achieve the MBE/WBE requirements for this contract, the prime contractor is unable to achieve the requirements and/or sub requirements for this contract. I submit the MBE/WBE Participation Form D and Form E, along with this Affidavit, which details the steps the prime contractor has taken in an attempt to achieve the contract requirements.

I request a full waiver.

BALTIMORE COUNTY, MARYLAND
Certified MBE/WBE Utilization and Fair Solicitation Affidavit
(FORM A)

IF YOU HAVE CHECKED BOX 2 OR 3, THE FOLLOWING IS APPLICABLE:

- 1) If a bidder is unable to comply with the goals established in a bid for a project, the bidder may submit a request for a waiver at the time of bid submission. However, occasions for granting waivers will be limited.
- 2) The request for waiver shall include documentation that demonstrates the bidder's good faith efforts to comply with the goals, including:
 - (I) Signed unavailability statements from all MBEs and WBEs that the bidder solicited for participation; and
 - (II) Copies of solicitation documentation to all potential subcontractors, including:
 - (a) Emails, letters, facsimile transmittals and confirmations containing plans, specifications, and anticipated time schedule for portions of the work to be performed and meeting notes and agendas clearly identifying the certified MBE or WBE classification and dates that the bidder contacted each; and
 - (b) Telephone logs containing names, addresses, dates, telephone numbers, work to be performed, anticipated time schedule and classification of certified MBEs and WBEs contacted.

As I have checked Box 2 or 3 of this Affidavit, I understand I must submit the following supporting documentation with the bid:

- *MBE/WBE Participation Schedule* (Form B)
- *MBE/WBE Disclosure and Participation Statement* (Form C)
- *MBE/WBE Subcontractors Unavailable Certificate* (Form D) (if applicable)
- *MBE/WBE Outreach Efforts – Compliance Statement* (Form E)
- Any other documentation in accordance with Section 6 (E) Bid Requirements of the attached Executive Order.

I acknowledge that the MBE/WBE subcontractors/suppliers listed on the *MBE/WBE Participation Schedule* (Form B) will be used to accomplish the percentage of MBE/WBE participation that the prime contractor shall achieve.

In the solicitation of subcontract quotations or offers, MBE/WBE subcontractors were provided the same information and amount of time to respond, as were non-MBE/WBE subcontractors.

The solicitation process was conducted in such a manner so as to not place MBE/WBE subcontractors at a competitive disadvantage to non-MBE/WBE subcontractors.

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

BALTIMORE COUNTY, MARYLAND
Certified MBE/WBE Utilization and Fair Solicitation Affidavit
(FORM A)

Bidder/Offeror Name

Affiant Signature

Address

Printed Name & Title

Address (continued)

Date

**BALTIMORE COUNTY, MARYLAND
MBE/WBE PARTICIPATION SCHEDULE
(FORM B)**

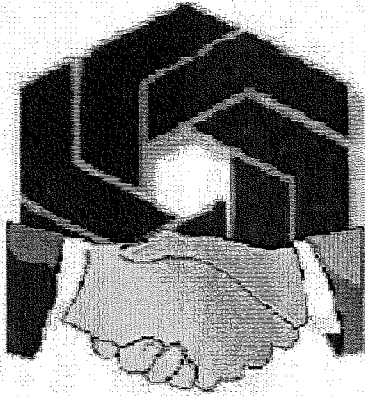
**This document must be completed and submitted with Bid/Proposal to Baltimore County.*

NOTE: If you do not complete and submit this form with your bid or offer to the County, the County may, in its sole discretion, deem your bid or offer NON-RESPONSIVE and accordingly the COUNTY WILL NOT CONSIDER YOU FOR CONTRACT AWARD.

PLEASE COMPLETE THE FOLLOWING INFORMATION FOR EACH MBE/WBE PARTICIPANT

Prime Contractor's Name	Prime Contractor's Address and Telephone Number
Project Name and Description	Project Location
	Base Bid \$ _____
1. MBE/WBE Firm Name	MBE/WBE Firm Address
MBE/WBE Firm Telephone Number _____ MBE/WBE Firm Fax Number _____ <input type="checkbox"/> MDOT Certification <input type="checkbox"/> Baltimore City Certification # _____	MBE/WBE Group Type <input type="checkbox"/> (African American) <input type="checkbox"/> (Women) <input type="checkbox"/> (Asian) <input type="checkbox"/> (Hispanic) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other)
Work to be Performed and Subcontract Dollar Amount	Percent of Total Contract
2. MBE/WBE Firm Name	MBE/WBE Firm Address
MBE/WBE Firm Telephone Number _____ MBE/WBE Firm Fax Number _____ <input type="checkbox"/> MDOT Certification <input type="checkbox"/> Baltimore City Certification # _____	MBE/WBE Group Type <input type="checkbox"/> (African American) <input type="checkbox"/> (Women) <input type="checkbox"/> (Asian) <input type="checkbox"/> (Hispanic) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other)
Work to be Performed and Subcontract Dollar Amount	Percent of Total Contract
3. MBE/WBE Firm Name	MBE/WBE Firm Address
MBE/WBE Firm Telephone Number _____ MBE/WBE Firm Fax Number _____ <input type="checkbox"/> MDOT Certification <input type="checkbox"/> Baltimore City Certification # _____	MBE/WBE Group Type <input type="checkbox"/> (African American) <input type="checkbox"/> (Women) <input type="checkbox"/> (Asian) <input type="checkbox"/> (Hispanic) <input type="checkbox"/> (American Indian) <input type="checkbox"/> (Other)
Work to be Performed and Subcontract Dollar Amount	Percent of Total Contract
MBE/WBE Total Dollar Amount	Total MBE/WBE Percent of Entire Contract
Form Prepared by: Name _____ Title _____ Date _____	Reviewed and Accepted by Minority Business Enterprise Officer Name _____ Title _____ Date _____

Total MBE Participation: _____ % \$ _____
 Total WBE Participation: _____ % \$ _____
 Total Participation: _____ % \$ _____



BRCPC

Baltimore Regional Cooperative Purchasing Committee

Visit our web site at <http://baltometro.org>

**REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT**

REVISED Due Date: 05/03/11, Time: 2:00 PM
AMENDMENT NO. 02
DATED: 04/27/11

Direct all questions to the lead agency:

Stephen P. Myer, Senior Buyer
Phone: (410) 887-3884
Email: smyer@baltimorecountymd.gov
BALTIMORE COUNTY, MARYLAND
Office of Budget and Finance
Purchasing Division
400 Washington Avenue, Room 148
Towson, Maryland 21204-4665

Amendments to solicitations often occur prior to bid opening and sometimes within as little as 48 hours prior to bid opening. It is the potential vendor's responsibility to frequently visit the Purchasing web site to obtain amendments once they have downloaded a solicitation.

All original and duplicate bids and other attachments, related documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

BIDDER CHECKLIST

- Have you signed your bid?
- Have you signed the Procurement Affidavit?
- Have you filled out all applicable forms?
- Have you returned the original? (and required duplicate copies when required?)
- Have you signed and returned amendments?
- Have you included the bid bond, if required?

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT**

AMENDMENT NO. 02

1. Replace the existing page 22 with the new attached Bid Labels page. As a reminder, the technical original proposal and copies must be packaged and labeled separately from the original price proposal and copies.
2. All other terms and conditions remain the same.

BID REPLY LABEL

*CUT ON THE DOTTED LINE AND SECURE
TO THE OUTSIDE OF YOUR RESPONSE
ENVELOPE OR CARTON.*

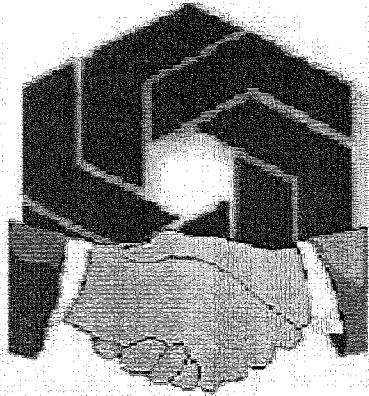
<hr/> NO. P-063 05/03/11, 2:00 PM ENERGY CONSULTING SERVICES, TERM CONTRACT
TO: BALTIMORE COUNTY, MARYLAND PURCHASING DIVISION 400 WASHINGTON AVE, ROOM 148 TOWSON, MARYLAND 21204-4665

BE SURE TO SEPARATE THE PRICE PROPOSALS FROM THE TECHNICAL PROPOSALS. PRICE AND TECHNICAL PROPOSALS MUST BE BOUND SEPARATELY SO THAT EVALUATORS CAN REVIEW THE TECHNICAL PROPOSALS WITHOUT KNOWLEDGE OF THE PRICE PROPOSALS.

PLEASE USE THE LABELS BELOW TO CLEARLY MARK THE OUTSIDE OF BOTH THE TECHNICAL PROPOSALS AND PRICE PROPOSALS WITHIN YOUR ENVELOPE OR CARTON.

TECHNICAL PROPOSAL

PRICE PROPOSAL



BRCPC

Baltimore Regional Cooperative Purchasing Committee

Visit our web site at <http://baltometro.org>

**REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT**

Due Date: 04/29/11, Time: 2:00 PM
Pre-Proposal Conference: 04/12/11, Time: 1:30 PM

Direct all questions to the lead agency:

Stephen P. Myer, Senior Buyer
Phone: (410) 887-3884
Email: smyer@baltimorecountymd.gov
BALTIMORE COUNTY, MARYLAND
Office of Budget and Finance
Purchasing Division
400 Washington Avenue, Room 148
Towson, Maryland 21204-4665

Amendments to solicitations often occur prior to bid opening and sometimes within as little as 48 hours prior to bid opening. It is the potential vendor's responsibility to frequently visit the Purchasing web site to obtain amendments once they have downloaded a solicitation.

All original and duplicate bids and other attachments, related documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

BIDDER CHECKLIST

- Have you signed your bid?
- Have you signed the Procurement Affidavit?
- Have you filled out all applicable forms?
- Have you returned the original? (and required duplicate copies when required?)
- Have you signed and returned amendments?
- Have you included the bid bond, if required?

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT**

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BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE (BRCPC)

GENERAL TERMS AND CONDITIONS FOR SOLICITATIONS

1. INSTRUCTIONS, FORMS AND SPECIFICATIONS

- 1.1 All bids are to be submitted on and in accordance with forms required by the lead jurisdiction, which are available at the office of the Purchasing Agent.
- 1.2 All bids must be clearly identified with the solicitation number, title of the solicitation and the due date and time.
- 1.3 Each bid shall be accompanied by an affidavit regarding price fixing, gratuities, bribery, and discriminatory employment practices. If the bidder is a business entity, a duly and legally authorized representative of the business entity shall execute the affidavit. The Purchasing Agent will provide the affidavit to bidders.
- 1.4 Bids must be typed or written and signed in ink, unless the solicitation is bid electronically, in which case an electronic signature is acceptable. Erasures or alterations must be initialed in ink, unless the solicitation is bid electronically, in which case electronic initials are acceptable. A duly and legally authorized representative of the business entity shall sign all bids in ink (or in the case of electronic solicitation, digitally). All bids shall be delivered sealed to the Purchasing Agent, no later than the time and date indicated herein. Bids received after the time or date indicated will not be considered.
- 1.5 Additional information or clarifications of any of the instructions or information contained herein may be obtained from the Purchasing Agent.
- 1.6 Any bidder who finds a discrepancy in or omission from the specifications, or who is in doubt as to their meaning or feels that the specifications are discriminatory, shall notify the Purchasing Agent in writing not less than 10 calendar days before the scheduled opening of bids. Discrepancies or exceptions taken do not obligate the Purchasing Agent to change or supplement the specifications. The Purchasing Agent will notify all bidders in writing, by addendum duly issued, of any interpretations of specifications or instructions that are made.
- 1.7 Unless a written discrepancy, change, supplement, or exception to the specifications is noted on the bid detailing nonconformance, any part number, or product number, etc. noted on the bid will be considered in full compliance with the specifications. Submission of a bid in response to this solicitation evidences the bidder's acceptance of the terms and conditions herein.
- 1.8 All official correspondence in regard to the specifications shall be directed to and/or will be issued in writing by the Purchasing Agent. Oral instructions or suggestions are not binding upon the Purchasing Agent or BRCPC.
- 1.9 The Purchasing Agent will notify bidders of any changes, additions or deletions to the specifications by written addenda posted on the lead agency's web site at www.baltimorecountymd.gov/purchasing. Addenda to solicitations are sometimes issued within as little as 48 hours prior to bid opening. It is each potential bidder's sole responsibility to frequently visit the web site to obtain all addenda.

2. BID DEPOSIT

- 2.1 A bid deposit may be required when indicated in the solicitation. Failure to submit the bid deposit with the bid, when required, will nullify the bid.
- 2.2 When required in the solicitation, a certified check, treasurer's check, U.S. Postal Money Order, or a bid bond must accompany each bid.
- 2.3 Bid deposits will be returned to each unsuccessful bidder upon the award of the solicitation, and to successful bidders upon its execution of the contracts with each participation jurisdiction and the meeting of bond requirements, if applicable.
- 2.4 Nonperformance by a successful bidder, failure to execute a contract with each participation jurisdiction, or failure to meet bond requirements within the time frame specified in the solicitation or award notification may result in the bid bond being forfeited as liquidated damages.

3. BASIS FOR AWARD OF CONTRACT

- 3.1 The Purchasing Agent shall award all contracts to the lowest responsible and responsive bidder(s) for competitive sealed bids and based on best value for competitive negotiations as determined in the sole discretion of the Purchasing Agent. Each participating jurisdiction will execute its own contract and issue its own purchase order for their contract. Each participating jurisdiction is responsible for determining that the method of solicitation complies with its procurement laws.
- 3.2 Any other consideration for the award will be stated in the solicitation.
- 3.3 Unless otherwise agreed in writing by the Purchasing Agent and the bidder(s) specified, all bids submitted shall be irrevocable for 120 calendar days following bid opening date, unless the bidder(s), upon request of the Purchasing Agent, agree to an extension. No bidder may withdraw its bid during that period.
- 3.4 When there is a conflict between the unit price or percentage and the extension, the unit price or percentage will prevail as the amount of the bid.
- 3.5 Bids shall be exclusive of all non-applicable Federal and Maryland state taxes. Tax exemption certificates will be furnished if required.
- 3.6 Each participating jurisdiction reserves the right to make payments via electronic funds transfers (EFT) or procurement cards for purchases for which those payment methods may be appropriate.

4. CASH DISCOUNT AND NET PAYMENTS

- 4.1 Cash discounts based on time of payment will not be considered in determining an award, but will be taken by each participating jurisdiction, if applicable, at time of payment.
- 4.2 Bids requiring payment within less than 30 days from the date of invoice will be rejected.

5. PERFORMANCE AND PAYMENT BONDS

- 5.1 The successful bidder may be required to give security or bond for the performance of each participating jurisdiction's contract as determined by the Purchasing Agent.

- 5.2 When bonds are required, a surety licensed to do business in the State of Maryland must issue the bonds for each participating jurisdiction.

6. RESERVATIONS

- 6.1 The Purchasing Agent reserves the right to reject any or all bids, in whole or in part, when in his/her reasoned and sole judgment, the public or BRCPC's interest will be served thereby.
- 6.2 The Purchasing Agent may waive formalities or technicalities in bids as the interest of the public or BRCPC and its participating jurisdictions may require, providing these differences do not violate the intent of the specifications, materially affect the operation for which the items are being purchased, or increase the price or estimated maintenance and repair cost.
- 6.3 Unless otherwise provided herein, each participating jurisdiction reserves the right to increase or decrease the quantities to be purchased at the prices bid. The quantity intended to be purchased and the period and/or percentage amount of any such reservation shall be stated in the solicitation and/or in any applicable participating jurisdiction's contract.
- 6.4 Unless otherwise provided herein, the Purchasing Agent reserves the right to make award(s) on a lump sum basis, individual item basis, or such combination as shall be in the best interest of the public and/or BRCPC.
- 6.5 Unless otherwise provided herein, the Purchasing Agent reserves the right to order goods or services from other sources without prejudice to the contract.

7. DELIVERIES

- 7.1 Bidders shall guarantee delivery in accordance with any delivery schedule as may be provided in the solicitation and/or in each participating jurisdiction's contract.
- 7.2 All deliveries shall be F.O.B. Destination and delivery costs and charges shall be included in the bid price.
- 7.3 Each participating jurisdiction reserves the right to levy a per diem charge to the successful bidder for each day the goods or services are not delivered in accordance with the delivery schedule. The per diem charge, identified in the solicitation and/or in each participating jurisdiction's contract, may be invoked at the discretion of the participating jurisdiction and said sum may be taken as liquidated damages and deducted from any compensation due to the successful bidder. Invoking the per diem charge as liquidated damages is not a waiver of the right to any other remedies or damages.
- 7.4 When practical, the successful bidder must package and ship all products in packaging and containers made of recycled, recyclable or biodegradable materials. Bidders are encouraged to eliminate packaging, or to use the minimum amount necessary for product protection, in order to minimize waste to the greatest extent practicable.

8. COMPETITION

- 8.1 The name of any manufacturer, trade name of manufacturer, or vendor catalog number mentioned in the specifications is for the purpose of designating a standard of quantity and type and for no other reason. Minimum specifications where included, are not established arbitrarily to limit competition or to exclude otherwise competitive bidders.
- 8.2 A bidder shall offer a price on only one unit. Even though two or more units may meet specifications, Bidders must determine which to offer. Submission by a bidder for more than

one unit shall be sufficient cause for rejection of that specific item in the Purchasing Agent's sole discretion.

- 8.3 Bids that show any omission, irregularity, alteration of forms, additions not called for, conditional or unconditional unresponsive bids, or bids obviously unbalanced may be rejected in the Purchasing Agent's sole discretion.
- 8.4 All bids must be accompanied by such descriptive literature as may be called for by the solicitation.
- 8.5 If goods to be provided or goods to be used by a successful bidder when providing a service contain any ingredients that could be hazardous or injurious to a person's health, a Material Safety Data Sheet (MSDS) must be provided to the Purchasing Agent. This applies also to any goods used by the Successful Bidder when providing a service to the BRCPC.

9. HOLD HARMLESS/INDEMNIFICATION

The successful bidder shall indemnify, defend, and save harmless each of the participating jurisdictions and their respective employees, agents and officials against or from all costs, fees (including reasonable attorneys' fees), liabilities expenses, damages, injury, and loss including (but not limited to) attorney's fees, which may be incurred or made against any of the participating jurisdictions, their respective employees, agents or officials, and resulting from any act or omission committed in the performance of the duties and obligations of the successful bidder under this solicitation and/or each participating jurisdiction's resulting contract or anyone under contract with the successful bidder to perform duties or obligations thereunder. The successful bidder shall allow each participating jurisdiction to participate in the defense of the participating jurisdiction, its employees, agents and officials, to the extent and as may be required by the participating jurisdiction, and the successful bidder shall cooperate with the applicable participating jurisdiction in all aspects in connection therewith.

10. INSURANCE

10.1 The successful bidder shall, at all times during the term of each participating jurisdiction's contract, maintain and keep in force such insurance as Workmen's Compensation, Liability, and Property Damage as will protect the successful bidder from claims under Workmen's Compensation Acts and also such insurance as will protect the successful bidder and the participating jurisdictions from any other claims for damages for person injury, including death, as well as from claims for damages to any property of each participating jurisdiction or of the public, which may arise from operations under this solicitation and each participating jurisdictions' contract, whether such operations are by the successful bidder or any subcontractor or any agent directly or indirectly employed by any of them.

10.2 Refer to the specifications for detailed insurance requirements.

11. DISPUTES

Prior to award, in case of disputes, the decision of the Purchasing Agent shall be final and binding. The Purchasing Agent may request, in writing, the recommendation of participating jurisdictions or other objective source. Subsequent to award of the solicitation, in case of disputes as to whether an item or service quoted or delivered meets specifications, the decision of the applicable participating jurisdiction shall be final and binding with respect to the participating jurisdiction's contract.

12. TERMINATION

12.1 Termination for Convenience: Any participating jurisdiction may terminate its contract, in whole or in part, upon giving at least thirty (30) days written notice to the successful bidder. The participating jurisdiction shall pay all reasonable costs incurred by the successful bidder up to the date of termination in connection with that participating jurisdiction's contract only. The successful bidder will not be reimbursed for any anticipatory profits, which have not been earned up to the date of termination by any participating jurisdiction or BRCPC. The BRCPC will be promptly notified in writing of any termination hereunder by the applicable participating jurisdiction.

12.2 Termination for Default: When the successful bidder has not performed or has unsatisfactorily performed under the contract of any participating jurisdiction, the participating jurisdiction may terminate its contract for default and the successful bidder is entitled to any reasonable costs incurred by the successful bidder up to the date of termination. The successful bidder will not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. The BRCPC will be promptly notified in writing of this termination by the applicable participating jurisdiction.

13. PATENT INFRINGEMENT

The successful bidder agrees to indemnify, protect, defend and save harmless each participating jurisdiction, its officers, agents, and employees with respect to any claim, action, cost (including, but not limited to, attorney's fees), or judgment for patent, copyright, or trademark infringement, or any other claim related to intellectual property or proprietary information arising out of purchase or use of goods or services or from any of the successful bidder's duties or obligations covered by the solicitation or any participating jurisdiction's contract. The successful bidder shall allow each participating jurisdiction to participate in the defense of the participating jurisdiction, its employees, agents and officials, to the extent and as may be required by the participating jurisdiction, and the successful bidder shall cooperate with the applicable participating jurisdiction in all aspects in connection therewith.

14. NON-ASSIGNMENT

A participating jurisdiction's contract resulting from this solicitation and the compensation, which may become due thereunder, are not assignable except with prior written approval of the applicable participating jurisdiction.

15. FACILITIES

The BRCPC and each participating jurisdiction reserves the right to inspect the bidder's facilities at no cost to the BRCPC or any participating jurisdiction at any time with prior notice.

16. AUTHORITY

Instructions, specifications, and proposals are issued, and all bids, quotations, orders, and purchases are made pursuant and subject to the enabling respective legislation of each of the participating jurisdictions. The successful bidder shall ensure compliance with the ethics provisions of the participating jurisdictions.

17. FAILURE TO RESPOND

Bidders who fail to respond three (3) times in succession to solicitations without adequate justification may be removed from the bidder's list.

18. AVAILABILITY OF FUNDS

BRCPC has no obligation (contractual, financial or otherwise) hereunder or for any participating jurisdiction's contract. The contractual obligation of each participating jurisdiction under its respective contract is contingent upon appropriation of funds by the governing body of the applicable jurisdiction from which payment shall be made.

19. GOVERNING LAW

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

19.2 The laws of Maryland shall govern the resolution of any issue arising in connection with each participating jurisdiction's contract, including, but not limited to, all questions on the validity of each such contract, the capacity of the parties to enter therein, any modification or amendment thereto, and the rights and obligations of the parties thereunder.

19.3 All bidders must be registered to do business in the State of Maryland in accordance with the Annotated Code of Maryland Corporations and Associations Sec. 2-102 Formation generally, Sec. 7-202 Registration to do interstate and foreign* business, and/or Sec. 7-203 Qualification to do intrastate. For information on registering or qualifying a corporation, LLC, LLP or LP call the Maryland Department of Assessments and Taxation (SDAT) at (410) 767-1340. Sole Proprietors and General Partnerships may call (410) 767-4991 or you may download the SDAT forms at: www.dat.state.md.us/sdatweb/sdatforms.html - entity or by calling at (410) 767-1340 or Toll Free (888) 246-5941. The successful bidder will be required to submit a Good Standing Certificate (also known as "Certificate of Status") issued by SDAT.

*"a corporation, association, or joint-stock company organized under the laws of the United States, another state of the United States, a territory, possession, or district of the United States, or a foreign country." Sec. 1-101 Annotated Code of Maryland Corporations and Associations.

20. NON-WAIVER

Any waiver of any breach of covenants herein contained to be kept and performed by the successful bidder shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent any participating jurisdiction from declaring a breach or default for any succeeding breach either of the same condition of covenant or otherwise. No failure or delay by any participating jurisdiction to insist upon the strict performance of any term, condition or covenant of its contract agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the participating jurisdiction from exercising any such right, power, or remedy at any later time or times.

21. INTEGRATION

This solicitation, bid response, and each subsequent participating jurisdiction's contract with the successful bidder contain the entire understanding between the successful bidder and each applicable participating jurisdiction. Each participating jurisdiction's contract shall only be amended if such amendment is in writing and executed by a legally authorized representative of the successful bidder

and the applicable participating jurisdiction. Any contract amendment of one participating jurisdiction shall not impact or affect any other participating jurisdiction's contract or BRCP.

22. SOCIO-ECONOMIC PROGRAMS

The participating jurisdictions have various socio-economic programs, which, if applicable, are detailed in the solicitation. Although there is no requirement that the bidder be a minority-owned, women-owned, disabled-owned business or small business, all under utilized businesses are encouraged to respond to this solicitation.

23. USE OF ILLEGAL IMMIGRANT LABOR

The use of illegal immigrant labor is in violation of the law and is strictly prohibited. Contractors and subcontractors must verify employment eligibility of workers in order to assure that they are not violating Federal/State/Local laws regarding illegal immigration.

24. PUBLIC INFORMATION

The participating jurisdictions operate under a public information law – Maryland Access to Public Records Act, State Government Article, Sections 10-611 through 10-628, of the Annotated Code of Maryland. Bids/proposals will be available for public inspection except to the extent that a bidder designates trade secrets or other proprietary data to be confidential. A bidder's designation of material as confidential will not necessarily be conclusive, and may be required to provide justification as to why such material should not be disclosed upon request.

GENERAL TERMS AND CONDITIONS APPLICABLE TO
STATE OF MARYLAND, BOARDS OF EDUCATION

1. TOBACCO PRODUCTS

The use of tobacco products is not permitted on school property. Referencing Code of Maryland Regulations 13A.02.04, the use of tobacco products is not permitted in or on property owned by the Board of Education or the political subdivisions.

2. CHILD SEX OFFENDER NOTIFICATION

2.1 Maryland law requires certain child sex offenders to register with the local law enforcement agency. One of the purposes of this law, found in Article 27§ 792, is to inform school systems when a child sex offender is residing or working in the area. When the child sex offender registers, the local police are required to notify the Superintendent of Schools, and the Superintendent, in turn, is required to send a notice to school principals.

2.2 As a successful bidder and/or its agents working for the political subdivisions, shall not employ convicted child sex offenders to work on projects for public schools if they, as a result, are required to perform delivery, installation, repair, construction or any other kind of services on political subdivision property. Further, Maryland Law effective June 22, 2006, requires that any person who enters a contract with a county board of education or a non-public school "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. A successful bidder and/or its agents who violate this requirement is guilty of a misdemeanor and if convicted may be subject to up to five years imprisonment and/or a \$5,000 fine.

2.3 A successful bidder shall screen their work-forces to ensure that a registered sex offender does not perform work at a school and also ensure that a subcontractor, independent contractor, successful bidder and/or any agents conducts screening of its personnel who may work at a school. The term "work force" is intended to refer to all of the successful bidder's direct employees, subcontractors, agents, and/or independent contractors it used to perform the work. Violations of this provision may cause a participation jurisdiction to take action against the successful bidder up to and including termination of the contract.

2.4 To assist you in identifying convicted child sex offenders, the schools have the list of convicted child sex offenders, which successful bidders may view. The schools maintain the list and update the list as new offenders are identified, however, it is solely the responsibility of the successful bidder to comply with this provision.

Additional General Instructions for Solicitations

1. Instructions, Forms and Specifications

1.1 Bid times are either Eastern Standard Time or Eastern Daylight Time, whichever prevails. Late bids will not be considered.

1.2 Submission of a bid evidences bidder's representation and warranty that the person submitting the bid response is authorized to act for and bind the contractor.

1.3 All original and duplicate bids/proposals and other attachments, related documents and correspondence, including all follow-up documents and correspondence, shall be typed or written in English. All prices/percentages and/or other monetary figures shall be in United States dollars.

1.4 Requests for Bids and Requests for Proposals shall be accompanied by an electronic version (CD) of the bid proposal PDF format. The CD must be labeled with the bid number, the bid title, and the bidder's name submitting the response. All bids must be submitted in a sealed envelope or carton as appropriate. This does not apply to Requests for Quotation.

1.5 Issuing Officer: The sole point of contact for the County for purposes of this solicitation is the Buyer, listed on the cover page; questions regarding any aspect of the competitive process must be directed to the Buyer, in writing.

2. Award of Solicitations

2.1 Invoices against resulting order(s) must be submitted, in duplicate, to the Office of Budget and Finance, Disbursements Section, 400 Washington Avenue, Room 148, Towson, Maryland 21204-4665. Invoices must show the vendor's Federal Tax Identification Number or Social Security Number, as appropriate, and order number and line number(s) that correspond with resulting order(s).

2.2 The County will not pay interest charges or other penalties for invoice payments.

3. Reservations

3.1 At any time during normal business hours and as often as the County may deem necessary, the Contractor shall make available to and permit inspection and photocopying, by the County, its employees or agents, of all records, information and

documentation of the Contractor related to the subject matter of this contract, including, but not limited to, all contracts, invoices, payroll, and financial audits.

3.2 Notwithstanding any other terms or provisions of the contract, in the event the County is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it thereunder, by act of the General Assembly of Maryland or the Baltimore County Council, by a court of competent jurisdiction or by administrative delay not due to the fault of the County (and its members and agents) shall not be liable directly or indirectly for any claims caused to or suffered by the Contractor or any other person in connection with or as a result of such prevention, restriction or delay.

3.3 The County further reserves the right to make such investigation as it deems necessary to determine the ability of bidders to furnish the required services, and bidders shall furnish all such information for this purpose as the County may request. The County also reserves the right to reject the proposal of any bidder who is not currently in a position to perform the contract, or who has previously failed to perform similar contracts properly, or in a manner acceptable to the County, all of which shall be in the County's sole discretion.

4. Competition

4.1 Specifications are based on County needs and uses, estimated costs of operations and maintenance, and other significant and/or limiting factors to meet County requirements, and to ensure consistency with County policies. Minimum specifications, and maximum specifications where included, are not established arbitrarily to limit competition or to exclude otherwise competitive bidders.

4.2 Unless multiple or alternate bids are requested in the solicitation, these bids may not be accepted. However, if a bidder clearly indicates a base bid, it shall be considered for award as though it were the only bid submitted by the bidder.

6. **Minority/Women's Business Enterprise (MBE/WBE) and Small Business Notice:** Baltimore County is seeking Minority, Woman and Small Businesses to bid on current solicitations as a prime or sub contractor. In accordance with the Executive Order dated June 4, 2009, "an overall goal of 15% of the cumulative total of all discretionary dollars spent

in a fiscal year of County procurements is to be awarded to and/or performed by MBE and WBE firms." MBE/WBE's and Small Businesses are encouraged to respond to this solicitation.

7. Authority

7.1 In case of disputes as to whether an item or service quoted or delivered meets specifications, the decision of the Purchasing Agent or authorized representative shall be final and binding on both parties. The Purchasing Agent may request the recommendation in writing of the head of the using agency, the Standards and Specifications Committee, or other objective sources.

7.2 Bidders desiring to appeal a decision of the Purchasing Division must deliver written protests to the Purchasing Division within 10 days of notification of award. The Purchasing Agent or designee will review the protested decision, examine any additional information provided by the bidder and respond in writing within 10 working days of receipt of written protests.

7.3 Instructions, Specifications, and Proposals are issued, and all bids, quotations, orders, and purchases are made pursuant and subject to the provisions of the Baltimore County Charter, and Article 10, Title 2 of the Baltimore County Code, 2003, as amended, and regulations and policies established or prescribed by the Purchasing Division.

8. Additional Reservations for RFP's

8.1 This RFP creates no obligation on the part of the County to compensate offerors for proposal preparation expenses. The County reserves the right to award a contract based upon proposals received without further negotiation and may do so; offerors should not rely upon the opportunity to alter their proposals during discussions.

8.2 The County reserves the right to waive minor irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award. The County reserves the right to cancel this RFP, in whole or in part, any time before the closing date.

8.3 Confidentiality: Offerors must specifically identify any portions of their proposals deemed to contain confidential information, proprietary information or trade secrets. Those portions must be readily separable from the balance of the proposal. Such designations will not be conclusive, and offerors may be required to justify why such material should not, upon written request, be disclosed by the County

under the Public Information Act, State Government Article, Title 10, Sub-Title 6, of the Annotated Code of Maryland, as amended. The County may disclose such information if required by law, court order or subpoena.

Rev. 11/09

**BALTIMORE COUNTY, MARYLAND
PROCUREMENT AFFIDAVIT**

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____ and I am duly authorized to represent and bind [business] _____ (the "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 Business, nor any of its officers, directors, partners, members, affiliates, 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 6-225 of the Criminal Procedure Article 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 Business, nor any of its officers, directors, partners, members, affiliates, or any of its employees directly involved in obtaining or performing contracts with public bodies, has:

(1) 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;

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

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

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

(5) 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 (1), (2), (3), or (4) above;

(6) 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;

(7) 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 Business, nor any of its officers, directors, partners, members, affiliates, 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 proceeding, 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 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 Business, nor any of its officers, directors, partners, members, affiliates, nor any of its employees, have in any way:

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

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

(3) Colluded with anyone to obtain information concerning the bid that would give the Business an unfair advantage over others.

H. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration, or at least \$100,000.00, shall file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

I. CERTIFICATION OF REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

(1) The Business is a (Insert State Name) (*Example: Maryland, Ohio, Iowa*) (Select One: **Corporation, Partnership, Limited Liability Company, Limited Liability Partnership, Sole Proprietor**) (_____), that it is registered in accordance with the Corporations and Associations Article of the Annotated Code of Maryland, that it is in good standing in the State of Maryland, and that it 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 none, 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 Baltimore County, 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.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. NONDISCRIMINATION IN EMPLOYMENT STATEMENT

I FURTHER AFFIRM THAT:

During the performance of any contract awarded pursuant to the solicitation of which this affidavit is a part:

(1) The Business will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test. The Business will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a

genetic test. Such action shall include, but not be limited to the following: employment, promotion, upgrading, demotion or transfer, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Business agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the owner setting forth provisions of this nondiscrimination clause.

(2) The Business will, in all solicitations or advertisements for employees placed by or on behalf of the Business, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test.

(3) The Business shall send to each labor union or representative of workers with which the Business has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the owner, advising the said labor union or workers' representative of these commitments, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Business shall furnish, if requested by the County, a compliance report concerning our employment practices and policies in order for the County to ascertain compliance with the special provisions of this affidavit concerning nondiscrimination in employment.

(5) In the event of the Business's noncompliance with the nondiscrimination clause of this affidavit, the contract may be canceled, terminated, or suspended in whole or in part, and the Business may be declared ineligible for further County work.

(6) The Business shall include the special provisions outlined herein pertaining to nondiscrimination in employment in every subcontract, so that such nondiscrimination in employment provisions shall be binding on each subcontractor or vendor.

L. FOREIGN CONTRACTS

I FURTHER AFFIRM THAT:

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 10-2-110 Article 10. Finance, Title 2 – Purchasing, Baltimore County Code 2003, as amended, which requires that prior to the award of a contract for services under the provisions of this title, and during the entire term of a contract award, the bidder or vendor shall disclose to the County whether any services covered by the bid or contract, including any subcontracted services, will be performed outside the United States. The disclosure shall be made to the Office of Budget and Finance, Purchasing Bureau.

M. ACKNOWLEDGMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the County and may be distributed to units of (1) Baltimore County; (2) the State of Maryland; (3) other counties or political subdivisions of the State of Maryland; (4) other states; and (5) 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 Baltimore County, or the State of Maryland or any unit of the State of Maryland having jurisdiction, the exercise of any right or remedy at Law or in equity with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the Business with respect to (a) this Affidavit, (b) 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, AFTER DILIGENT INQUIRY.

Date: _____

By: _____

Name:
Title:
(Authorized Representative and Affiant)

MINORITY PARTICIPATION AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title]_____ and the duly authorized representative of [business] _____ (the "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 MINORITY PARTICIPATION

I FURTHER AFFIRM THAT:

I am aware that, pursuant to the June 4, 2009 Executive Order of Baltimore County, Maryland, the following words have the meanings indicated.

(A) "Minority Business Enterprise" or "MBE" means a business enterprise that is owned, operated and controlled by one or more minority group members (African American, Hispanic American, Asian American, or Native American) who have at least 51% ownership and in which the minority group members have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

(B) "Women's Business Enterprise" or "WBE" means a business enterprise that is owned, operated and controlled by one or more women who have at least 51% ownership and in which the women have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

___ The Business is a certified MBE with

Maryland State Department of Transportation (MDOT) # _____

City of Baltimore # _____

Name Other Jurisdiction: _____ # _____

___ The Business is a certified WBE with

Maryland State Department of Transportation (MDOT) # _____

City of Baltimore # _____

Name Other Jurisdiction: _____ # _____

___ The Business is not a certified MBE or WBE, however:

The ownership of the Business consists of ___% minorities and ___% women (for a total of ___%), each of which has operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

The Business anticipates utilizing MBE or WBE subcontractors for ___% of the work on the contract.

The Business is not a certified MBE or WBE nor is it 51% owned, operated and controlled by one or more minority group members or a woman.

Due to the specific nature of work, this contract does not lend itself to subcontracting opportunities. Therefore, _____ is requesting a full waiver of the MBE/WBE requirement.

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: _____

Name:
Title:
(Authorized Representative and Affiant)

Taxpayer Identification Number (TIN) and Certification
 (Substitute for IRS Form W-9)
COMPLETE BOTH SIDES OF FORM

Baltimore County, Maryland
 Office of Budget and Finance
 400 Washington Avenue, Room 148
 Towson, Maryland 21204

Certification of TIN and business name are required for all successful bidders prior to issuing a contract or purchase order. Completion of **SIDE 1** of this form is necessary to meet IRS regulations. All MBE/WBE vendors should also complete **SIDE 2**. For questions, call 410-887-3587.

SIDE 1

List your **legal business name** below, as shown on your income tax return. **Sole proprietors** should list their individual name as noted on your social security card. You may enter a business name on line 2. Other entities must list your business name as shown on Federal tax documents. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the business name line (2). For **limited liability companies** (LLC) that are owned by an individual, the owner's name must be listed in the Name line (1) and the business name can be listed on the business name line (2). For **limited liability companies** that are corporations, partnerships, etc., enter the business name on Name line (1).

1. Name (as shown on your income tax return)		
2. Business name, if different from above		
Address		
City	State	ZIP Code
Remittance Address, if different from above		
City	State	ZIP Code
Contact Person	Title	
Phone Number () - Ext.	Fax Number () -	
E-mail address		

Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1. For individuals, this is your social security number (SSN). For other entities, it is your employer identification number (EIN). Note, this is the TIN shown on your federal tax documents.	<table style="width:100%; border-collapse: collapse;"> <tr> <td colspan="11">Social Security Number</td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> <tr> <td align="center" colspan="11">OR</td> </tr> <tr> <td colspan="11">Employer Identification Number</td> </tr> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> </table>	Social Security Number																						OR											Employer Identification Number																					
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<input type="checkbox"/>	CHECK HERE IF YOU ARE EXEMPT FROM BACK-UP WITHHOLDING
<input type="checkbox"/>	CHECK HERE IF YOU ARE TAX-EXEMPT, EXPLAIN:
Filing Status (Ownership) (LLC is not acceptable)	
<input type="checkbox"/> Individual	<input type="checkbox"/> Sole Proprietor
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership
<input type="checkbox"/> Other: (explain)	

CERTIFICATION:
 Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Signature of U.S. Person	Date
---------------------------------	------

SIDE 2

MBE / WBE Certification	
<p>Maryland Department of Transportation (MDOT)</p> <p>Certification #: _____</p> <p>Certification Date: ____ / ____ / ____</p> <p>Pending: _____</p>	<p>City of Baltimore</p> <p>Certification #: _____</p> <p>Certification Date: ____ / ____ / ____</p> <p>Pending: _____</p>

Business Ownership (Check Only One)					
	G	Government Entity		O	Other: _____
	H	Disabled		P	Non Profit
	MA	Minority-owned, Not small business		W	Woman-owned, Small business
	M	Minority-owned, Small business		WA	Woman-owned, Not small business
	NS	Non-minority-owned, small business		X	Woman-owned, Minority, Small business
	NL	Non-minority-owned, Large business		XA	Woman-owned, Minority, Not small business

Type of Business/Organization			
	Association		Attorney
	Government Entity		Educational Institution
	Medical Service Provider		Non-profit Organization
	Other: (explain)		Financial Institution

Ethnicity of Ownership (Check Only One)					
	A	Asian American		I	American Indian/Alaskan Native
	B	African American		N	Non-minority
	H	Hispanic American		O	Other Ethnic Group: _____

Incorporation
<p>Incorporation State: _____ OR Date Business Started ____ / ____ / ____</p>

Signature		
<p>I certify that the information shown on this registration is true and correct. I will advise the Purchasing Division immediately, in writing, of any change affecting this data.</p>		
<p>Signature: _____</p>	<p>Title: _____</p>	<p>Date: _____</p>



BALTIMORE COUNTY, MARYLAND

INSURANCE PROVISIONS

1. GENERAL REQUIREMENTS

1.1 Coverages Required:

Unless otherwise required by the specifications or the contract, the Contractor/Vendor shall purchase and maintain the insurance coverages listed herein.

1.2 Certificate of Insurance:

Before starting work on the contract or prior to the execution of the Contract on those bid, the Contractor/Vendor shall provide Baltimore County, Maryland with a Certificate of Insurance provided by the County, or an exact replica thereof, evidencing the required coverages.

1.3 Baltimore County as Insured:

The coverage required, excluding Worker's Compensation and Employers' Liability and Medical Malpractice Liability/Professional Liability/Errors and Omissions Liability, must include Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.

1.4 Contractor's/Vendor's Responsibility:

The providing of any insurance herein does not relieve the Contractor/Vendor of any of the responsibilities or obligations the Contractor/Vendor has assumed in the contract or for which the Contractor/Vendor may be liable by law or otherwise.

1.5 Failure to Provide Insurance:

Failure to provide and continue in force the required insurance shall be deemed a material breach of the contract.

2. INSURANCE COVERAGES

2.1 General Liability Insurance

2.1.1 Minimum Limits of Coverage:

Personal Injury Liability and Property Damage Liability Combined Single Limit - \$500,000 each occurrence

2.1.2 Such insurance shall protect the Contractor/Vendor from claims which may arise out of, or result from, the Contractor's/Vendor's operations under the contract, whether such operations be by the Contractor/Vendor, any subcontractor, anyone directly or indirectly employed by the Contractor/Vendor or Subcontractor, or anyone for whose acts any of the above may be liable.

2.1.3 Minimum Coverages to be Included:

(a) Independent Contractor's coverage;

(b) Completed Operations and Products Liability coverage; and
(c) Contractual Liability coverage.

2.1.4 Damages not to be Excluded:

Such insurance shall contain no exclusions applying to operations by the Contractor/Vendor or any Subcontractor in the performance of the Contract including but not limited to: (a) Collapse of, or structural injury to, any building or structure; (b) Damage to underground property; or (c) Damage arising out of blasting or explosion.

2.2 Automobile Liability Insurance

2.2.1 Minimum Limits of Coverage:

Bodily Injury Liability and Property Damage Liability
Combined Single Limit - \$500,000
any one accident

2.2.2 Minimum Coverages to be Included:

Such insurance shall provide coverage for all owned, non-owned and hired automobiles.

2.3 Workers' Compensation and Employers' Liability Insurance

Such insurance must contain statutory coverage, including Employers' Liability insurance with limits of at least:

Bodily Injury by Accident - \$250,000 each accident
Bodily Injury by Disease - \$500,000 policy limit
Bodily Injury by Disease - \$250,000 each employee

2.4 Valuable Papers and Records Coverage and Electronic Data Processing (Data and Media) Coverage

Minimum Limits of Coverage:

\$100,000 Per Claim and Each Occurrence
\$100,000 in the Aggregate

2.5 Other

Such other insurance in form and amount as may be customary for the type of business being undertaken by the Contractor/Vendor.



BALTIMORE COUNTY, MARYLAND
CERTIFICATE OF INSURANCE

THIS FORM MUST BE COMPLETED BY A LEGALLY AUTHORIZED REPRESENTATIVE OF INSURANCE COMPANY OR INSURANCE AGENCY.

THE CONTRACTOR/VENDOR MUST MAINTAIN THE INSURANCE COVERAGES REQUIRED UNDER THE TERMS AND CONDITIONS OF THIS CONTRACT WHILE THIS CONTRACT IS IN EFFECT INCLUDING RENEWAL AND EXTENSION TERMS.

TO: BALTIMORE COUNTY, MARYLAND
PURCHASING DIVISION
400 Washington Avenue, Room 148
Towson, Maryland 21204

Solicitation/Contract/Purchase Order No.

Name of Contractor/Vendor

THIS IS TO CERTIFY THAT:

- (1) The undersigned has received and reviewed the INSURANCE PROVISIONS of the above-numbered Solicitation/Contract/Purchase Order No.; and
(2) The following insurance has been issued, is in force, and conveys all the rights and privileges afforded under the policy and as required under the Solicitation/Contract/Purchase Order; and

Table with 4 columns: Type of Insurance, Insurance Company, Policy Numbers, Amt. Of Coverage. Rows include General Liability, Automobile Liability, Worker's Compensation and Employers' Liability, Valuable Papers and Electronic Data, and Other.

- (3) General Liability, Automobile Liability and Valuable Papers and Electronic Data insurance coverage shall name Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as an additional insured.
(4) The Worker's Compensation and Employers' Liability insurance coverage shall name Baltimore County, Maryland and its agents, employees, officers, directors, and appointed and elected officials as a certificate holder.

THE UNDERSIGNED AGREES that should any of the insurance coverages indicated above be cancelled, not renewed, or changed in such a manner as would make the coverage not in conformity with the provisions mentioned above, thirty (30) days advance written notice shall be given to BALTIMORE COUNTY, MARYLAND at the address shown above; EXCEPT IN THE CASE OF NON-RENEWAL, notice shall be given as soon as known, if that be less than thirty (30) days, but in no event, less than (10) days. This notice requirement shall be reduced to only ten (10) days in case of cancellation for non-payment of insurance premiums for the coverages certified. All notice requirements shall identify the Contractor/Vendor and the number of the Solicitation/Contract/Purchase Order No.

Name of Insurance Company or Agency
Address
City, State, Zip Code
Area Code/Telephone No.

Signature of Authorized Representative of Insurance Company or Agency
Type/Print Name
Date

This Certificate of Insurance was adopted to eliminate the uncertainty regarding different forms of such documents and to reduce clerical errors. Insurer may provide ACORD Certificates of Insurance also reflecting policy duration and amount of coverage, however, submission of an ACORD form does not satisfy the requirements of this procurement, and in the event of any conflict between this Certificate of Insurance form and any ACORD forms, the terms and conditions of this Baltimore County Certificate of Insurance form shall prevail.

BID REPLY LABEL

*CUT ON THE DOTTED LINE AND
SECURE TO THE OUTSIDE OF YOUR
RESPONSE ENVELOPE OR CARTON.*

REQUEST FOR BID

**NO. P-063
04/29/11, 2:00 PM
ENERGY CONSULTING SERVICES, TERM
CONTRACT**

**TO: BALTIMORE COUNTY, MARYLAND
PURCHASING DIVISION
400 WASHINGTON AVE, ROOM 148
TOWSON, MARYLAND 21204-4665**

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT**

GENERAL CONDITIONS AND SPECIFICATIONS

1. BACKGROUND.

- 1.1 The Baltimore Regional Cooperative Purchasing Committee (BRCPC) is a purchasing consortium consisting of county and local government jurisdictions in the Central Maryland region (hereinafter "BRCPC Entities"). In existence since 1968, BRCPC has purchased electricity cooperatively since deregulation of the Maryland power market began in 2000 and has purchased natural gas under the State of Maryland since the mid 1990's. During that period, most purchases for both markets have consisted of full requirements fixed rate pricing through a traditional government public bid process.
- 1.2 In 2006, the BRCPC Entities evaluated the effectiveness of its electricity purchasing strategy and process since 2000 and consulted with a number of industry specialists. The BRCPC Entities concluded that its current municipal government procurement rules and regulations were not the most cost effective procurement and risk management methods for procuring energy commodities. Accordingly, the BRCPC Entities developed and approved a new strategy for procuring electricity in the Maryland deregulated marketplace.
- 1.3 The strategy is based on purchasing electricity on an hourly (Locational Marginal Price –LMP) and fixed rate block purchasing structure. Energy price risk is managed in conjunction with an approved risk management policy. The strategy was implemented in 2006 and each BRCPC Entity has contracted with a Maryland licensed Electric Supply Service Provider ("Supplier") to enable it to access the hourly and fixed rate block markets.

2. SCOPE.

- 2.1 It is the intention of this solicitation that the Contractor shall furnish and Baltimore County, along with the other participating BRCPC entities, shall purchase energy consulting services for electricity and natural gas procurements covered by this contract which Baltimore County and the other BRCPC Entities may require during the period of time specified. Baltimore County and other BRCPC Entities may require any other energy consulting services during the term of this agreement.
- 2.2 The following jurisdictions are participating in this procurement for the following energy commodities, as members of the BRCPC purchasing consortium. Each jurisdiction will be contracting with the successful offeror separately as a result of the award of contract by Baltimore County Purchasing Division, the lead jurisdiction.

2.2.1 Electricity: Estimated 3750 Accounts

Anne Arundel County Government	Carroll County Government
Anne Arundel County Public Schools	City of Aberdeen
Anne Arundel County Community College	City of Annapolis
Baltimore City Government	City of Bowie
Baltimore City Public Schools	Harford County Community College
Housing Authority of Baltimore City	Harford County Government
Baltimore County Government	Harford County Public Schools
Baltimore County Libraries	Howard County Government
Baltimore County Public Schools	Howard County Public Schools
Community College of Baltimore County	Howard County Community College
Baltimore Museum of Art	Walters Art Museum
Baltimore County Revenue Authority	

2.2.2 Natural Gas: Estimated 1058 Accounts

Anne Arundel County Government	Baltimore County Revenue Authority
City of Annapolis	Community College of Baltimore County
City of Bowie	Carroll County Government
Baltimore City Government	Harford County Community College
Housing Authority of Baltimore City	Harford County Government
Baltimore County Government	Harford County Public Schools
Baltimore County Libraries	Howard County Government
Baltimore County Public Schools	Howard County Public Schools

2.3 The Contractor shall provide the following services to assist the BRPC Entities in their procurement of electricity and natural gas:

2.3.1 Energy Procurement strategy development and implementation

2.3.1.1 Gather market data and prepare all necessary market analysis to assist in the development of the energy procurement strategy.

2.3.1.2 Identifying risk profiles, time frames, and cost targets.

2.3.2 Procurement of retail supplier to purchase electricity and natural gas on the wholesale markets.

2.3.2.1 Data Collection: Historical electricity data for all of the accounts must be collected, checked for accuracy, compiled, analyzed and placed into a format that can be easily provided to all potential suppliers.

2.3.2.2 Identify and Qualify Retail Suppliers: Identify all viable suppliers and put them through a pre-qualification process. This process will consider financial stability, ability to serve, review of existing arrangements/contracts, credit issues, day ahead purchasing capability/flexibility, contract terms and conditions and other criteria.

2.3.2.3 Contracting and Implementation: Analysis, evaluating and recommendation to assist in selecting the supplier of choice.

2.3.3 Provide ongoing advice on energy commodity strategy and execution as the BRPC Entities purchase electricity and natural gas directly in the wholesale markets.

2.3.4 Contract Performance Tracking and account reconciliation

2.3.4.1 Contract Performance Monitoring: Monitor actual contract performance versus expected performance, impact of fixed price contracts and/or provider of last resort pricing. This will include analysis and monitoring of local distribution rates for impact on contract performance.

2.3.4.2 Reporting: Provide quarterly reports for overall energy strategy performance and recommendations for any adjustments to energy procurement policy and strategy. Annual performance reporting shall be provided on a fiscal year basis. Reports will be provided in electronic and hard copy.

2.3.4.3 Budget Projections: Provide forecast price and cost data and advise the BRPC Entities the impact of hedging energy prices with fixed cost purchases. Prepare annual budgets and mid-year update.

2.3.5 Energy Market Reports and Reporting: Submit current energy market information available via the web and also through a more customized reporting process. Preparation and presentation of a customized energy report package for the BRCPC meetings. The report package will include current forward market prices, comparisons to local utility default rates and market cost estimates for the electric and natural gas accounts.

2.3.6 The Contractor shall attend all meetings requested by the BRCPC Entities as a group or individually. The Contractor shall also provide all information and reports as requested by the BRCPC Entities or by each entity individually. The Contractor shall also attend the BRCPC Energy Board meeting once a month and present a report on the portfolio performance and activity for each energy being procured by the BRCPC entities.

3. PROPOSAL REQUIREMENTS.

3.1 Each Offeror's proposal must include the following:

3.1.1 Detailed plan of services to be provided.

3.1.2 Consulting experience including past and current.

3.1.3 Contracts, references, contacts, scope of work and savings realized.

3.1.4 Corporate staff including resumes and how responsibilities are to be assigned.

4. PROCUREMENT SCHEDULE.

4.1 March 31, 2011: RFP solicitation is posted-up.

4.2 April 12, 2011: RFP Pre-Proposal Conference held at BMC.

4.3 April 29, 2011: Bid opening for energy consulting services RFP.

4.4 May 10, 2011: Evaluation Committee meets to short list Offerors.

4.5 May 24, 2011: Oral presentations.

4.6 July 1, 2011: Evaluation committee makes award recommendation.

4.7 July 1 – October 31, 2011: Contracts executed.

4.8 November 1, 2011: Energy consulting services contract start-up.

5. TERM OF AGREEMENT.

5.1 The term of this contract shall be for one (1) year. Each BRCPC Entity reserves the right to renew this contract for nine (9) additional one year renewal options under the same terms and conditions. Each BRCPC Entity will automatically renew this contract on each option year unless notice is given to the Contractor that the contract is not renewed.

5.2 If price adjustments are requested pursuant to the terms of the contract, the Contractor must notify the Baltimore County Purchasing Division ninety (90) days prior to the current terms expiration date.

5.3 The Contractor must maintain the insurance coverages required by the County while this contract is in force, including automatic renewal terms, and shall provide documentation of such insurance in a form satisfactory to the County when required.

6. **PRE-PROPOSAL CONFERENCE.** A pre-proposal conference is scheduled for Tuesday, April 12, 2011 at 1:30 p.m., at the Baltimore Metropolitan Council, McHenry Row, 1500 Whetstone Way, Baltimore, Maryland 21230.
7. **QUESTIONS AND INQUIRIES; ADDENDA.**
 - 7.1 Questions will be entertained at the conference. If it becomes necessary to revise any part of this RFP, addenda will be posted on the web site at www.baltimorecountymd.gov/purchasing.
 - 7.2 Offerors must acknowledge, in writing, receipt of all addenda in the text of their proposals. All official correspondence in regard to the specifications should be directed to and will be issued by the Purchasing Bureau. Offerors are cautioned that the County assumes no responsibility for oral explanations or interpretations of solicitation documents.
 - 7.3 **The deadline for written questions pertaining to this solicitation is seven (7) working days prior to the due date of proposals.**
8. **EVALUATION OF OFFERS.** Award will be made to the responsible offeror whose proposal best meets the needs of the County as set forth herein.
 - 8.1 Proposals will be evaluated based on the following criteria, listed in order of importance.
 - 8.1.1 Compliance with Scope of Work.
 - 8.1.2 Consulting Experience.
 - 8.1.3 Staff Qualifications.
 - 8.1.4 MBE/WBE Subcontracting Participation.
 - 8.4.1 MBE/WBE subcontracting participation is not required, however, offers containing MBE/WBE subcontractor participation will be evaluated. Offers shall refer to the following MBE/WBE participation forms: MBE/WBE Participation Summary, Form A, Form B, and Form C. Offerors utilizing MBE/WBE subcontracting participation must complete the following forms: Form A, header participation percentages, check #1 Box, and sign the last page. Form B, prime offeror's information, list each MBE/WBE subcontractor's information, fill-in the participation percentages, and sign the form. Form C, complete the prime offeror's and MBE/WBE subcontractor's information and have both parties sign the form (one Form C for each MBE/WBE subcontractor).
 - 8.1.5 Price: Lump sum annual fee per energy commodity.
 - 8.2 After consideration of the factors set forth in this RFP, the committee will recommend award to the offeror whose proposal is most advantageous to the County.
 - 8.3 This RFP will result in the submission of "proposals" (not "bids"), and the evaluation and award process will be based on both scored technical and price responses, not just price. Therefore, the County may enter into negotiations with offerors and invite "best and final offers" as deemed to be in the best interest of the County. Negotiations may be in the form of face-to-face, telephone, facsimile or written communications, or any combination thereof, at the County's sole discretion.
 - 8.4 Offerors are strongly advised not to prepare their proposal submissions based on any assumption or understanding that negotiations will take place. Offerors are advised to respond to this RFP fully and with forth-rightness at the time of proposal submission.

8.5 Non-acceptance of an individual offer may mean that one or more other proposals were more advantageous, or that all were rejected.

9. **ORAL PRESENTATION**. Offerors may be required to clarify their proposals by making individual presentations to the evaluation committee.

10. **CONTRACTOR QUALIFICATIONS**.

10.1 At the option of the County, offerors may be required to furnish evidence of sufficient financial responsibility to fulfill this contract, and evidence that they have, or can obtain the necessary equipment, manpower, and storage facility to ensure delivery within the parameters of this contract.

10.2 Offerors must provide at least five (5) references (names of contact persons and phone numbers) of similar sized contracts serviced during the past ten (10) years.

10.3 Prior to award of this contract, the County reserves the right to inspect the facilities of any responsive offeror. The reputation of bidders regarding adequacy of their resources and facilities, and past records of their skillful performance of work of the type and magnitude required herein shall be considered when making the award.

11. **SUBMITTAL PROCESS AND REQUIRED COPIES**. Each offeror shall submit **one original, clearly marked as such, and eight (8) copies** of the complete proposal. The cost of preparing proposals is the responsibility of offerors. The County will not photocopy your proposal documents for the purpose of complying with this provision requiring a pre-determined number of duplicate copies. Failure to provide the required number of complete duplicate copies may result in rejection of your proposal.

11.1 Proposals must be securely sealed and addressed to the Baltimore County Purchasing Bureau, 400 Washington Avenue, Room 148, Towson, Maryland 21204 using the label provided in the solicitation package. Copies of the label must be made for multiple packages.

11.2 Technical and price proposals are to be mailed together in one package, but the Technical and Price Proposals must be bound separately. There shall be no reference to the price of products and services in the Technical Proposal. Proposals may be either mailed or hand-delivered. If the proposal is sent by mail or commercial express service, the Offeror shall be responsible for actual delivery of the proposal to the proper County office before the deadline. All timely proposals become the property of the County.

11.3 Late proposals will not be considered. Proposals received after the deadline will be returned unopened.

11.4 Proposals should be prepared simply and economically, providing a straightforward, concise description of the offer, and all required information. They should be printed on recycled paper and duplexed if possible; staples, clips or rubber bands are preferred to ring binders, and unnecessarily elaborate brochures or other expensive visual presentations are neither necessary nor desired. Each page of the proposal should be consecutively numbered.

11.5 Each proposal shall be accompanied by an executed procurement affidavit which is provided by the Purchasing Bureau in the solicitation package.

12. **FUNDING OUT**. If funds are not appropriated or otherwise made available to support contract continuation in any fiscal year, each entity shall have the right to terminate the contract without any obligation or penalty.

13. **COOPERATIVE PURCHASE**.

13.1 The County reserves the right to extend all of the terms, conditions, specifications, and unit or other prices of any contract resulting from this bid to any and all public bodies, subdivisions, school districts, community colleges, colleges, and universities including non-public schools.

This is conditioned upon mutual agreement of all parties pursuant to special requirements which may be appended thereto. The supplier/contractor agrees to notify the issuing body of those entities that wish to use any contract resulting from this bid and will also provide usage information, which may be requested.

- 13.2 The County assumes no authority, liability or obligation, on behalf of any other public or non-public entity that may use any contract resulting from this bid. All purchases and payment transactions will be made directly between the contractor and the requesting entity. Any exceptions to this requirement must be specifically noted in the bid/proposal response.

14. **INSURANCE.**

- 14.1 The successful contractor will be required to execute a Certificate of Insurance form furnished by the County in accordance with the attached requirements. The successful contractor will have fifteen (15) calendar days to comply with this requirement, excluding County holidays and non-work days, if applicable.
- 14.2 The Insurer must maintain the insurance coverages required by the County while this agreement is in force, including automatic renewal terms, and shall provide documentation of such insurance in a form satisfactory to the County when required.
- 14.3 In the event the Contractor changes their insurance carrier, a new Certificate of Insurance (form PB021) must be requested from the County and completed by the new insurance carrier within ten (10) days of the change of policy.

15. **PRICES AND INVOICING.**

- 15.1 Prices shall be quoted for each energy category for the entire BRCP Entities. Prices shall essentially be a retainer for providing unlimited hours of service in accordance with the scope of work. Prices shall include all areas of cost including but not limited to all labor, supervision, administrative technical support, reports, documentation, mileage, and communication expenses, overhead, profit and all items of cost. There shall be no additional charges assessed during the life of the contract for the contract scope of work, including all renewals.
- 15.2 Each BRCP Entity shall be invoiced and shall pay a percentage of the contract price for each energy category. This percentage shall constitute that portion of the contract price equal to said entity's percentage of the BRCP's energy usage for that energy category. Invoicing shall be issued monthly to each entity for said entity's portion of the contract price. Invoices must be legibly prepared showing the full description and price of services. Authorization to pay invoices will be given by the using agency for the entity prior to payment of invoices.
- 15.3 From time to time, a new entity may wish to join the BRCP Entities for purchasing one or both energy commodities. Said entity shall agree to all terms, conditions, and prices of the existing contract and shall execute a contract with the Contractor. In addition to the monthly contract price, the new entity shall pay the Contractor a one time initiation fee of \$25,000.00. The Contractor shall credit this savings one time to the remaining BRCP Entities proportionate to the entity contribution. The addition of a new entity shall require that the Contractor recalculate each entity's percentage of the contract price (the entity's contribution), and to change the invoicing accordingly. The addition of a new entity may possibly also institute a recalculation of each entity's contribution in conformance to Section 17.4 of this bid solicitation.

16. **ESCALATION.**

- 16.1 All prices offered herein shall be firm against any increase for one (1) year from the effective date of the contract. Prior to commencement of subsequent renewal terms, Baltimore County and the other BRCP Entities may entertain a request for escalation in accordance with the current Consumer Price Index at the time of the request or up to a maximum 5% increase on the current pricing, whichever is lower.

- 16.2 For purposes of this section, "Consumer Price Index" shall mean the Consumer Price Index-All Urban Consumers-United States Average-All Items (CPI-U), as published by the United States Department of Labor, Bureau of Labor Statistics.
- 16.3 Baltimore County and each BRCP Entity reserves the right to accept or reject the request for a price increase within thirty (30) days. If the price increase is approved, the price will remain firm for the renewal year in which it was requested.
- 16.4 If the volume of energy, for all BRCP Entities in total, increases in either energy category by more than 50% of the original volume, the Contractor may request an escalation in the contract price for that energy category. Again, Baltimore County and each BRCP Entity reserves the right to accept or reject the request for a price increase within thirty (30) days. If the price increase is approved, the price will take effect at the commencement of the next renewal year and will remain firm for that renewal year.

17. **ADDITIONS TO THE SCOPE OF WORK.** In the future, Baltimore County and the other BRCP Entities may request that the Contractor provide energy consulting services for other energy commodities such as vehicle fuels, heating oil, and similar products as an addition to the original contract scope of work. Other energy consulting services may include, but not be limited to, any services related to demand load response programs, energy conservation, energy best practices, and any services related to energy demand and energy supply. Any and all energy consulting services may be included and provided under this term contract. Baltimore County and the other BRCP entities, and the Contractor shall negotiate the additional scope of work and the pricing structure and shall mutually agree to this contract before it becomes part of the contract. Any additional scope of work can either be added to the contract for Baltimore County and the other BRCP entities as a group, any combination of entities, or any individual entity.

18. **"SAMPLE" FORM CONTRACT.**

- 18.1 The County's form contract is attached as part of this solicitation. By the act of submitting a proposal, the offeror expressly acknowledges that he/she/it accepts the terms and conditions as stated in the form contract unless exceptions are submitted in writing with the proposal.
- 18.2 The offerors' acceptance of, or deviations from, the form contract terms and conditions are considered during the evaluation and subsequent award.
- 18.3 If the offeror submits an exception, which alters the County's risk, liability, exposure in, or the intent of this procurement, the County reserves the right in its' sole and absolute discretion to deem the offeror non-responsive.

BALTIMORE COUNTY, MARYLAND
REQUEST FOR PROPOSAL NO. P-063
ENERGY CONSULTING SERVICES, TERM CONTRACT
Due Date: 04/29/11, Time: 2:00 P.M.

PROPOSAL SIGNATURE COVER PAGE

SUBMISSION OF A BID/PROPOSAL IN RESPONSE TO THIS SOLICITATION EVIDENCES THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS THEREIN. THIS PAGE MUST BE PROPERLY SIGNED BY AN AUTHORIZED OFFICIAL IN THE FIRM WHO REPRESENTS AND WARRANTS ACCEPTANCE OF ALL TERMS AND CONDITIONS OF THE REQUEST FOR BID/ REQUEST FOR PROPOSAL.

COMPANY NAME: _____

ADDRESS: _____

_____ (City) _____ (State) _____ (Zip Code)

TELEPHONE: _____ FAX: _____

SIGNED: _____ DATE: _____

PRINT NAME: _____ TITLE: _____

TAX ID NUMBER (FIN/SS#) _____ EMAIL: _____

Is your firm in compliance with all applicable laws and regulations relating to the employment of illegal aliens?
If YES, check here _____

NOTICE: A notice required to be delivered shall be deemed to have been received when such notice has been sent to the following address and individual:

THE PERSON SIGNING THE BID/PROPOSAL MUST INITIAL ANY ALTERATIONS IN FIGURES ON THIS FORM IN INK.

_____ We wish to submit a "NO BID" at this time.

_____ We do not offer this commodity/service.

Is your company a certified Minority Business Enterprise? Bidders must complete the applicable Minority Participation Affidavit attached.

Payment Terms: _____ Cash discounts for less than 30 days will not be considered in determining awards. However, should that bidder obtain award by consideration of the gross price, the County should make every effort to obtain the discount. The County will not accept payment terms with a period of less than (30) days.

Delivery shall be made within _____ calendar days after receipt of order.

F.O.B. Destination (unless otherwise stated herein).

If your firm is not already receiving email notification of new solicitations and amendments, you may register for email notification on the County's web site at <http://www.baltimorecountymd.gov/purchasing>.

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE
 REQUEST FOR PROPOSAL NO. P-063
 ENERGY CONSULTING SERVICES, TERM CONTRACT
 Due Date: 04/29/11, Time: 2:00 P.M.

PRICE SHEET PAGE 1 OF 1		REQUEST FOR PROPOSAL			
LINE NO.	COMMODITY/SERVICE DESCRIPTION	QUANTITY FROM/TO	UNIT	UNIT PRICE	EXTENDED AMOUNT
1	COMMODITY CODE: 91841 Energy Consulting Services, for all BRCPC Electricity Accounts, as per specifications	12	Month	\$ _____	\$ _____
2	COMMODITY CODE: 91841 Energy Consulting Services, for all BRCPC Natural Gas Accounts, as per specifications	12	Month	\$ _____	\$ _____

GRAND TOTAL \$ _____

COMPANY NAME: _____

FED ID OR SOCIAL SECURITY NO. _____

WHERE LANGUAGE IS BRACKETED SELECT ONE OF THE OPTIONS AND DELETE THE OTHER OR INSERT THE INFORMATION REQUESTED. THIS FORM MAY HAVE TO BE MODIFIED TO FIT A PARTICULAR TRANSACTION. PLEASE CONTACT THE PURCHASING BUREAU AND THE OFFICE OF LAW BEFORE THIS FORM IS MODIFIED

CONTRACT

THIS AGREEMENT made this ____ day of _____, _____, (the "Agreement") is by and between _____, a body corporate and politic, (hereinafter "Entity") and _____ (hereinafter the "Contractor").

WHEREAS, the Entity is part of a consortium of governmental and non-profit entities (each a "Participating Entity", and, collectively, the "Participating Entities") constituting the Baltimore Regional Cooperative Purchasing Committee ("BRCPC") entering into cooperative agreements with the Contractor for consulting services related to the purchase of electricity; and

NOW THEREFORE in consideration of the mutual promises and covenants set forth herein, the parties hereto agree as follows:

1. Contractor's Duties

1.1 The Contractor, in consideration of the payments hereinafter specified and agreed to be made by the Entity, together with the other Participating Entities, hereby covenants and agrees to perform all services, in strict and entire conformity with the Attachment A entitled, "Services to be Performed", any Purchase Order subsequently issued, the Request for Proposal No. 205863, and the response and any amendments or revisions thereto (collectively, the "Bid").

1.2 The Contractor shall be an independent Contractor and not an employee of the Entity, and shall be responsible for the reporting and remittance of all state and federal taxes. The Contractor shall perform the services outlined in Attachment A hereto. The Contractor's services will be provided with due care and in a manner satisfactory to the Entity, and in accordance with all applicable professional standards.

1.3 Notwithstanding any other terms or provisions of this Agreement, in the event the Entity is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the Entity's legislative authority, by a court of competent jurisdiction or by administrative delay not due to the fault of the Entity (and its members and

agents) shall not be liable directly or indirectly for any claims caused to or suffered by the Contractor or any other person in connection with or as a result of such prevention, restriction or delay.

2. Compensation.

2.1 In consideration of the services to be provided by the Contractor, the Contractor shall be paid the combined total sum of _____ (\$ _____) per month (the "Fee") during the Initial Term (hereinafter defined). The Entity shall pay a monthly sum (the "Entity Contribution"), which constitutes that portion of the Fee equal to said Participating Entity's percentage of the BRCP's electricity usage. In no event shall the Entity be responsible or liable to the Contractor for more than the Entity Contribution.

2.2 The Contractor shall submit invoices to the Entity monthly. The Contractor's invoices shall reflect the:

- Contractor's name
- Address
- Federal tax identification number
- Order number and line number(s) that correspond with resulting orders
- Services performed during the preceding billing period

Original invoices shall be submitted to

_____. Invoices in the proper form and approved by the Entity shall be paid by the Entity within thirty (30) days of receipt thereof. The Entity reserves the right to approve such invoices, in its sole discretion, and to request such detail and additional information as the Entity, in its discretion deems appropriate.

2.3 In no event shall the compensation paid to the Contractor exceed the sum of the Entity's approved appropriation for such services in any contract year. If any portion of any Term of this Agreement extends beyond the Entity's current fiscal year, this Agreement is subject to availability and appropriation of funds for that portion of the Term that extends beyond the Entity's current fiscal year.

2.4 Except as may be specifically agreed upon by the parties hereto in writing, the Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the services rendered or to be rendered or materials provided

hereunder. The parties hereto further agree that the Entity shall have no obligation to reimburse, pay directly, or otherwise satisfy, any expenses of the Contractor in connection with the performance of its obligations under this Agreement, including, but not limited to, the cost of any insurance or license fees.

3. Term.

3.1 This Agreement shall be effective when executed by the Entity and shall continue through one (1) year (hereinafter defined as the "Initial Term"), at which time the Entity may exercise its option to renew set forth in Paragraph 3.2 below, unless sooner terminated pursuant to this Agreement.

3.2 The Entity reserves the sole right to renew this Agreement for four (4) years in one (1) year increments (the "Renewal Term") on the same terms and conditions set forth herein. Subject to the appropriation of funds in the annual budget of the Entity, the Entity will automatically renew this Agreement at the end of the Initial Term unless it provides notice of non-renewal to the Contractor prior to the end of the Initial Term, except that, in the event any other Participating Entity shall withdraw from participation for any reason, so that the Entity Contribution percentage increases by more than twenty percent (20%), the Agreement shall not automatically renew, but shall require the written consent to renewal of the Entity. The compensation and manner of payment set forth in Paragraph 2 shall remain as is.

4. Contractor's Representations and Warranties. The Contractor hereby represents the following:

4.1 The Contractor is a limited liability company, duly formed and validly existing under the laws of the State of _____ and is qualified to do business and is in good standing in the State of Maryland.

4.2 The Contractor has the power and authority to consummate the obligations and responsibilities contemplated hereby, and has taken all necessary action to authorize the execution, delivery and performance required under this Agreement.

4.3 The person executing this Agreement for the Contractor warrants that he is duly authorized by the Contractor to execute this Agreement on the Contractor's behalf.

4.4 The professional services to be provided under this Agreement shall be performed competently and with due care, and in accordance with all applicable laws, codes, ordinances and regulations and licensing requirements.

4.5 The Contractor has obtained and shall continue to maintain, at its own cost, such licenses and certifications as are necessary to provide the services rendered under this Agreement, and shall present such licenses to the Entity upon its request for the same.

4.6 All representations and warranties made in the Procurement Affidavit and the Bid response remain true and correct in all respects.

5. Termination.

5.1 Termination for Convenience.

5.1.1 The Entity may terminate this Agreement, without cause, by providing written notice thereof to the Contractor at least thirty (30) days prior to the intended date of termination at the address set forth below, or at such other address as may be later designated by the Contractor in writing. The Contractor acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement illusory or unenforceable.

5.1.2 In the event of termination, without cause, the Contractor shall be paid for all reasonable costs incurred by the Contractor up to the date of termination set forth in the written notice of termination. Payment shall be made in accordance with the provisions of Paragraph 2 of this Agreement.

5.2 Termination for Default.

5.2.1 The Entity may terminate this Agreement, for default, as set forth in Paragraph 7 hereof, by providing written notice thereof to the Contractor at least seven (7) days prior to the intended date of termination at the address set forth below, or at such other address as may be later designated by the Contractor in writing.

5.2.2 In the event of termination for default, the Entity shall have the rights and remedies hereinafter set forth.

5.3 Termination for Non-Appropriation of Funds.

5.3.1 The failure of the Entity to appropriate sufficient funds in any future fiscal year to provide funds for this Agreement shall entitle the Entity to terminate this Agreement without prior notice to the Contractor.

6. Insurance.

The Contractor shall be required to provide insurance required by the Entity pursuant to the attached insurance requirements in the form and in amounts acceptable to the Entity. The Contractor shall maintain the insurance coverages required by the Entity while this Agreement is in force, and provide documentation of such insurance in a form satisfactory to the

Entity. Such documentation may, in the discretion of the Entity, be in the form of binders or declarations from the insurance company. In the event of a conflict between the provisions of the attached insurance requirements and this Agreement, the provisions of this Agreement shall prevail.

7. Default. The term "Default" as used in this Agreement shall mean the occurrence or happening, from time to time, of any one or more of the following:

7.1 Representations and Warranties. If any representation or warranty, expressed or implied, contained in this Agreement, and if applicable, the Bid shall prove at any time to be incorrect or misleading in any material respect either on the date when made or on the date when reaffirmed.

7.2 Compliance with Covenants and Conditions. If the Contractor shall fail to comply with the terms of any covenant, condition, agreement or any express or implied warranty contained in this Agreement.

7.3 Performance of Contractual Obligations. If the services hereunder are not performed in good faith and in accordance with the provisions of this Agreement.

7.4 Conditions Precedent to Any Disbursement. If the Contractor shall be unable to satisfy any condition precedent to its right to receive a disbursement.

8. Remedies for Default.

8.1 The Entity shall have the right upon the happening of any Default, without providing notice to the Contractor:

a. In addition to other available rights and remedies, to terminate this Agreement immediately, in whole or in part;

b. To suspend the Contractor's authority to receive any undisbursed funds; and/or

c. To proceed at any time or from time to time to protect and enforce all rights and remedies available to the Entity, by suit or any other appropriate proceedings, whether for specific performance of any covenant, term or condition set forth in this Agreement, or for damages or other relief, or proceed to take any action authorized or permitted under applicable law or regulations.

8.2 Upon termination of this Agreement for default, the Entity may elect to pay the Contractor for services provided up to the date of termination, less the amount of damages caused by the default, all as determined by the Entity in its sole discretion. If the

damages exceed the undisbursed sums available for compensation, the Entity shall not be obligated to make any further disbursements hereunder.

9. Remedies Cumulative and Concurrent.

No remedy herein conferred upon or reserved to the Entity is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder, or under this Agreement, or now or hereafter existing at law or in equity or by statute. Every right, power and remedy given to the Entity shall be concurrent and may be pursued separately, successively or together against the Contractor, and every right, power and remedy given to the Entity may be exercised from time to time as often as may be deemed expedient by the Entity.

10. Confidential Information.

10.1 The Contractor shall not disclose any documentation and information disclosed to the Contractor in the course of its performance of duties hereunder with respect to the past, present and future Entity business, services and clients without the express written consent of the Entity.

10.2 Notwithstanding anything herein to the contrary, any analytical models created, and any models used, by the Contractor, such as financial or economic spreadsheet models, are confidential and proprietary to the Contractor, unless they are created specifically for the Participating Entity or Entities. Such confidential and proprietary models may not be transmitted to the Entity unless the Contractor elects to do so. In the case that the Contractor uses such confidential and proprietary models, the Contractor shall provide to the Entity sufficient data or output from the models that will allow the Entity to conduct a thorough review of the output from such models.

10.3. Except as may be required by law, or by any lawful order of a court, the Entity will not disclose information provided to it by the Contractor that is deemed to be confidential commercial or financial information and is exempt from disclosure as such under the Maryland Public Information Act. The Contractor will clearly identify and mark any information or documents provided to the Entity that it believes to be exempt from disclosure and will defend and hold the Entity harmless against any and all costs the Entity may incur if any information is not released at the request of the Contractor.

11. Conflict of Interest.

The Contractor represents and warrants that there exists no actual or potential conflict of interest between its performance under this Agreement and its engagement or

involvement in any other personal or professional activities. In the event such conflict or potential conflict arises during the term of this Agreement, or any extension thereof, the Contractor shall immediately advise the Entity thereof.

[(THIS PROVISION PERTAINS TO HOWARD COUNTY ONLY) The Contractor certifies that the officer of the corporation who is executing this Agreement has read and understand the provisions of Section 901(a) of the Howard County Charter dealing with conflicts of interest and Section 22.204 of the Howard County Code dealing with conflicts of interest.]

12. Assignment.

12.1 Neither the Entity nor the Contractor shall assign, sublet or transfer its interest or obligations under this Agreement to any third party, without the written consent of the other. The Contractor further agrees to provide a minimum of ninety (90) days' written notice to the Entity prior to entering into any merger or consolidation where the surviving entity will be unwilling or unable to accept the Contractor's obligations hereunder, to enable the Entity to procure the goods or services elsewhere. In the event the cost of procuring such alternate goods or services increases the cost to the Entity, and/or delays delivery time of any product, in addition to any other remedies available to the Entity, the Contractor shall pay to the Entity, as damages, any additional costs incurred.

12.2 Nothing herein shall be construed to create any personal or individual liability upon any employee, officer or elected official of the Entity, nor shall this Agreement be construed to create any rights hereunder in any person or entity other than the parties of this Agreement.

13. Delegation of Duties.

The Contractor shall not delegate the Contractor's duties under this Agreement without the prior written consent of the Entity.

14. Indemnification.

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

14.2 Contractor shall also defend, indemnify and hold Entity harmless against all liability to any third party arising from the alleged violation of any third parties' trade secrets, proprietary information, trademark, copyright, patent rights, or intellectual property rights in connection with the Contractor's work under this Agreement.

14.3 If a claim is made by a third party that uses any work product or services provided by Contractor hereunder, or any portion thereof, infringes a U.S. patent, copyright or trade secret, upon receipt of Entity's written notice of such claim, Contractor shall indemnify, defend and hold harmless Entity against claims by any such third party that the Contractor's work product or services a portion thereof infringes a U.S. Patent, copyright or trade secret.

15. Integration and Modification.

This Agreement sets forth the entire agreement between the parties relative to the subject matter hereof. No representation, promise or condition, whether oral or written, not incorporated herein shall be binding upon either party to this Agreement. No waiver, modification or amendment of the terms of this Agreement shall be effective unless made in writing and signed by an authorized representative(s) of the party sought to be bound thereby.

16. Fee Prohibition

The Contractor warrants and represents that it has not employed or engaged any person or entity to solicit or secure this Agreement, and that it has not paid, or agreed to pay any person or entity a fee or any other consideration contingent on the making of this Agreement. If any suit, claim, or demand shall arise concerning such a fee, the Contractor agrees to indemnify and hold harmless the Entity, from all such claims, suits or demands.

17. No Partnership.

Nothing contained in this Agreement shall be construed in any manner to create any relationship between the Contractor and the Entity other than expressly specified herein and the Contractor and the Entity shall not be considered partners or co-venturers for any purpose on account of this Agreement.

18. Waiver of Jury Trial. [THIS PARAGRAPH DOES NOT APPLY TO BALTIMORE CITY, BALTIMORE COUNTY, OR HOWARD COUNTY]

THE CONTRACTOR AND THE ENTITY HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE ENTITY AND/OR THE CONTRACTOR ARE PARTIES ARISING OUT OF OR IN ANY WAY PERTAINING TO THIS AGREEMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS,

INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE ENTITY AND THE CONTRACTOR AND THE ENTITY AND THE CONTRACTOR HEREBY REPRESENT AND WARRANT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY AN INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THE ENTITY AND THE CONTRACTOR FURTHER REPRESENT AND WARRANT THAT THEY HAVE BEEN REPRESENTED OR HAVE HAD THE OPPORTUNITY TO BE REPRESENTED, IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER, BY LEGAL COUNSEL, SELECTED OF THEIR OWN FREE WILL, AND THAT THEY HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

19. Governing Law.

This Agreement shall be governed and construed in accordance with the laws of the State of Maryland. Any suit to enforce the terms hereof or for remedy for breach or threatened breach hereof shall be brought exclusively in the courts of the State of Maryland for Entity and the parties expressly consent to the jurisdiction thereof and waive any right that they may otherwise have to bring, transfer or remove such suit in or to the courts of any other jurisdiction.

20. Conflicting Terms.

20.1 The Contractor acknowledges that any Purchase Order issued on or after the effective date of this Agreement is hereby integrated and made a part of this Agreement, provided, however that if a conflict arises between the provisions of this Agreement and the Purchase Order, the provisions of this Agreement shall prevail.

20.2 In the event of a conflict between the Bid and this Agreement, the provisions of this Agreement (without the conflicting terms in the Bid) shall prevail.

21. Severability.

If any of the provisions in this Agreement are declared by a court or other lawful authority to be unenforceable or invalid for any reason the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

22. Time is of the Essence.

Time is of the essence with respect to performance of the terms and conditions of this Agreement.

23. Counterparts.

This Agreement may be executed in any number of counterparts and by different parties hereto in separate Counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument.

24. Ownership of Goods.

Except as expressly provided in Paragraph 10.2 hereof, all finished or unfinished work, reports, or goods that are the subject of this Agreement including any licenses or consents acquired by the Contractor for performance hereunder, shall be and shall remain the property of the Entity.

25. Discrimination Prohibited.

25.1 In the execution of the obligations and responsibilities hereunder, including, but not limited to, hiring or employment made possible by or relating to this Agreement, the Contractor shall not

a. Fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test;

b. Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee, because of the individual's race, color, religion, sex, age, national origin, marital status, sexual orientation, genetic information, or disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or because of the individual's refusal to submit to a genetic test or make available the results of a genetic test; or

c. Request or require genetic tests or genetic information as a condition for hiring or determining benefits.

25.2 All solicitations or advertisements for employees shall state that the Contractor is an equal opportunity employer.

26. Reports / Information/Inspections/and Audits.

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

26.2 The Entity may request the Contractor, at the expense of the Contractor, to have performed an independent audit of the Contractor's financial information including, but not limited to, balance sheets, statement of revenue and expenses, and receipts and disbursements. The independent auditor selected shall be subject to the approval of the Entity.

26.3 The Contractor shall provide monthly comprehensive reports of its activities and the status of its objectives to the person designated by the Entity to receive such reports. The Contractor shall maintain, in a neat and orderly manner, all documents and records relating to work performed pursuant to this Agreement and shall, upon the request of the Entity, turn over to the Entity all information, data, documents, records, reports, drawings and the like, prepared in the course of work under this Agreement.

27. Notice.

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

FOR THE ENTITY:

FOR THE CONTRACTOR:

28. Political Contribution Disclosure Affirmation.

The Contractor affirms that it is aware of, and will comply with, the provisions of Sections 14-101 through 14-108 of the Election Law Article of the Annotated Code of Maryland, which require that every person who makes, during any 12-month period, one or more contracts, with one or more Maryland governmental entities involving cumulative consideration,

or at least \$100,000.00, shall file with the State Board of Elections certain specified information to include disclosure of attributable political contributions in excess of \$500 during defined reporting periods.

29. No Waiver, Etc.

No failure or delay by the Entity to insist upon the strict performance of any term, condition or covenant of this Agreement, or to exercise any right, power, or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, condition, or covenant or of any such breach, or preclude the Entity from exercising any such right, power, or remedy at any later time or times.

30. Survival.

The provisions of paragraphs 4 (Contractor's Representations and Warranties), 10 (Confidential Information), and 14 (Indemnification) shall survive termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WITNESS:

[INSERT LEGAL NAME OF CONTRACTOR]
Federal Identification No.

By: _____ (SEAL)

[Insert Name]
[Insert Title]

[Signatures continued on next page]

WITNESS:

[NAME OF ENTITY], a body
corporate and politic

By: _____ Date
[Officer of Entity]
[Title]

APPROVED FOR LEGAL FORM AND SUFFICIENCY*
(Subject to Execution by A Duly Authorized County
Administrative Official and County Council, if Indicated)

OFFICE OF THE COUNTY ATTORNEY

*Approval of Legal Form and Sufficiency Does Not Convey
Approval or Disapproval of Substantive Nature of Transaction.
Approval is Based Upon Typeset Document. All Modifications Require Re-Approval.

REVIEWED AND APPROVED

SAMPLE

[INSERT DEPT. AND DEPT. HEAD]

[NAME OF COUNCIL OR BOARD]

By: _____ Date
[Council or Board]

ATTACHMENT A

SERVICES TO BE PERFORMED

The Contractor shall act as consultant to the Entity, together with the other Participating Entities, provide the following services to the Entity:

- Gather all necessary market data and prepare all necessary market analysis to assist in the development and implementation of an energy procurement strategy.
- Assist in procuring an electricity Contractor and a natural gas Contractor to enable the purchase of power on the wholesale, day ahead, and real time markets.
- Provide ongoing energy procurement strategy.
- Implementation of a systematic and continuous process to track the performance of the procurement strategy.
- Provide energy market reports and reporting.
- Provide predictor services for both electricity and natural gas.
- Expand consulting services to other energy commodities if requested by an BRCPC Entity or any group of BRCPC Entities.

THE ABOVE ARE IN ADDITION TO ANY OTHER SERVICES AS SET FORTH IN REQUEST FOR PROPOSAL NO. 205863.

CONTRACT AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

I am the [title] _____ and the duly authorized representative of [business] _____ (the "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. BID/PROPOSAL AFFIDAVIT AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

By: _____

Name:

Title:

(Authorized Representative and Affiant)