

**Invitation for Bids
Verbatim Court Reporting Services-Major Proceedings**

**For The Maryland Public Service Commission
PSC #03-01-13**



Issue Date: December 4, 2012

NOTICE

Prospective Bidders who have received this document from the Maryland Public Service Commission's web site or eMaryland Marketplace (<https://emaryland.buyspeed.com>), or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changed or additional materials related to this IFB, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the IFB or other communications can be sent to them.

Minority Business Enterprises are Encouraged to Respond to this Solicitation

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

To help us improve the quality of State solicitations and to make our procurement process more responsive and business friendly, we ask that you take a few minutes to complete and fax or email this form to: Dolline M. Serra at (410) 333-6495 or dserra@psc.state.md.us. Thank you for your assistance.

Title: Verbatim Court Reporting Services – Major Proceedings

Solicitation No.: PSC #03-01-13

I. If you are not bidding, please indicate why:

- Other commitments preclude our participation at this time.
- The subject of the contract is not in our business line.
- We lack experience in the work/commodities required.
- The scope of work is beyond our present capacity.
- We cannot be competitive. (Explain in REMARKS section.)
- The specifications are either unclear or too restrictive. (Please explain below.)
- Bid requirements, other than specifications, are unreasonable or too risky. (Please explain below.)
- Time for completion is insufficient.
- Bonding/insurance requirements are prohibitive. (Please explain below.)
- Doing business with government is simply too complicated. (Please explain below.)
- Prior experience with State of Maryland contract was unprofitable or otherwise unsatisfactory. (Please explain below.)
- Other: _____

II. Please explain your response further, offer suggestions or express your concerns.

REMARKS:

OPTIONAL:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address or email: _____

Thank you

KEY INFORMATION SUMMARY SHEET

STATE OF MARYLAND

Invitation for Bids

Multi-Step

Verbatim Court Reporting Services – Major Proceedings

For The Maryland Public Service Commission

PSC #03-01-13

IFB Issue Date: December 4, 2012

IFB Issuing Office: Public Service Commission

Procurement Officer: Dolline M. Serra
Office Phone: (410) 767-8009
E-mail: dserra@psc.state.md.us

Pre-Bid Conference: December 21, 2012
Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 19th Floor
Baltimore, MD 21202

Bids are to be sent to: Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 16th Floor
Baltimore, MD 21202
Attention: Dolline M. Serra, Procurement Officer

Closing Date and Time: February 4, 2013 11:00 AM (Local Time)

NOTICE

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SECTION 1 - GENERAL INFORMATION

1.1 Summary Statement

The Maryland Public Service Commission (“PSC” or “Commission”) is seeking a court reporting service to prepare and deliver transcripts of testimony given during its proceedings. (NOTE: This Multi-Step Invitation for Bids (“IFB”) excludes reporting and transcription services for all transportation matters, depositions, fuel rate and purchase gas cases, individual vs. company complaints, and administrative meetings.) In addition, the Commission will be seeking interactive real-time reporting plus computerized litigation support technology as a part of a computer-integrated courtroom. Accordingly, the Commission is requesting submission of bids to furnish this reporting service for a five (5) year period, beginning May 1, 2013 through April 30, 2018.

The Commission intends to make only one award under this IFB.

1.2 Non-exclusive Use

It is the Commission’s intention to obtain services as specified in this IFB. However, the contract shall not be construed to require the Commission to use this contract exclusively. The Commission reserves the right to procure services of any nature from other sources when it is in the best interest of the State to do so and without notice to the Contractor.

1.3 Abbreviations and Definitions

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

- a. “COMAR” means Code of Maryland Regulations.
- b. “Contract” means the document executed by the selected Bidder to provide the work required under his IFB.
- c. “Contractor” means the selected qualified Bidder.
- d. “PSC” and “Commission” mean the Public Service Commission of Maryland.
- e. “MBE” means a Minority Business Enterprise that is certified by the Maryland Department of Transportation (MDOT).
- f. “Bidder” means an entity that submits a bid in response to this IFB.
- g. “Procurement Officer” means the PSC representative responsible for this IFB and for the determination of contract scope issues, and the only PSC representative that can authorize changes to the contract.
- h. Domestic Corporation means **an entity that is** incorporated in Maryland.
- i. Foreign Corporation means **an entity that is not** incorporated in Maryland.

- j. Resident Agent means an entity that has been contracted by a Foreign Corporation to be their local (Maryland) contact and has been registered with the MD Department of Assessments and Taxation (SDAT).
- k. “IFB” means this Invitation for Bids for verbatim court reporting services for the Public Service Commission, PSC #03-01-13, dated XXXXXXXX 2012, including any amendments.
- l. “State of Maryland Business Hours” means 8:00 A.M. to 5:00 P.M., local time, Monday – Friday, excluding State holidays, and Service Reduction days.
- m. Proceedings mean, but are not limited to, pre-hearing conferences, case hearings, oral arguments, informal conferences and legislative hearings.
- n. “PUA” means Maryland Public Utilities Article, Annotated Code of Maryland
- o. Expedited Delivery means delivery between two (2) and five (5) days.
- p. Next Day Delivery means delivery by 10:00a.m. the day after an order is placed.
- q. Emergency Hearing is a hearing that has been scheduled with only a one day notice.
- r. Proposed Award Notice means a letter of intent to award upon receipt of all required information to proceed with the award process: SDAT Department ID Number, eMM Registration Number, completed and signed contract and contract affidavit.
- s. Public Service Commission’s website means the homepage on www.psc.state.md.us
- t. Real-time means the ability to have available to proceedings participants the simultaneous translation and display of live proceedings utilizing computer-aided translation within five (5) seconds of stenotype input.

1.4 Contract Type

The Contract that results from this IFB shall be an “Indefinite Quantity” with a fixed unit price Contract in accordance with COMAR 21.06.03.06 for the specified services.

1.5 Contract Duration

The contract resulting from this IFB shall be for a period of five (5) years.

1.6 Procurement Officer and Contract Manager

The Procurement Officer, who is the sole point of contact in the State for purposes of this IFB prior to the award of any contract and the State’s Contract Manager, who shall manage the daily activities of the contract and provide technical guidance to the Contractor is listed below:

Dolline M. Serra, Procurement Officer
Maryland Public Service Commission 6 St. Paul Street, 16th Floor, Baltimore, Maryland
21202-6806 Telephone: 410-767-8009
Email: dserra@psc.state.md.us

1.7 Use of "e-Maryland Marketplace"

eMaryland Marketplace (eMM) is an electronic commerce system administered by the Maryland Department of General Services (<http://www.eMarylandMarketplace.com>). **A vendor must be registered on eMM in order to receive an award.** Registration on eMM is free; if you have questions regarding registration, please call the e-Maryland Marketplace's Help Desk at 410-767-1492.

1.8 Questions

The Procurement Officer, prior to the Conference, shall accept written questions from prospective Bidders. If possible and appropriate, such questions shall be answered at the Conference. (No substantive question shall be answered prior to the Conference.) Questions may be submitted preferably by e-mail, or by mail or facsimile to the Procurement Officer only.

Questions shall also be accepted subsequent to the Conference. All post-Conference questions should be submitted in a timely manner to the Procurement Officer only. The Procurement Officer shall, based on the availability of time to research and communicate an answer, decide whether an answer can be given before the bid due date. Answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, shall be distributed to all prospective Bidders who are known to have received a copy of the IFB.

1.9 Pre-Bid Conference

A Pre-Bid Conference (Conference) will be held on December 21, 2012 beginning at 11:00 AM (local time), at the Public Service Commission, William Donald Schaefer Tower, 6 Saint Paul Street, 19th Floor Hearing Room, Baltimore, Maryland 21202. All interested Bidders are encouraged to attend in order to facilitate better preparation of their bids. In addition, attendance may facilitate the Bidders understanding of this IFB's requirements.

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

In addition, if there is a need for sign language interpretation and/or other special accommodations due to a disability, it is requested that at least five days advance notice be provided. PSC will make reasonable efforts to provide such special accommodations.

1.10 Bids Due (Closing) Date

Technical Offers and Price Bids in separate sealed envelopes, which are clearly labeled as to their contents, must be received by the Procurement Officer at the address listed in Section 1.6 no later than 11:00 AM (local time) on February 4, 2013 in order to be considered.

Requests for extension of this date or time will not be granted. Bidders mailing bids should allow sufficient mail delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02F, bids received by the Procurement Officer after the due date, of February 4, 2013, at 11:00 AM (local time) will not be considered.

As specified in COMAR 21.05.02.17, there will be no public bid opening and no information about the results during step one (1) of the process. There will be a public opening for this Invitation for Bids (IFB) during step Two (2) of the process. The public bid opening is scheduled for February 18, 2013 at 11:00 AM (local time) at the Public Service Commission, William Donald Schaefer Tower, 6 Saint Paul Street, 16th Floor, Baltimore, Maryland 21202.

Oral, fax, telephone or email bids will **not** be accepted.

Bids, requests for withdraws, and modifications not received by the time and at the place indicated are late and may only be considered in accordance with COMAR 21.05.02.10.

1.11 Duration of Bid

Bids submitted in response to this IFB are irrevocable for 90 days following the closing date of bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

1.12 Revisions to the IFB

If it becomes necessary to revise this IFB before the due date for bids, amendments will be provided to all prospective Bidders who were sent this IFB or otherwise are known by the Procurement Officer to have obtained this IFB. In addition, amendments to the IFB will be posted on the PSC web page under Procurements/Contracts and through eMM.

Bidders shall acknowledge the receipt of all amendments to this IFB issued before the bid due date in the Bidder's Transmittal Letter accompanying the bid submittal. Failure to acknowledge receipt of amendments does not relieve the Bidder from complying with all terms of any amendment.

1.13 Cancellations/Discussions

The State reserves the right to cancel this IFB, accept or reject any and all bids, in whole or in part, received in response to this IFB, to waive or permit cure of minor irregularities in accordance with COMAR 21.06.02.

1.14 Incurred Expenses

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

1.15 Economy of Preparation

Bids should be prepared simply and economically, providing a straightforward, concise description of the Bidder's response to meet the requirements of this IFB.

1.16 Protests/Disputes

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

1.17 Multiple or Alternative Proposals

Neither multiple nor alternate proposals will be accepted.

1.18 Access to Public Records Act Notice

A Bidder should give specific attention to the clear identification of those portions of its bid that it considers confidential, proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Access to Public Records Act, Title 10, Subtitle 6, of the State Government Article of the Annotated Code of Maryland. Information which is claimed to be confidential is to be placed in the transmittal letter of the technical offer and, if applicable, in the Financial Bid.

Bidders are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information can be disclosed (see COMAR 21.05.08.01).

1.19 Bidder Responsibilities

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

1.20 Mandatory Contractual Terms

By submitting a bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms of this IFB and the Contract. A copy of the contract is included for your information as Attachment F. Any exceptions to this IFB or the Contract shall be clearly identified in the transmittal cover letter (see Section 4.2.2). A bid that takes exception to these terms may be rejected.

1.21 Bid/Proposal Affidavit

A bid submitted by a Bidder shall be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this IFB.

1.22 Contract and Contract Affidavit

All Bidders are advised that if a contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract and a Contract Affidavit (Attachments E and F).

1.23 Arrearages

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

1.24 Procurement Method

1.24.1 This contract will be awarded in accordance with the competitive sealed bids process under COMAR 21.05.02.17, specifically Multi-Step Sealed Bidding. A "Multi-Step Sealed Bid" means a two-phase process in which bidders submit

unpriced technical offers or samples, or both, to be reviewed by the State and a second phase in which those bidders whose technical offers or samples, or both, have been found to be acceptable during the first phase have their price bids considered.

1.24.2 Multi-Step Competitive Sealed Bid Process

- A. Bidders shall submit all mandatory requirements as set forth in this IFB and as listed in Section 4.
- B. Bidders shall submit one (1) unbound original and two (2) bound copies of the Technical Offer and one (1) original of the Bid Form, including all attachments **sealed in separate envelopes** on or before the closing date and time. Any and all bids received after that date and time shall be considered late and rejected on that basis.
- C. The Procurement Officer shall initially review each submission for responsiveness. Bids determined to be not responsive or bidders determined to be not responsible shall be rejected on that basis.
- D. All Technical Offers, which the Procurement Officer determines are responsive and responsible, shall be evaluated in step one of the process in accordance with the evaluation criteria specifically set forth in Section 5 of this IFB. Technical Offers shall be evaluated and determined by the Procurement Officer to be “acceptable” or “unacceptable”.
- E. All bidders whose Technical Offers have been determined to be “acceptable”, shall compete on the basis of price in step two of the process. Price Bids shall be opened at this time.
- F. Award shall be made on the basis of the lowest favorable bid price.
- G. All unsuccessful participants of step one of the process shall be timely notified, along with the return of their Bid Form unopened.

1.25 Bid Opening

A public bid opening will be held at the Public Service Commission Offices, located at 6 St. Paul Street, 16th floor, Baltimore, MD 21202 on February 18, 2013 at 11:00 AM (local time). Bids will be made available for public inspection at or within a reasonable time after bid opening. Any material claimed to be confidential or proprietary by the Bidder must be clearly marked and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. The reason for each claim shall be included.

1.26 Verification of Registration and Tax Payment

Before a corporation can do business in the State of Maryland it shall be registered with the Department of Assessments and Taxation (SDAT), State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. A Bidder's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Bidder from final consideration and recommendation for contract award.

1.27 False Statements

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

- (a) In connection with a procurement contract a person may not willfully:
 - * Falsify, conceal, or suppress a material fact by any scheme or device;
 - * Make a false or fraudulent statement or representation of a material fact; or
 - * Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

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

- (c) A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

1.28 Minority Business Enterprises

A minority business enterprise subcontractor participation goal of 25% of the total value of the contract has been established for this solicitation. A search of the Maryland Department of Transportation (MDOT) certified MBE database using NACIS code 561492 verified that the number of MBEs were available to make this goal very obtainable. MBE requirements are specified in **Attachment D thru D5** of this IFB.

A current directory of MBEs is available through the Maryland State Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, MD 21076. The phone number is 410-865-1244. The directory is also available at <http://www.mdot.state.md.us>. The most current and up-to-date information on MBEs is available via the web site.

1.29 Tie Bids

In the event the Commission receives responsive bids from responsible bidders that are identical in price, terms and conditions and which meet all the requirements and evaluation criteria set forth in this invitation for bids the award will be made consistent with the provisions of COMAR 21.05.02.14(B).

1.30 Prompt Pay Requirements

This procurement and the contract to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to Sections 11-201, 13-205(a), and Title 14, Subtitle 3 of the State Finance and Procurement Article (SFP), and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Offeror who is awarded a contract must comply with the prompt payment requirements outlined in the Contract, §31 (see Attachment F). Additional information is available on the GOMA website at www.mdminoritybusiness.com

1.31 Veteran Owned Small Business Enterprises (VSBE)

No VSBE goal has been established for this solicitation.

1.32 Living Wage Requirements

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. Additional information regarding the State's wage requirement is contained in this solicitation (see Attachment C entitled Affidavit of Agreement). If the Bidder fails to submit and complete the required documentation under State law, the State may determine a Bidder to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier Area; currently **\$12.91** per hour in the Tier 1 Area and **\$9.70** per hour in the Tier 2 Area (**effective September 28, 2012**) but subject to an annual adjustment [*increase or decrease*]. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.

The contract resulting from this invitation to bids has been deemed to be Tier 1 contract.

SECTION 2 - SCOPE OF WORK

2.1. General Information

The Commission was established in 1910 by the Maryland General Assembly and given regulatory jurisdiction over public utilities operating in the State.

The fact-finding hearings conducted by the Commission are both adjudicatory and legislative in nature. The adjudicatory hearings are adversarial proceedings conducted within the general framework of judicial procedures and evidence. Parties to the proceedings place evidence into the record and cross-examine one another's witnesses. The decision rendered by the Commission must be based upon the evidence on the record.

Typically, proceedings will involve the testimony of managers, engineers, accountants, statisticians, financial consultants, economists, and other experts who can provide evidence pertaining to the complicated management, accounting, financing, rate design and services issues pending before the Commission. In a rate application filed by a large utility, the Commission will receive as much as 2,500 pages of written testimony and cross-examination producing over 3,000 pages of transcripts. ***Language and terms used in Commission proceedings are unique to the field of utility regulation and include a wide array of acronyms.***

In addition to the evidentiary hearings, the Commission holds legislative hearings and evening public hearings at various locations in the service area of the utility whose matter is before the Commission. The purpose of the evening public hearings is to provide customers of the utility with an opportunity to comment on various proceedings and to provide information about how they will be impacted. The statements made at a public hearing are transcribed and become part of the official record in the case.

This IFB requires that the selected Contractor be capable of providing interactive computer aided transcription called "real-time" and computerized litigation support software as part of a computer integrated courtroom for all En Banc¹ Commission proceedings and such other proceedings as the Commission may direct. "Real-time" reporting may assist the Commission in meeting the objectives of the Americans with Disabilities Act and improve the efficiency of Commission proceedings by instantly displaying the reporter's transcription in text form on a video monitor. Computerized litigation support software connected to a computer aided transcription system will permit an unlimited number of on-line computer users, including off-site users, access to the ongoing unedited transcript. Coupled together, "real-time" reporting and computerized litigation support technology afford the Commission and participants in recorded proceedings such features as: (1) instant access to the ongoing transcript both on-site and off-site; (2) a same day first pass corrected transcript in a computer readable format; (3) the ability for subscribers to highlight and mark portions of the transcript, search words and phrases, attach

¹ "En Banc" means the full five member Commission sitting and hearing either adjudicatory or legislative formal case proceedings.

notes, and review questions and answers during the proceeding, all without interfering with the ongoing transcription; (4) the ability to access other computer programs simultaneously; and (5) the ability to produce compressed transcripts (“compressed transcript” means a paper transcript where 3-5 pages of normal double-spaced transcript pages are reduced, put in 2 columns and appear on a one paper copy page). The Commission presently receives its “real-time” computerized litigation support through the use of LiveNote^{TM2} software.

2.2 *Services*

2.2.1 **General**

- A. This IFB and the ensuing contract will cover the requirements for the verbatim reporting of proceedings conducted by the Commission. (*Note:* This IFB **excludes** reporting and transcription services for all transportation matters, depositions, fuel rate and purchased gas cases, individual vs. company complaints, and Administrative Meetings.)

The Contractor shall furnish all labor, material and supplies in connection with the performance of this contract, unless otherwise agreed to by the Commission. As a part of this requirement, the Contractor must be able to provide all PC-based software necessary to perform introductory training (on-site users only) in the use of computer assisted litigation support software. The Commission will provide a type 5 network cable connecting its 16th floor hearing room with its computer room for network and remote access.

- B. All spoken testimony, argument, comments, instructions, objections, and other verbal statements shall be reported, and no part of the required transcript shall be omitted from the record, unless otherwise directed by the presiding officer. Nothing spoken at a proceeding shall be “off the record” unless so designated by the presiding officer.
- C. The Commission reserves the right to use local reporting services for proceedings in the extreme areas of the State and reserves the right to call on other reporting services in the event the Contractor is unable to provide the required services under the contract.
- D. The selected Contractor will provide “real-time” as the method of providing the verbatim reporting services for all En Banc proceedings and other proceedings as the Commission may direct.

2.2.2 **Volume of Work**

- A. The Commission anticipates that approximately 10,000 original pages of transcripts *per year* from approximately 90 days of proceedings will be produced during the duration of the verbatim reporting service contract. As a yearly average over the past contract (2007 – 2012), the Commission received 6,560 pages of “Real-time” transcript pages for 73 days of

proceedings. Each Party participating in “real-time” proceedings purchased approximately two (2) sets of each transcript.

- B. The Commission does not warrant any business volume and shall not be held responsible for volumes greater or less than those anticipated or experienced. By submission of a technical offer and bid form, the bidder agrees to hold the Commission harmless with regard to any estimates of anticipated work volume.

2.3 Deliverables

2.3.1 Availability of Reporting Personnel (Mandatory Requirement)

- A. The Contractor shall have at least four (4) qualified stenographic reporters available on any one day to accommodate multiple Commission proceedings after a one (1) day notice from the Commission.
- B. Of the four (4) reporters required under A above, at least one (1) reporter shall be capable of providing interactive “real-time” reporting service on any one day after a one (1) day notice from the Commission. Reporters used to meet this requirement must be capable of utilizing LiveNote Software.
- C. The Contractor shall have at least one (1) qualified reporter available on a minimum of six (6) hours notice for an unscheduled day or evening Commission proceeding. Interactive “real-time” service will not be required to meet this provision. This option has only been used one (1) time in the last five (5) years. Should this option be needed, a court reporter may use a tape recorder.
- D. The Contractor shall provide four (4) qualified reporters willing to cover the entire State of Maryland for day and evening, as well as holiday and Saturday hearings when scheduled by the Commission
- E. The Contractor **may not use unapproved reporters or subcontractors** without the written authorization by the Commission.

2.3.2 Transcript Requirements (Mandatory Requirement)

- A. Transcript pages shall be 8½" x 11" size (paper form) containing a minimum of twenty-three (23) numbered lines with the numbers printed outside and adjacent to the left margin of each reporting page. The left-hand margin to the reported material shall not exceed 1½" and a maximum right-hand margin of ¾." Whenever testimony is continuous, requiring more than one line, the text shall begin as close as possible to the left-hand margin.
- B. All transcripts (paper form) shall have black type characters on white bond paper. Any required copy shall have sharp, dark typing and be capable of reproduction. All copies shall

be easily readable. Faintly printed copies are not acceptable. Typing shall be ten (10) spaces to the inch, double-spaced and in a type font acceptable to the Procurement Officer.

- C. Each volume of a transcript, both paper and electronic copy, shall begin with a title page or pages, showing the caption of the case, case number, time, date and location of the proceeding, Presiding Officer or officials, names of parties appearing in the proceeding and the organizations represented, and the name of the court reporter or reporters. Each transcript volume shall contain an index indicating: (1) the name of the witness and the name(s) of attorney(s) examining the witness, with the appropriate transcript reference page; and (2) exhibits introduced into evidence, with the appropriate transcript reference page.
- D. Each transcript page and volume in any one proceeding shall be numbered consecutively. Subsequent proceedings involving the same case number shall continue the page and volume numbering sequence. Each volume shall have a front and back cover and meet the following requirements:
 - (1) The front cover shall be clean, firm transparent plastic; back cover shall be white or colored 140 lb. index paper #1, sulfite paper, heavy weight plastic; and
 - (2) Be bound with a fastener approved by the Procurement Officer.
- E. The Contractor shall provide the Commission, free of charge, with one (1) original and one (1) copy in paper form, one (1) copy in an approved electronic format, and one (1) copy in a compressed format of the transcript developed at each proceeding. **The Contractor shall have the exclusive right to sell transcripts of the proceedings to participants at the prices contained in the contract awarded under this IFB.**
- F. Unless otherwise instructed by the Presiding Officer, the Contractor shall be responsible for keeping exhibits introduced at hearings in good order and condition and shall promptly return them to the Commission after use in preparation of the appropriate transcript.
- G. The taking of testimony shall be by stenotype machine, unless otherwise authorized by the Commission
- H. All final transcripts shall be proofread by the reporter taking the testimony or a reporter present during the proceedings to ensure complete accuracy, unless specifically exempted by the Procurement Officer. Any corrections to be completed in the transcripts shall be at the expense of the Contractor.
- I. A final, fully-edited transcript **may not contain an error rate of more than one error per five pages of transcript.** The failure to meet the maximum error rate requirement shall be a sufficient ground for terminating the contract. The Procurement Officer shall be solely responsible for determining whether a given transcript meets the maximum error rate requirement. The failure to enforce the maximum error rate requirement shall not be construed as a waiver of either the requirement or the related contract termination provision.

2.3.3 Delivery of Transcripts (Mandatory Requirement)

- A. Final, fully-edited transcripts (both paper and electronic copy) shall be delivered to the Commission, next day for all “real time” transcription and within ten (10) working days of the date of the proceeding for all other transcription service, except as provided in (B) below, or if a time extension is granted by the Presiding Officer.
- B. When requested by the Presiding Officer or the Commission, or a party in a proceeding, “next day” or “expedited” transcript service shall be provided by delivering to the Commission, and to the requesting party a “next day” or “expedited” completed and fully-edited transcript by 10:00 a.m. on the due date.
- C. (1) Final, fully-edited transcripts (original, one copy, compressed copy and the electronic copy) shall be delivered via courier to the Commission during regular business hours.

(2) Copies of transcripts and an electronic copy shall be delivered to a requesting party during regular business hours with postage or other transportation charges fully prepaid. The delivery cost is to be included as part of the page rate to be charged to a party.
- D. The selected Contractor shall be capable of providing the following delivery options:
 - (1) Regular paper copy transcript - 10-day, expedited or next day.
 - (2) Electronic copy in ASCII or other approved electronic format - 10-day, expedited, next day or same day.
 - (3) Compressed transcript – 10-day, expedited, or next day.
 - (4) First pass corrected electronic copy of transcript – within 1 hour or less of end of proceeding (“real-time” only).
 - (5) Computer link to ongoing transcription in English (“real-time” only).

The Commission may request any combination of the above.

Note: The failure to produce transcripts in a timely manner shall be sufficient ground for terminating the contract. The Procurement Officer shall be solely responsible for determining whether delivery requirements are met. The failure to enforce delivery requirements shall not be construed as a waiver of either the requirements or the related contract termination provision.

2.3.4 Appearance (Mandatory Requirement)

The failure to appear at a Commission proceeding shall be a sufficient ground for terminating the contract. The Procurement Officer shall be solely responsible for determining whether appearance requirements are met. The failure to enforce appearance requirements shall not be construed as a waiver of either the requirements or the related contract termination provision.

2.3.5 Cost

A. Cost to the Commission

The Commission shall receive all court reporting services under this IFB at no cost. This includes a sufficient number of licenses of the latest version of LiveNote™ litigation support software and updates as they occur (see 2.3.6).

B. Cost to State Agencies

A State agency **appearing as a party** to a proceeding shall receive transcripts at the party ***10-day delivery rate for all proceedings and be entitled to receive delivery on a date equal to the shortest period requested by another party.*** If a State agency is the only party requesting transcript delivery in less than 10-days, it will pay party rate for that delivery schedule. State agencies shall be entitled to ***“real-time” service*** for all Commission proceedings for which “real-time” is required by the Commission or requested by a party ***at the 10-day party transcript rate.***

C. Cost to Parties (Excluding PSC and State Agencies)

Cost to Parties will be charged at the prices contained in the contract awarded under this IFB. Parties to En Banc proceedings who desire a transcript shall pay the applicable “real-time” rate for transcripts.

2.3.6 Other Requirements (Mandatory Requirement)

- A. The Contractor must provide all necessary hardware to perform the required reporting service. If “real-time” reporting is being provided, the Contractor shall provide the Commission with not more than **10** licenses of the latest version of LiveNote™ software (including upgrades as they are developed by the software Contractor) compatible with the Commission’s network. As part of this requirement, the Contractor is responsible for ensuring that, at least 10 minutes before a scheduled proceeding, the hearing room of the Commission is properly set up. When the “real-time” court reporting system is used, the Contractor is responsible for ensuring that all computer connections, cables, software, etc. are fully tested and operational for each day’s hearing (including Commission network access).
- B. The Contractor must provide initial training and support in the use of “real-time” and computerized litigation support software for the Commission’s personnel. Update training for Commission personnel may be required for new “real-time” software releases. Training must also be provided to participants in Commission proceedings upon request and at the Contractor’s expense.
- C. The Contractor must provide to the Commission on a yearly basis, a report that shall include the number of days real-time reporting was used, the amount of revenue generated by this

IFB, the number of transcripts purchased (and how many pages that equals) by delivery times, excluding PSC's.

2.3.7 Confidentiality of Record (when required)

The Contractor and all reporters shall hold in the strictest confidence any and all information that may be gained during the performance of service under this contract. Confidential transcripts or portions of a transcript shall be available to only parties authorized by the Commission. Violation of this requirement will subject the Contractor to immediate termination at the discretion of the Procurement Officer.

2.3.8 Copying of Transcripts by the Commission and Electronic Publication

- A. The Commission reserves the right to duplicate with its own facilities, additional copies of any transcript furnished by the Contractor for its own use. The Commission also reserves the right to duplicate, with its own facilities, additional copies for any persons who did not participate as a party in the proceeding for which the transcript was prepared.
- D. The Commission reserves the right to post a transcript on its website six months after the creation of the transcript or after the proceeding (Commission case) for which a transcript was created is closed, whichever is later.

Note: The majority of major proceedings are available for live stream video viewing (except confidential portions) in real time from the PSC website. It is anticipated that some of these videos may be archived later for public viewing.

SECTION 3 - MINIMUM QUALIFICATIONS OF VENDOR AND REPORTING PERSONNEL

3.1 Reporters

The Bidder shall certify, in writing, a list of a minimum of four (4) skilled and experienced reporters to be used in providing the reporting service. The certificate shall list the name, address, and experience of each reporter. Subcontracting with or the use of reporters other than those contained in the Bidder's originally certified list will be subject to the acceptance and approval of the Commission.

3.2 Reporter Experience

Each of the reporting personnel certified by the Bidder under 3.1 above shall have a minimum of five (5) years of full-time reporting experience, at least three (3) years of which shall be administrative hearing reporting experience; a resume may be submitted to fulfill this requirement. Experience with administrative type of proceedings involving utility regulatory matters is desirable but not required.

3.3 References

- A. The Bidder shall provide references from any other administrative agency for which it provides or has provided verbatim reporting services during the past five (5) years.
- B. The Bidder shall supply at least five (5) references to support the bid. Any references from A above can be counted toward the five (5) references. The references must be current and must refer to work accomplished in areas similar to the service type indicated in this IFB. Identify the name of each organization, a current point of contact and telephone number. The State shall have the right to contact any reference of its choosing as part of the evaluation and selection process.

3.4 Reporters-Notary

All Court Reporting personnel shall be Maryland authorized notaries and be prepared to notarize documents when required. A separate fee may not be charged for the notary service.

SECTION 4 - PROPOSAL FORMAT

4.1 Bid Submission

Bidders must submit bids in two parts:

- Volume I - Technical Offer
- Volume II - Financial Bid

4.2 Volume I - Technical Offer

4.2.1 Technical Offer

Technical offers must be submitted in a separate sealed package labeled “Technical Offer” and must bear the name of the bidder and the name and number of the IFB. Inside this package, an original and two (2) copies shall be provided. The technical volume must contain sufficient information to enable the Procurement Officer to evaluate the offer in accordance with all mandatory requirements. It shall be prepared in a clear, concise manner and shall address all appropriate aspects of the IFB **except pricing**. All pages of the offer shall be consecutively numbered from beginning (Page 1) to end (Page "x").

4.2.2 Transmittal Letter

A transmittal letter shall accompany the Technical Offer. The purpose of this letter is to transmit the offer, acknowledge the receipt of any addenda, confirm that the Bidder is fully capable of providing all work under Section 2 Scope of Work, identify any information claimed to be confidential and note any concerns with the IFB or the contract. The transmittal letter should be brief and signed by an individual who is authorized to commit the Bidder to the services and requirements as stated in this IFB.

4.2.3 Format of IFB

The IFB sections are numbered for ease of reference. In addition to the instructions below, the Bidder's Technical Offer should be organized and numbered in the same order as this IFB. This Technical Offer organization will allow State officials and the Procurement Officer to "map" Bidder responses directly to IFB requirements by paragraph number.

4.2.3.1 The Bidders Technical Offer shall include the following sections in this order:

Section 1 – Summary Statement

Give an overview of background and experience.

Section 2 – Scope of Work and Mandatory Requirements

Show understanding of and ability to perform the scope of work and meet the mandatory requirements.

Section 3 – Minimum Qualifications of Vendor and Reporting Personnel

3.1 List of reporting personnel (minimum 4).

3.2 Reporting personnel experience.

3.3 Provide Bidder references.

3.4 Provide copy of Maryland Notary certification for each reporting personnel.

4.2.3.2 The bid must also contain the following in order to be considered responsive to this IFB:

(a) Bid/Proposal Affidavit – Attachment B

(b) Living Wage Affidavit of Agreement – Attachment C

(c) Certified MBE Utilization and Fair Solicitation Affidavit – Attachment D-1

4.3 *Volume II- Financial Bid*

4.3.1 Financial Bid

Under separate sealed cover from the technical offer and clearly identified as the “financial bid”, it must bear the name of the bidder and the name and number of the IFB. Inside this package, provide one original copy of the Financial Bid Form (Attachment A). Do not change or alter the bid form. Alterations may cause rejection of the bid. The bid form must be signed and dated by an individual who is authorized to bind the firm to the prices offered.

SECTION 5- CRITERIA FOR SELECTION PROCEDURE

5.1 *Qualifying Bids*

Each bid will first be reviewed for compliance with the mandatory features described in Sections 2 and 3, and with all other mandatory requirements of this procurement. Failure to comply with any mandatory requirement will disqualify an offer. Only responsive and responsible Bidders whose Technical Offers have been determined to be “acceptable” shall compete on the basis of price in step two of the process and have their financial bids opened at the public bid opening on February 18, 2013 at 11:00 AM (local time) at the Public Service Offices located at 6 St. Paul Street, 16th floor, Baltimore Maryland 21202.

5.2 *Contract Award Basis*

The contract will be awarded to the overall lowest price per page.

5.3 *Evaluation Formula*

All page prices will be totaled, generating an overall page price. The lowest overall page price will be the apparent awardee.

Example: Using a 100 page transcript with a request for one (1) copy/set.

Bid #1	1st COPY PRICING		
	10-day 1 st copy price	\$ 5.00	Price = \$ 500.00
	10-day real time 1 st copy price	\$ 6.00	Price = \$ 600.00
	Expedited 1 st copy price	\$ 7.50	Price = \$ 750.00
	Next Day Copy Price	\$12.50	Price = <u>\$1,250.00</u>
			Total = \$3,100.00 / 100 pages (A)
	Overall Price Page for 1st copy = \$31.00		

Bid # 1:	2nd COPY PRICING		
	10-day 2nd copy price	\$ 3.00	Price = \$ 300.00
	10-day real time 2nd copy price	\$ 3.00	Price = \$ 300.00
	Expedited 2 nd copy price	\$ 3.00	Price = \$ 300.00
	Next Day copy price	\$ 3.00	Price = <u>\$ 300.00</u>
			Price = \$1,200.00 / 100 pages (B)
	Overall Price Page for 2nd copy = \$12.00		

BID # 1 OVERALL PRICE PAGE (A + B) \$43.00

Bid #2	1st COPY PRICING		
	10-day 1 st copy price	\$ 4.50	Price = \$ 450.00
	10-day real time 1 st copy price	\$ 8.00	Price = \$ 800.00
	Expedited 1 st copy price	\$ 8.00	Price = \$ 800.00
	Next Day Copy Price	\$12.00	Price = <u>\$1,200.00</u>
			Total = \$3,250 / 100 pages (A)
	Overall Price Page for 1st copy = \$32.50		

Bid # 2:	2nd COPY PRICING		
	10-day 2nd copy price	\$ 2.50	Price = \$ 250.00
	10-day real time 2nd copy price	\$ 2.50	Price = \$ 250.00
	Expedited 2 nd copy price	\$ 2.50	Price = \$ 250.00
	Next Day copy price	\$ 2.50	Price = <u>\$ 250.00</u>
			Price = \$1,000.00 / 100 pages (B)
	Overall Price Page for 2nd copy = \$10.00		

BID # 2 OVERALL PRICE PAGE (A + B) \$42.50

Bidder #2 is the apparent awardee.

5.4 Reciprocal Preference

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

LIST OF ATTACHMENTS

In accordance with State Procurement Regulations:

ATTACHMENT A – Bid Form – This form is to be completed by the Bidder and sealed in a separate envelope from the technical offer and clearly marked. **Only one copy of the bid form is needed.**

ATTACHMENT B – Bid/Proposal Affidavit – This form must be completed and **submitted with the Bidder’s Technical Offer, original only.**

ATTACHMENT C – Affidavit of Agreement - Maryland Living Wage Requirements for Service Contracts - This form must be completed and **submitted with the Bidder’s Technical Offer, original only.**

ATTACHMENT D – Minority Business Enterprise Participation Instructions and Forms.

- D-1 Certified MBE Utilization and Fair Solicitation Affidavit
Must be submitted with Technical Offer – original only.
- D-2 Outreach Efforts Compliance Statement
Must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier.
- D-3 Subcontractor Project Participation Certification
Must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier.
- D-4 Prime Contractor Paid/Unpaid MBE Invoice Report
Must be submitted monthly by the Prime Contractor.*
- D-5 Sub-Contractor Paid/Unpaid MBE Invoice Report
Must be submitted monthly by the Sub-Contractor.*

ATTACHMENT E – Contract Affidavit – This form is not required at bid submission time. **It must be submitted within 5 working days of notification of apparent award.**

ATTACHMENT F– Contract - This form is not required at bid submission time. **It must be submitted within 5 working days of notification of apparent award.**

ATTACHMENT G – Pre-Bid Response Form – This form is not mandatory. Submission is requested within 5 working days of the Pre-Bid Conference.

*Period covered should be from the 1st day of the month through the end of the month. Both the Prime Contractor and Sup-Contractor’s invoice report (D-4 and D-5) is due the 15th of the month following the month of the report. **Example:** January 1 through January 31 is due by February 15.

ATTACHMENT A – BID FORM

The undersigned, having received and become familiar with the Verbatim Reporting Service Contract, hereby proposes to provide court reporting services and transcripts of testimony in accordance with the provisions, terms and conditions contained in the said Contract Documents for the following prices:

	<u>A</u>	<u>B</u>	<u>C</u>
Service to Parties	<u>1st Copy</u> <u>Price/Pg.</u>	<u>Add.</u> <u>Copy/Price/Pg.</u>	Page Price = A + B
10-day Delivery	\$ _____ (above not to exceed \$5.00)	\$ _____ (above not to exceed \$3.00)	\$ _____
10-day “real time” Delivery	\$ _____ (above not to exceed \$7.00)	\$ _____ (above not to exceed \$3.00)	\$ _____
Expedited Delivery (2 – 5 day Delivery)	\$ _____ (above not to exceed \$8.00)	\$ _____ (above not to exceed \$4.00)	\$ _____
Next Day Delivery	\$ _____ (above not to exceed \$13.00)	\$ _____ (above not to exceed \$4.00)	\$ _____

Overall Page Price [Total of Column C] \$ _____

Authorized Signature _____

Print Name & Title: _____

Company Name: _____

Address: _____

Office Telephone: _____ Office Fax No.: _____

FEIN: _____ Email: _____
Federal Identification Number

All above information must be completed at time of submission.

eMM Registration/Vendor Number*: _____

State Department of Assessments and Taxation (SDAT) Department Number*: _____

***Due within five (5) days of Proposed Award Notice**

ATTACHMENT B – Bid/Proposal Affidavit

BID/PROPOSAL AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

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

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or

(4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

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

B-2. Certification Regarding Veteran-Owned Small Business Enterprises. The undersigned bidder hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

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

(2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;

(3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

(5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or

(6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1) — (5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
 - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

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

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. 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): _____

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying 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 taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is

subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

Date: _____

By: _____

(print name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

ATTACHMENT C – Living Wage Affidavit of Agreement

Maryland Living Wage Requirements-Service Contracts

Contract No. _____

Name of Contractor _____

Address _____

City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

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

- Bidder/Offeror is a nonprofit organization
- Bidder/Offeror is a public service company
- Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

Affidavit of Agreement
Maryland Living Wage Requirements-Service Contracts (continued)

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

- _____ All employee(s) proposed to work on the contract will spend less than one-half of the employee's time during every work week on the State contract;
- _____ All employee(s) proposed to work on the contract will be 17 years of age or younger during the duration of the contract; or
- _____ All employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

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

Name of Authorized Representative: _____

Signature of Authorized Representative Date

Title

Witness Name (Typed or Printed)

Witness Signature Date

ATTACHMENT D – Minority Business Enterprise Participation

ATTACHMENT D - MINORITY BUSINESS ENTERPRISE PARTICIPATION

State of Maryland
PUBLIC SERVICE COMMISSION

PURPOSE

COMAR 21.11.03 Provide maximum contracting opportunities be extended to certified minority business enterprises, and establishes.

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

To meet the goal using MBE subcontractors, all Prime Contractors must:

- Identify work areas for subcontracting
- Solicit minority business enterprises through written notice or personal contact
- Help minority businesses meet bonding requirements or grant them a waiver of bonding requirements
- Identify their MBE subcontractors at the time they submit their bids or proposals

MBE GOALS AND SUB GOALS

- An MBE subcontract participation goal of **25%** percent of the total contract dollar amount has been established for this procurement. By submitting a response to this solicitation, the bidder or Offeror agrees that this dollar amount of the contract will be performed by certified minority business enterprises

OR

- An overall MBE subcontract participation goal of ___ percent of the total contract dollar amount has been established for this procurement. This dollar amount includes:
 - A sub-goal of ___ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as women-owned businesses.
 - A sub-goal of ___ percent of the total contract dollar amount to be allocated to certified minority business enterprises classified as African American-owned businesses.

By submitting a response to this solicitation, the bidder or Offeror agrees that these dollar amounts of the contract will be performed by certified minority business enterprises as specified.

- ◆ A prime contractor — including an MBE prime contractor — must accomplish an amount of work not less than the MBE subcontract goal with certified MBE subcontractors. (COMAR 21.11.03.09B(2))
- ◆ A prime contractor comprising a joint venture that includes MBE partner(s) must accomplish the MBE subcontract goal with certified MBE subcontractors.

SOLICITATION AND CONTRACT FORMATION

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

If a Bidder or Offeror fails to submit Attachment D-1 with the bid or offer as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

- ◆ Within **10 working days** from notification that it is the apparent awardee or from the date of the actual award, whichever is earlier, the apparent awardee must provide the following documentation to the Procurement Officer.
 - (1) Outreach Efforts Compliance Statement (Attachment D-2)
 - (2) Subcontractor Project Participation Certification (Attachment D-3)
 - (3) If the apparent awardee has requested a waiver (in whole or in part) of the overall MBE goal or of any sub-goal as part of the previously submitted Attachment D-1, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11.
 - (4) Any other documentation required by the Procurement Officer to ascertain bidder or Offeror responsibility in connection with the certified MBE participation goal.

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

MBE Reporting Instructions

Prime Contractor shall:

1. Submit by the 15th of each month to the Department a separate report for each (**Attachment D-4**) Subcontractor. The report shall list:
 - a) all payments made to the MBE subcontractor during the previous 30 days
 - b) **any unpaid invoices over 30 days old received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.**
2. Include in its written agreements with the MBE subcontractors as listed on the MBE Participation Schedule a requirement that those subcontractors submit monthly to the Department a report (**Attachment D-5**) that identifies the prime contract. The D-5 report shall list:
 - a) all payments received from the Prime Contractor during the previous 30 days
 - b) any outstanding invoices to include number and date, and the invoice amount
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. **Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.**
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. **Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.**
5. At the option of the Procurement Agency, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

Attachments

- D-1 Certified MBE Utilization and Fair Solicitation Affidavit (**must be submitted with bid or offer**)
- D-2 Outreach Efforts Compliance Statement (**must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier**)
- D-3 Subcontractor Project Participation Certification (**must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier**)

- D-4 Prime Contractor Paid/Unpaid MBE Invoice Report (must be submitted monthly by the Prime Contractor)*
- D-5 Subcontractor Paid/Unpaid MBE Invoice Report (must be submitted monthly by the MBE subcontractor)*

*Period covered should be from the 1st day of the month through the end of the month. Both the Prime Contractor and Sup-Contractor's invoice report (D-4 and D-5) is due the 15th of the month following the month of the report.

Example: January 1 through January 31 is due by February 15

Attachment D-1 – MBE Utilization

MDOT Certified MBE Utilization and Fair Solicitation Affidavit
(submit with bid or offer)

This document **MUST BE** included with the bid or offer. If the Bidder or Offeror fails to complete and submit this form with the bid or offer as required, the procurement officer shall deem the bid non-responsive or shall determine that the offer is not reasonably susceptible of being selected for award.

In conjunction with the bid or offer submitted in response to Solicitation No. **PSC #03-01-13**, I affirm the following:

1. I acknowledge and intend to meet the overall certified Minority Business Enterprise (MBE) participation goal of ____ percent and, if specified in the solicitation, sub goals of ____ percent for MBEs classified as African American-owned and ____ percent for MBEs classified as women-owned. Therefore, I will not be seeking a waiver pursuant to COMAR 21.11.03.11.

OR

- I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. Within 10 business days of receiving notice that our firm is the apparent awardee, I will submit all required waiver documentation in accordance with COMAR 21.11.03.11.

2. *I understand that if I am notified that I am the apparent awardee, I must submit the following additional documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier.*

- (a) Outreach Efforts Compliance Statement (Attachment B)
- (b) Subcontractor Project Participation Statement (Attachment C)
- (c) Any other documentation, including waiver documentation, if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal.

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

3. In the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors.
4. Set forth below are the (i) certified MBEs I intend to use and (ii) the percentage of the total contract amount allocated to each MBE for this project. I hereby affirm that the MBE firms are only providing those products and services for which they are MDOT certified.

Prime Contractor: (Firm Name, Address, Phone)	Project Description:
Project Number:	

List Information For Each Certified MBE Subcontractor On This Project

Minority Firm Name	MBE Certification Number
Certification Category For Dually Certified MBE Subcontractors <i>(Check Only One Certification Category)</i> <input type="checkbox"/> African American Owned <input type="checkbox"/> Woman-Owned	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category For Dually Certified MBE Subcontractors <i>(Check Only One Certification Category)</i> <input type="checkbox"/> African American Owned <input type="checkbox"/> Woman-Owned	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors <i>(Check Only One Certification Category)</i> <input type="checkbox"/> African American Owned <input type="checkbox"/> Woman-Owned	
Percentage of Total Contract	
Minority Firm Name	MBE Certification Number
Certification Category for Dually Certified MBE Subcontractors <i>(Check Only One Certification Category)</i> <input type="checkbox"/> African American Owned <input type="checkbox"/> Woman-Owned	
Percentage of Total Contract	

Continue on a separate page, if needed.

SUMMARY

Total <i>African-American</i> MBE Participation:	_____ %
Total <i>Woman-Owned</i> MBE Participation:	_____ %
Total <i>Other</i> Participation	_____ %
Total All MBE Participation:	_____ %

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

Bidder/Offeror Name

(PLEASE PRINT OR TYPE)

Signature of Affiant

Name: _____

Title: _____

Date: _____

Attachment D-3 Subcontractor Project Participation Certification

Subcontractor Project Participation Certification

Please complete and submit one form for each MDOT certified MBE listed on Attachment A within 10 working days of notification of apparent award.

_____ (*prime contractor*) has entered into a contract with _____ (*subcontractor*) to provide services in connection with the Solicitation described below.

Prime Contractor Address and Phone	Project Description
Project Number	Total Contract Amount \$
Minority Firm Name	
MBE Certification Number	
Work To Be Performed	
Percentage of Total Contract	

The undersigned Prime Contractor and Subcontractor hereby certify and agree that they have fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority business enterprise in its bid or proposal;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of the bid or proposal;
- (3) fail to use the certified minority business enterprise in the performance of the contract; or

- (4) pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

PRIME CONTRACTOR SIGNATURE

SUBCONTRACTOR SIGNATURE

By: _____

By: _____

Name, Title & Date

Name, Title & Date

Attachment D-4 Prime Contractor Paid/Unpaid MBE Invoice Report

Maryland Public Service Commission Minority Business Enterprise Participation

Report #: _____ Reporting Period (Month/Year): _____ Report should run from the 1st of the month through the last day of the month and is due by the 15th of the following month.	Contract #: PSC #03-01-13 Contracting Unit: PUBLIC SERVICE COMMISSION Contract Amount: MBE Subcontract Amt: Project Begin Date: Project End Date: Services Provided:
--	---

Prime Contractor:		Contact Person:																															
Address:																																	
City:		State:	Zip:																														
Phone:	Fax:																																
Subcontractor Name:		Contact Person:																															
Phone:	Fax:																																
Subcontractor Services Provided:																																	
List all payments made to MBE subcontractor named above during this reporting period: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice#</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			Total Dollars Paid: \$		_____	List dates and amounts of any outstanding invoices: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 40%; text-align: center;"><u>Invoice #</u></th> <th style="width: 55%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$</td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			Total Dollars Unpaid: \$		_____
	<u>Invoice#</u>	<u>Amount</u>																															
1.																																	
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Total Dollars Paid: \$		_____																															
	<u>Invoice #</u>	<u>Amount</u>																															
1.																																	
2.																																	
3.																																	
Total Dollars Unpaid: \$		_____																															

**If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.

****Return one copy (hard or electronic) of this form to the following address (electronic copy with signature and date is preferred):**

Dolline M. Serra, Procurement Officer
 Maryland Public Service Commission
 6 St. Paul Street, 16th Floor
 Baltimore, MD 21202
dserra@psc.state.md.us

Signature: _____ Date: _____

Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report

**Maryland Public Service Commission
Minority Business Enterprise Participation**

Report #: _____ Reporting Period (Month/Year): _____ Report should run from the 1st of the month through the last day of the month and is due by the 15th of the following month	Contract #: PSC #03-01-13 Contracting Unit: PUBLIC SERVICE COMMISSION Contract Amount: MBE Subcontract Amt: Project Begin Date: Project End Date: Services Provided:
---	---

MBE Subcontractor Name:																															
MDOT Certification #:																															
Contact Person:																															
Address:																															
City:	State: Maryland	Zip:																													
Phone:	Fax:																														
Subcontractor Services Provided:																															
List all payments received from Prime Contractor during reporting period indicated above. <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$ _____</td> <td></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Paid: \$ _____			List dates and amounts of any unpaid invoices over 30 days old. <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice Amt</u></th> <th style="width:15%; text-align: center;"><u>Date</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid: \$ _____</td> <td></td> </tr> </tbody> </table>		<u>Invoice Amt</u>	<u>Date</u>	1.			2.			3.			Total Dollars Unpaid: \$ _____		
	<u>Invoice Amt</u>	<u>Date</u>																													
1.																															
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Total Dollars Paid: \$ _____																															
	<u>Invoice Amt</u>	<u>Date</u>																													
1.																															
2.																															
3.																															
Total Dollars Unpaid: \$ _____																															
Prime Contractor:		Contact Person:																													

****Return one copy (hard or electronic) of this form to the following address (electronic copy with signature and date is preferred):**

Dolline M. Serra, Procurement Officer
 Maryland Public Service Commission
 6 St. Paul Street, 16th Floor
 Baltimore, MD 21202
dserra@psc.state.md.us

Signature: _____ Date: _____

ATTACHMENT E - CONTRACT AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID

Number: _____

Address: _____

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

Name and Department ID Number:

_____ Address:
_____.

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which

require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

By: _____

(print name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

ATTACHMENT F - CONTRACT

PSC # 03-01-13 Verbatim Court Reporting Services – Major Proceedings

THIS CONTRACT is made this _____ day of _____ by and between _____(company name) and the STATE OF MARYLAND, acting through the MARYLAND PUBLIC SERVICE COMMISSION. In consideration of the premises and the covenants herein contained, the parties agree as follows:

1. Definitions

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

- 1.1 “Bid Proposal” means the Contractor’s Bid Form, dated _____.
- 1.2 “Contractor” means _____ whose principal business address is _____ and whose principal office in Maryland is _____.
- 1.3 “IFB” means the Invitation for Bids Verbatim Court Reporting Services-Major Proceedings- PSC # 03-01-13 dated December 4, 2012.
- 1.4 “Procurement Officer” means Doline M. Serra.
- 1.5 “PSC” or “Commission” means the Public Service Commission of Maryland.
- 1.6 “State” means the State of Maryland.

2. Scope of Work

- 2.1 The Contractor shall provide verbatim court reporting services for major Commission proceedings as required under the IFB, PSC# 03-01-13, dated December 4, 2012.

These services shall be provided in accordance with this contract and the following exhibits, which are attached and incorporated herein by reference. If there is any conflict between this contract and the exhibits, the terms of the contract shall govern. If there is any conflict among the exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – Invitation for Bids, PSC #03-01-13 dated December 4, 2012.

Exhibit B - Contractor’s Technical Offer and Bid Form dated _____.

Exhibit C - State Contract Affidavit dated _____.

Exhibit D - Living Wage Affidavit dated _____.

The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly.

3. Time for Performance.

Unless terminated earlier as provided in this Contract, the Contractor shall provide the services described in Contractor's Technical Offer in accordance with the IFB. The term of this Contract is for a period of **5 years commencing on May 1, 2013 and terminating on April 30, 2018.**

4. Consideration and Payment

4.1 The services set for the above shall be performed during the term of the contract as stated herein at prices not to exceed those contained in the Contractor's Bid Form dated _____.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, solely for purposes of this Contract with the State of Maryland shall be the sole property of the PSC and shall be available to the Department at any time. The PSC shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

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

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

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

6. Patents, Copyrights, Intellectual Property

6.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.

6.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. If a third party claims that a Product infringes that party's patent or copyright, the Contractor will defend the PSC against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the PSC (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in section 6.3 below.

6.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

7. Confidentiality

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

8. Loss of Data

In the event of loss of any State data or records held or maintained by the Contractor in the performance of travel services where such loss is due to the intentional act or omission or

negligence of the contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data, in the manner and on the schedule set by the Procurement Officer. The Contractor shall ensure that all data is backed up, and is recoverable by the Contractor. This paragraph does not apply to data lost in transmission within or across the Contractor's network, except when such a loss of data in transmission is due to the gross negligence or intentional act of Contractor, its agents, servants, employees, or its subcontractors.

9. Identification

9.1 The Contractor shall indemnify the State against liability for any costs, expenses, loss, suits, actions, or claims of any character arising from or relating to the performance of the Contractor or its subcontractors under this Contract.

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

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

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

10. Non-Hiring of Employees

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

11. Disputes

This Contract shall be subject to the provisions of Title 15, Subtitle 2, of the State Finance and Procurement Article Annotated Code of Maryland, as from time to time amended, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Contract Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier.

Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

12. Maryland Law

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

13. Nondiscrimination in Employment

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

14. Contingent Fee Prohibition

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

15. Non-Availability of Funding

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

16. Termination for Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written

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

17. Termination for Convenience

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

18. Delays and Extensions of Time

The Contractor agrees to perform this agreement continuously and diligently. No charges or claims for damages shall be made by the Contractor for any delays or hindrances, regardless of cause, in the performance of services under this Contract. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

19. Suspension of Work

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

20. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, as from time to time amended, the regulations set forth in

Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

21. Financial Disclosure

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

22. Political Contribution Disclosure

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

23. Retention of Records

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section.

24. Representations and Warranties

The Contractor hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

25. Costs and Price Certification

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

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current.

26. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the State of Maryland, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the State. Any such subcontract or assignment shall include the terms of Sections 10 and 12 through 25 of this Contract and any other terms and conditions that the State deems necessary to protect its interests. The State shall not be responsible for the fulfillment of the Contractor's obligations to the subcontractors.

27. Liability

27.1 For breach of this Agreement, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

A. For infringement of patents and copyrights as provided in Section 6 of this Contract;

B. Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;

C. For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to one (1) times the total dollar amount invoiced under this Contract up to the date of settlement or final award of any such claim. Third party claims arising under Section (9) "Indemnification", of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's

liability for third party claims arising under Section 9 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 9.

27.2 As provided in this section, the limitations contained in this section are the maximum for which the Contractor and its subcontractors are collectively responsible for damages arising as a result of this contract.

28. Administrative

28.1 Procurement Officer. The work to be accomplished under this Contract shall be performed under the direction of the Procurement Officer or the Procurement Officer’s designee. All matters relating to the interpretation of this Agreement shall be referred to the Procurement Officer for determination.

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

If to the State: Dolline M. Serra, Procurement Officer
Maryland Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 16th floor
Baltimore, Maryland 21202
Telephone: 410-767-8009
E-mail: dserra@psc.state.md.us

If to the Contractor: _____

29. Commercial Nondiscrimination

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of

its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace.

Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

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

C. The contractor shall include the above Commercial Nondiscrimination clauses, or similar clauses approved by the Commission, in all sub-contracts.

30. **Living Wage Requirements**

A solicitation for services under a State contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement (SFP) Article, Annotated Code of Maryland. Additional information regarding the State's wage requirement is contained in this solicitation (see Attachment C entitled Affidavit of Agreement). If the Bidder fails to submit and complete the required documentation under State law, the State may determine a Bidder to be not responsible.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier Area; currently **\$12.91** per hour in the Tier 1 Area and **\$9.70** per hour in the Tier 2 Area (**effective September 28, 2012**) but subject to an annual adjustment [*increase or decrease*]. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State contract pursuant to §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

NOTE: Whereas the Living Wage may change annually, the Contract price may not be changed because of a Living Wage change.

31. Prompt Payment Policy

31.1. If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- A. Not process further payments to the Contractor until payment to the subcontractor is verified;
- B. Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- C. Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
- D. Place a payment for an undisputed amount in an interest-bearing escrow account; or
- E. Take other or further actions as appropriate to resolve the withheld payment.

31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of a procurement officer or a representative of the Department, concerning a withheld payment between the Contractor and subcontractor under this policy directive, may not:

- A. Affect the rights of the contracting parties under any other provision of law;
- B. Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
- C. Result in liability against or prejudice the rights of the Department.

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

- A. Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
- B. This verification may include, as appropriate:
 - 1. Inspecting any relevant records of the Contractor;
 - 2. Inspecting the jobsite; and

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

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

CONTRACTOR

By:

Date:

PUBLIC SERVICE COMMISSION OF MARYLAND

By: Douglas R.M. Nazarian, Chairman

Date:

Approved for form and legal
Sufficiency this _____ day
of _____, 2012.

Robert H. Erwin,
General Counsel

ATTACHMENT G – PRE-BID CONFERENCE RESPONSE FORM

PSC #03-01-13

Invitation for Bids Verbatim Court Reporting Services – Major Proceedings

A Pre-Bid Conference shall be held on **December 21, 2012 at 11:00AM** (Local Time) at the Maryland Public Service Commission, located @ 6 Saint Paul Street, 19th Floor Hearing Room, Baltimore, Maryland 21202. Please return this form by **December 17, 2012** advising whether or not you plan to attend.

Email or fax this form to the Procurement Officer:

Dolline M. Serra
Public Service Commission
William Donald Schaefer Tower
6 Saint Paul Street, 16th Floor
Baltimore, MD 21202
Facsimile: (410) 333-6495
E-mail: dserra@psc.state.md.us

Please indicate:

_____ Yes, the following representatives (by name and title) shall be in attendance:

1. _____
2. _____
3. _____

_____ No, we shall not be in attendance.

_____ Contact Name (Please Print)
_____ Signature
_____ Title
_____ E-Mail Address