



Agenda Item (2)G
March 10, 1992

Montgomery County Government

MEMORANDUM

March 5, 1992

TO: County Council

FROM: Joan M. Pedersen, Program Evaluator
Office of Legislative Oversight

SUBJECT: Selection of the Independent Auditor

BACKGROUND

On January 27, 1992, in accordance with Council Resolution 12-154, Council Procedures for the Selection of the Independent Auditor, the MFP Committee authorized the Office of Legislative Oversight (OLO) to enter into contract negotiations with the firm that received the highest rating in response to Council RFP No. 21385, and prepare a draft contract for the Committee's approval.

On behalf of the MFP Committee and the Council, OLO met with representatives of KPMG Peat Marwick to discuss contract terms for the next independent auditor contract. Peat Marwick approached the discussions with an extremely cooperative attitude. As a result of negotiations, the agreed upon fees to be charged the County (for the Fiscal Year 1992 financial audit, single audit, fire departments and rescue squad audits, and the UMTA grant certification) will be \$145,500. This amount is \$1,269 below the current contracted fees for these same services.

For contract renewals, all fixed fees and hourly rates will be increased by the actual change in the September to September Washington, D.C. Consumer Price Index-All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics, or four and one-half percent (4 1/2%), **whichever is less**. Peat Marwick originally proposed a five percent (5%) annual increase for its fees, but through negotiations, OLO persuaded the firm to agree to an annual cap of four and one-half percent (4 1/2%). This cap is one-half percent **lower** than the five percent (5%) stipulated in the current contract with Peat Marwick, which could have significant financial implications should inflation increase over the four-year life of the contract.

The MFP Committee met on February 24, 1992 to review the proposed contract and terms negotiated with KPMG Peat Marwick, and endorsed the recommendations contained in the summary of OLO Project 91-6.

Office of Legislative Oversight

100 Maryland Avenue, Rockville, Maryland 20850, 301/217-7990

REQUIRED ACTION

The attached Council Resolution (Circle 3) was introduced on March 3, 1992. The Management and Fiscal Policy Committee recommends that the Council approve KPMG Peat Marwick to perform the annual independent audit of the County's financial records and actions for the period specified, and authorize the Council President to execute the attached contract. (The County Attorney's Office has approved the proposed contract as to form and legality.)

JP/cca
544/4

Attachment

CONTRACT

This Contract is entered into this _____ day of _____, 1992, between the County Council for Montgomery County, Maryland (referred to in this Contract as the "Council") and KPMG Peat Marwick, 2001 M Street N.W., Washington, D.C. 20036, (referred to in this Contract as the "Auditor"). The Council and the Auditor together are referred to in this Contract as the "Parties".

BACKGROUND

1. The Council adopted Resolution _____ on _____ 1992, authorizing the Council President to contract with KPMG Peat Marwick, a certified public accountant firm, to perform the annual independent audit of the County's financial records and actions for the Fiscal Year ending June 30, 1992.

2. On November 8, 1991, the Council's Management and Fiscal Policy (MFP) Committee issued a Request for Proposal (RFP) No. 21385 in order to obtain an Auditor to provide the following services:

A. Financial Audit. Examine the Combined Financial Statements, Notes, Combining Financial Statements, Individual Fund Financial Statements and the Account Groups of Montgomery County, Maryland.

Separate Auditor's reports are required for the Comprehensive Annual Financial Report (CAFR) and the General Purpose Financial Statements (GPFS), the "liftables" to be issued separately. The Auditor's opinion may place reliance on reports issued by other Auditors as they relate to component units and joint ventures. Requirements for the financial audit also include:

1. **Maryland State Uniform Financial Report.** Review and attest to the County's uniform financial report submitted to the Maryland State Division of Fiscal Services, and transmit completed forms as required.

2. **Single Audit Act.** Examine the combined statement of revenues and expenditures of Federal grant programs of Montgomery County, Maryland and review internal accounting and administrative controls. The Auditor's report will include the Auditor's opinion on the general purpose financial statements and the combined statement of revenues and expenditures of Federal grant programs, the Auditor's report on the study and evaluation of internal control systems, and the Auditor's report on the entity's compliance with applicable laws and regulations.

3. **Management Letter.** The Auditor will prepare a detailed management letter to be submitted to the County Council at the completion of the annual audit. The management letter is to be submitted within forty-five (45) days after completion of the Auditor's field work and should include comments, recommendations and suggested improvements in accounting procedures, internal controls, management actions and other relevant areas.

4. **Official Statement.** The County will include in its Official Statement, the General Purpose Financial Statements, notes, and Auditor's opinion from the latest available Comprehensive Annual Financial Report.

5. Certificate of Achievement. The Government Finance Officers Association (GFOA) annually awards a Certificate of Achievement for Excellence in Financial Reporting to governmental units whose Comprehensive Annual Financial Report (CAFR) conforms to the program's standards. Montgomery County, Maryland has consecutively received this certificate for the past twelve years. Since the program's specific standards require financial disclosure greater than required under generally accepted accounting principles, the Auditor is expected to assist the County to ensure that the CAFR is in compliance with the GFOA's standards.

6. Fiscal Year Closing. The County annually has a planning meeting with the component units included in the Montgomery County, Maryland reporting entity, to discuss the fiscal year closing process and identify any issues that may impact the timing of the closing. The Auditor is expected to participate in this meeting, specifically to discuss any mandated reporting changes that would be applicable to the current and the subsequent fiscal year.

7. Arbitrage. The Auditor will review and report on the calculation of rebate amount under the U.S. Treasury arbitrage rebate requirements.

8. Progress Reports/Annual Conference. The Auditor will provide monthly progress reports outlining the progress to date and any accounting or auditing concerns which would have come to the Auditor's attention and would have an impact on any items included in this scope of services. Periodically, conferences with the Council may be required to discuss the Auditor's reports and management letters.

B. Fire Departments and Rescue Squad. Examine the financial records, prepare Budgetary and GAAP Financial Statements and assist with preparation of the official notes to the financial statements of the 18 independent fire departments and one rescue squad as they relate to monies appropriated by the County Council.

Separate Auditor's reports including the Financial Statements and the Auditor's opinion, are required for each of the 18 independent fire departments and one rescue squad. The Auditor will prepare a detailed management letter to be submitted to the County Council at the completion of the annual audit. The management letter is to be submitted within forty-five (45) days after completion of the Auditor's field work and should include comments, recommendations and suggested improvements in accounting procedures, internal controls, management actions and other relevant areas.

C. Urban Mass Transit Administration (UMTA) Grant. Review underlying documentation and certify to data contained within the County's Section 15 Annual Report to UMTA, and particularly to the Section 9 Statistics Summary, Form 006, included in that report. A separate Auditor's report and Section 9 Data Certification are required based upon examination requirements and procedures specified by UMTA and agreed to by the County.

D. Enhanced 9-1-1 Trust Fund. Review the County's report to the Emergency Number Systems Board on expenditures for the operation and maintenance of the County's 9-1-1 Trust Fund. A separate Auditor's opinion is required based upon criteria developed by the Emergency Number Systems Board for the State of Maryland. The County may exercise its option to award multi-year examination of this segment, not to exceed a three-year period. These

professional services shall be delivered only upon specific authorization of the Contract Administrator of this Contract, as evidenced by the issuance of a Notice-to-Proceed.

E. Period of the Audit. The period of the audit for the first year of the engagement will be July 1, 1991 through June 30, 1992 (Fiscal Year 1992). The Contract will be renewable for three additional years, one year at a time. The period of the audit for each subsequent year will be the fiscal year beginning July 1 and ending June 30.

F. Optional Auditing Services. The County may, from time to time, require additional audits or audit-related services (such as analysis of the impact of GASB statements). In that event, the Contract will be amended to include the additional work. The terms of such amendment for each additional work assignment will be established at the time of the initial contract negotiations. These professional services will be delivered only upon specific authorization of the Contract Administrator of this Contract, as evidenced by the issuance of a Notice-to-Proceed.

G. Optional Accounting Services. The County may, from time to time, require professional accounting services from the Auditor to assist with the close of the County's books, the preparation of draft schedules to support each fund and draft financial statements, to close the books of tax funded fire and rescue departments, and other related professional services. These professional services shall be delivered only upon specific authorization of the Contract Administrator of this Contract, as evidenced by the issuance of a Notice-to-Proceed.

H. Comfort Letters. The County may require, from time to time, that the Auditor perform such tests and analyses as deemed necessary in accordance with generally accepted auditing standards to issue a consent letter authorizing the County to use the Auditors' opinion in County debt offering documents. These services shall be delivered only after the issuance of a Notice-to-Proceed by the County's Director of Finance.

3. The approved FY 1992 Operating Budget for nondepartmental accounts includes funds for the Contract with a certified public accountant firm to perform the independent audit.

4. The Council's Management and Fiscal Policy (MFP) Committee evaluated the Auditor's proposal in accordance with the County's Procurement Regulations and evaluation criteria stated in the RFP and recommended the Auditor for Contract award.

5. The County Council determined that the Auditor is responsible and qualified to provide the auditing services, and approved the MFP Committee recommendation.

6. The Parties, therefore, agree to the following terms:

ARTICLE I. DOCUMENTS

- A. On November 8, 1991, the Council's Management and Fiscal Policy (MFP) Committee issued Request for Proposal (RFP) No. 21385 to perform audit services for Montgomery County, Maryland. This RFP has been provided to the Auditor and is incorporated in this Contract by reference.
- B. The Auditor submitted a timely proposal dated January 3, 1992, which is incorporated in this Contract by reference.
- C. In the case of any conflicts arising from the information stated in this Contract and the above two documents incorporated by reference, the Contract will prevail over either of the other documents and the proposal will prevail over the RFP.

ARTICLE II. SCOPE OF WORK

- A. Basic Work. The Auditor agrees to perform all auditing services set forth in Section II, Scope of Services, Items A through C, of the RFP, as described in Section 1, Technical Approach, of the Auditor's proposal dated January 3, 1992.
- B. Enhanced 9-1-1 Trust Fund. The Auditor agrees to perform all auditing services set forth in Section II, Scope of Services, Item D, of the RFP, as described in Section 1, Technical Approach, of the Auditor's proposal dated January 3, 1992. This work may encompass one or more audit years, not to exceed three fiscal years, as directed by the Emergency Number System Board (Board) of the Maryland Department of Public Safety and Correctional Services. The Board may require direct correspondence and a separate agreement with the Auditor before authorizing the work.
- C. Additional Work. Additional work within the general scope of this Contract may be authorized by Contract amendment.
- D. Changes to Scope of Services. The terms of this contract may be subject to amendment upon the issuance of accounting or auditing standards which significantly affect the Auditors' scope of work. In such circumstances, the County and the Auditor will agree on the contract modification prior to performing the work.

ARTICLE III. COMPENSATION

- A. Payment for Auditing Services described in the Request for Proposal No. 21385, Section II, Items A. and B.
 - 1. The Council will pay the Auditor a fixed fee of **\$136,500** for Fiscal Year 1992 audit services performed under this portion of the Contract in five payments, according to the following schedule:

- Twenty percent (20%) of the agreed upon fee will be paid on June 1st, August 1st, October 1st, and December 1st, upon the Office of Legislative Oversight's (OLO) determination that the Auditor is making satisfactory progress toward completion of all auditing services.
 - The final payment of twenty percent (20%) of the fee will be paid after acceptance of all audit deliverables as described in the proposal Section 1, Technical Approach.
2. The Auditor will send all invoices for auditing services under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the Director of the Office of Legislative Oversight, or his designee.
- B. Payment for Auditing Services Described in the Request for Proposal No. 21385, Section II, Item C.
1. The Council will pay the Auditor a fixed fee of **\$9,000** for services related to the Fiscal Year 1992 UMTA Grant audit and certification.
 2. The Auditor will be paid in two equal installments, with the first installment to be paid upon completion of the Auditor's field work related to the audit, and the second installment to be paid after acceptance of the audit deliverables described in Section 1, Technical Approach, of the Auditor's proposal.
 3. The Auditor will send an invoice for auditing services performed under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the Director of the Office of Legislative Oversight, or his designee.
- C. Payment for Auditing Services Described in the Request for Proposal No. 21385, Section II, Item D.
1. Under the authority granted to the Council by the Emergency Number System Board (Board), the Council will authorize payment to the Auditor of a fixed fee of **\$3,500** for services related to an audit of the Enhanced 9-1-1 Trust Fund encompassing a single fiscal year; and an additional fixed fee of **\$2,900** for each fiscal year period added to the scope of the audit.
 2. The Auditor will be paid after acceptance of the audit deliverables described in the Auditor's proposal, Section 1, Technical Approach.

3. Payment for this audit will be made by the Emergency Number Systems Board of the Maryland Department of Public Safety and Correctional Services. The Auditor will send an invoice for auditing services performed under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Upon verification of the correctness of the invoice, the Office of Legislative Oversight will forward the invoice along with any necessary documents and reports to the the Emergency Number Systems Board for payment.

D. Payment for Optional Auditing and Review Services in the Request for Proposal No. 21385, Section II, Item E.1.

1. The Council will pay the Auditor for additional audits, audit related services (such as analysis of the impact of GASB statements), and reviews on a "Time and Materials" basis in accordance with the following hourly rates:

	<u>Audit Services</u>	<u>Review Services</u>
Partner	\$190	\$190
Senior Manager	110	145
Manager	90	115
Senior Accountant/Consultant	60	80
Staff Accountant/Consultant	50	65
Assistant Accountant/Technician	40	50

2. The Auditor will send all invoices for services rendered under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the Director of the Office of Legislative Oversight, or his designee.

E. Payment for Optional Accounting Services in the Request for Proposal No. 21385, Section II, Item E.2.

1. The Contract fee for professional services rendered by the Auditor to assist with closing of the books or preparing related draft financial schedules and statements for the Department of Finance; the individual fire departments and rescue squad; or other County departments which may require assistance, will be at the composite rate per hour of:

April 1, 1992 - September 30, 1992	\$38 per hour
October 1, 1992 - March 31, 1993	\$45 per hour

2. The Auditor will send an invoice for services rendered under this portion of the contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices will be paid from Department of Finance funds upon approval of the Director of Finance, or from Fire and Rescue funds upon approval of the Chairman of the Fire and Rescue Commission, or from other specific department funds upon approval of the appropriate department director.

F. Payment for Optional Work in the Request for Proposal No. 21385, Section II, Item E.3.

1. The Contract fee for services associated with providing each letter consenting to the use of the Auditor's Report on the County's fiscal year 1992 financial statements will not exceed **\$8,000**, which includes out-of-pocket expenses.
2. The payment for these services will be made from the Cost of Issuance appropriation after delivery of the consent letter.
3. The Auditor will send an invoice for services performed under this portion of the Contract to the Director, Office of Legislative Oversight, Room 509, Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850. Invoices may be approved for payment only by the County's Director of Finance.

G. Fees for Subsequent Years.

1. The Contract fees for subsequent years' Auditor services (Fiscal Years 1993, 1994, 1995) will be the preceding year fixed fees or hourly rates increased by the actual percent change in the September to September Washington, D.C. Consumer Price Index-All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics for the applicable year, or **four and one-half percent (4.5%)**, whichever is less.

ARTICLE IV. TERM

- A. All work under this Contract, up to and including the exit conference with the MFP Committee must be completed within one calendar year beginning on the date established in a written Notice-to-Proceed provided to the Auditor by the Contract Administrator.
- B. The Council, at its option, may renew the Contract for three additional years, one year at a time.
- C. The period for performance of any additional work will be established in a Contract amendment providing for the additional work.

ARTICLE V. STAFFING

- A. Key personnel for this project are those persons named in Section 2, pages 2-22 and 2-23 of the Auditor's proposal dated January 3, 1992.
- B. The key personnel specified in this Contract must work on this project at the level of effort proposed by the Auditor unless a change in either the key personnel or level of effort is approved by the Contract Administrator and authorized by Contract amendment. If it should become necessary to replace any of the key personnel on the Auditor's staff, the new personnel's qualifications and experience will be at least equal to those of the replaced staff.

ARTICLE VI. CONTRACT ADMINISTRATOR

- A. The Council President hereby delegates to the person identified below the responsibility and authority to perform the functions of the Contract Administrator for this Contract:

Name: Joan M. Pedersen
Title: Program Evaluator

Address: Office of Legislative Oversight
Room 509, Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

Telephone: (301) 217-7995

- B. During any prolonged absence of the designated Contract Administrator, the Director of the Office of Legislative Oversight will serve as the alternate Contract Administrator.
- C. Unless the Council President changes this delegation of authority, in writing, no other person is authorized to perform the functions of the Contract Administrator for this Contract.

ARTICLE VII. TERMS AND CONDITIONS

- A. Council is the Principal Client. As required by Section 315 of the Charter, the Council is the principal client of the Auditor. The Council, through the MFP Committee, is to be kept fully informed of any problems and issues arising during the course of the audit as well as progress being made on completion of the audit.
- B. Other Contracts with the County. In order that the auditor/client relationship be maintained between the Auditor and the Council, any additional work during the term of the Contract which the Auditor or its affiliates propose to perform for Montgomery County Government, over and above the auditing services specified in this Contract will be subject to the prior written concurrence of the Council. The concurrence will be expressed through the Council's MFP Committee after verifying that there is no conflict of interest or unfair advantage.

- C. Minority Business. The Auditor will subcontract to certified minority, female, or disabled-owned (MFD) firms, a minimum of \$29,100 or twenty percent (20%) of the Contract fees for the basic Fiscal Year 1992 financial audit, the fire departments and rescue squad audits, and the 1992 UMTA Grant certifications.
- D. Communication with the Component Units Included in the Montgomery County, Maryland Reporting Entity. A copy of all correspondence from the Auditor to the component units included in the Montgomery County, Maryland reporting entity will be sent to the Contract Administrator at the same time the correspondence is sent to the addressee.
- E. Confidential Information. Some material reviewed by the Auditor in performance of this Contract will be of a confidential or proprietary nature. The Auditor will not divulge such confidential or proprietary information to any party other than the County officials directly involved.
- F. Verification and Audits. All audit working papers, status reports, financial reports, briefings, billings, and other information developed for this Contract will be subject to verification. This verification may be done by authorized representatives of the County Council, the cognizant Federal agency and the General Accounting Office. Accordingly, the contractor and all subcontractors will be required to maintain for a period of five years, books, records, documents, and other evidence directly pertinent to the performance of work under this Contract in accordance with appropriate accounting procedures and accepted professional practices. The authorized representatives will have full access to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The contractor will further be required to provide proper facilities within their office, if requested, for performance of such inspections and audits.
- G. Publication or Release of Data. The Auditor will not publish or release any data, tentative conclusions, reports, correspondence, descriptions, procedures, calculations, compilations or other information relative to this Contract, without written concurrence of the Council.
- H. General Conditions. This Contract is subject to ATTACHMENT A, "General Conditions of Agreement Between Council and Auditor."

ARTICLE VIII. ENTIRE AGREEMENT

- A. This Contract consisting of ten pages, its attachment consisting of seven pages, and the two documents incorporated by reference constitute the entire agreement between the Council and the Auditor. Any modifications will not become binding on either party until reduced to writing and accepted by both parties.

WITNESS:

KPMG PEAT MARWICK

BY: _____

Date: _____

County Council
for Montgomery County, Maryland

BY: _____
Bruce Adams, President

Date: _____

Approved as to form and legality by:

County Attorney

Date: _____

**GENERAL CONDITIONS OF AGREEMENT
BETWEEN COUNCIL AND AUDITOR**

1. **ACCURATE INFORMATION, ACCOUNTING SYSTEM AND AUDIT.** The Auditor certifies that all information the Auditor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy.

The Auditor certifies that the Auditor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the Auditor's and any first-tier subcontractor's records to determine and verify compliance with the contract. The Auditor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with Federal or State funds, the appropriate Federal or State authorities may also examine these records. The Auditor must include the preceding language of this paragraph in all first-tier subcontracts.

2. **APPLICABLE LAWS.** This contract shall be governed by the laws and regulations of Maryland and Montgomery County including Montgomery County Procurement Regulation #130-85, as amended by Emergency Regulation 11-89E, where applicable. The regulations are incorporated by reference and made part of this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations shall govern. The Auditor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits and comply with applicable Federal, State, and local laws, codes, and regulations. For purposes of litigation involving this contract, exclusive venue and jurisdiction shall be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

3. **ASSIGNMENTS AND SUBCONTRACTS.** The Auditor shall not assign or transfer this contract, any interest or claim hereunder, except as expressly authorized in writing by the Council and no contract shall be made by the Auditor with any other party for furnishing any of the work or services without the approval of the Council. Unless performance is separately and expressly waived in writing by the Council, an assignment does not release the Auditor from responsibility for performance of this contract.

4. **CHANGES.** The Council may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified in writing to

reflect any equitable adjustment justified by any increase or decrease in the Auditor's cost or time required for performance or change in scope of service. Any claim about an adjustment in time or money due to a change must be given in writing to the contract administrator within 30 days from the date the Council issued the change or the claim will be deemed waived. Any failure to agree upon the time or money adjustment must be resolved under the "Disputes" clause of this contract. The Auditor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

5. **CONTRACT ADMINISTRATION.** In accordance with Montgomery County Code Section 29A-5(b)(8), the Office of Legislative Oversight (OLO) will administer the Auditor's contract. The contract administrator, subject to restrictions enumerated below, is the Office representative designated by the Director and is authorized to:

- a. serve as liaison between the County and Auditor;
- b. give direction to the Auditor to ensure satisfactory and complete performance;
- c. monitor and inspect the Auditor's performance to ensure acceptable timeliness and quality;
- d. serve as records custodian for this contract;
- e. accept or reject the Auditor's performance;
- f. furnish timely written notice of the Auditor's performance failures to the Council and to the County Attorney, as appropriate;
- g. prepare required reports;
- h. approve or reject invoices for payment;
- i. recommend contract modifications or terminations to the Council; and
- j. issue notices to proceed.

The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, effect procurement, interpret ambiguities in contract language, or waive the County's contractual rights.

6. **DISPUTES.** Any dispute concerning a question of fact arising under this contract which is not disposed of by Agreement shall be decided by the Council. Pending final decision of a dispute hereunder, the Auditor shall proceed diligently with the contract performance. Disputes under this contract may be resolved pursuant to Montgomery County Procurement Regulations, Section M.2.

7. **DOCUMENTS, MATERIALS AND DATA.** The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in or developed as a result of this contract. The County may use this information for its own purposes, or use it for reporting to State and Federal agencies. The Auditor warrants that it has title to or right of use of all documents, materials or data used or developed in

connection with this contract. The Auditor must keep confidential all documents, materials, and data prepared or developed by the Auditor or supplied by the County.

8. **ENTIRE AGREEMENT.** There are no promises, terms, conditions, or obligations other than those contained in this contract; and this contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto with the exception of express warranties given to induce the purchase of goods or services by the County.

9. **GUARANTEE.** The Auditor herein guarantees that all products offered will carry a guarantee against any and all defects for a minimum period of one year from acceptance. The Auditor shall be required to correct any and all defects in material and/or workmanship which may appear during the guarantee period by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction. All warranties and guarantees will be considered to be in effect from the date of acceptance by the County of the goods or services. The Auditor guarantees that all work shall be accomplished in a professional manner and the Auditor shall observe and comply with all Federal, State, County and local laws, ordinances and regulations in performing the services listed. Any goods and materials provided by the Auditor shall be of first quality.

10. **HAZARDOUS AND TOXIC SUBSTANCES.** Manufacturers and distributors are required by the "Federal Hazard Communication Standard" (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The Auditor must comply with these laws, as applicable, and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of services under this contract.

11. **IMMIGRATION REFORM AND CONTROL ACT.** The Auditor warrants that both the Auditor and any subcontractor do not and shall not hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien knowing the alien is an unauthorized alien and hire any individual without complying with the requirements of the Immigration Reform and Control Act of 1986 (the Act), including, but not limited to, any verification and record keeping requirements. The Auditor further assures the County that, in accordance with the Act, it does not and will not discriminate against an individual with respect to hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment because of such individual's national origin or in the case of a citizen or intending citizen, because of such individual's citizenship status.

12. **INCONSISTENT PROVISIONS.** Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the Auditor, the County's General Conditions will supersede those terms and conditions in the event of any inconsistency.

13. **INDEMNIFICATION.** It is agreed that the Contractor (Auditor) shall be responsible for any loss, personal injury, death and/or any other damage (including incidental and consequential) that may be done or suffered by reason of the Auditor's negligence or failure to perform any of the obligations defined by this Agreement and the Auditor hereby agrees to indemnify and save Montgomery County (County) harmless from any loss, cost, damage and other expenses suffered or incurred by the County by reasons of the Auditor's negligence or failure to perform any of the said obligations. The Auditor agrees to defend the County in any action or suit brought against the County arising out of the Auditor's negligence, errors, acts or omissions under this Agreement. The negligence of any agent, subcontractor or employee of the Auditor is deemed to be the negligence of the Auditor within the meaning of this paragraph. For purposes of this paragraph, County includes its boards, commissions, agencies, agents, officials and employees.

14. **INDEPENDENT CONTRACTOR.** It is understood that the Auditor is an independent contractor and shall not be considered an agent of the County nor shall any of the Auditor's employees or agents be construed as subagents of the County.

15. **INSPECTIONS.** The County has the right to monitor, inspect and evaluate or test all supplies or services called for by the contract at all reasonable places (including the Auditor's place of business) and times (including the period of preparation or manufacture).

16. **INSURANCE REQUIREMENTS.** Prior to the execution of the contract by the Council, the proposed awardee must obtain at its own cost and expense and keep in force and effect until termination of the contractual relationship with the County, including all extensions, the following insurance with Insurance Company/Companies licensed to do business in the State of Maryland evidenced by a Certificate of Insurance and/or certified copies of the insurance policies.

● **Worker's Compensation.** Meeting all requirements of Maryland Law and with the following minimum limits:

- Bodily Injury by Accident: \$100,000 each accident
- Bodily Injury by Disease: \$500,000 policy limits
- Bodily Injury by Disease: \$100,000 each employee

● **Professional Liability.** Professional Liability insurance covering errors and omissions and negligent acts committed during the period of contractual relationship with the County with at least \$1,000,000 coverage per claim and aggregate, with a maximum deductible of \$25,000. Auditor agrees to provide for a one-year discovery period under this policy.

● **Commercial General Liability.** Minimum \$500,000 combined single limit for Bodily Injury and Property damage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Product Liability

● **Automobile Liability.** Minimum automobile insurance covering owned, hired, and non-owned vehicles as follows:

- Bodily Injury: \$250,000 each person; \$500,000 each occurrence
- Property Damage: \$300,000 each occurrence

● **Additional Insured.** Montgomery County Government must be named as an additional Insured on all liability policies.

● **Policy Cancellation.** Sixty days written notice of cancellation or material change in any of the policies is required.

- **Certificate Holder:** Montgomery County Government
ATT: Joan M. Pedersen
Contract Administrator
100 Maryland Avenue, Room 509
Rockville, Maryland 20850
Contract #21385

17. **MINORITY BUSINESS PROGRAM.** It is the policy of the Council to actively and aggressively recruit minority-owned businesses to provide goods and services for the performance of governmental functions pursuant to Section 11B-23 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled-owned businesses (MFD). MFD businesses include persons and firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group and include Blacks (not of Hispanic origin), Hispanics, American Indians, Alaska natives, Pacific Islanders, Women, and the Mentally or Physically Disabled.

18. **NON-CONVICTION OF BRIBERY.** The Auditor hereby declares and affirms that, to its best knowledge, none of its officers, directors or partners and none of its employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery or conspiracy to bribe under the laws of any State or the Federal government.

19. **NON-DISCRIMINATION IN EMPLOYMENT.** The Auditor agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 11B-3 and Section 27-19 of the Montgomery County Code, as well as all other applicable State and Federal laws and regulations regarding employment discrimination. The Auditor assures the County that in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of age, color, creed, national origin, race, religious belief, sexual preference or handicap.

20. **NOTICE OF ETHICS REQUIREMENTS.** The Auditor is required to comply with the ethics provisions contained in Montgomery County Code, as amended, Chapters 11B and 19A. In addition, notice is hereby given as follows:

- a. **GIFTS.** It is unlawful for any person to offer, give or agree to give to any public or former public employee or for any public or former public employee to solicit, demand, accept or agree to accept from another person gifts for or because of an official public action taken, or to be taken, or which could be taken; a legal duty performed, or to be performed, or which could be performed; or a legal duty violated, or to be violated or which could be violated by such public or former public employee (Section 11B-50).
- b. **KICKBACKS.** It is unlawful for any payment, gift or benefit to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order (Section 11B-50).
- c. **CONTINGENT FEES.** If the amount of the contract is in excess of three thousand dollars, the Auditor represents that he or she has not retained anyone to solicit or secure the contract from the County upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting for bona fide employees or bona fide established commercial selling agencies maintained by the person so representing for the purpose of securing business, or an attorney rendering professional legal services consistent with applicable canons of ethics (Section 11B-51).
- d. **EMPLOYMENT RESTRICTIONS.** Unless authorized by law, it shall be unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment. The Auditor warrants that during the contract term, not to employ present or former County employees or officials in violation of Sections 11B-52 or 19A-8 of the Montgomery County Code.

21. **NOTICE TO PROCEED.** The Auditor shall commence his services under this Agreement upon issuance of a written Notice-to-Proceed by the Office of Legislative Oversight (OLO). If the services are to be executed in phases, the OLO will issue a written Notice-to-Proceed specifically for each phase.

22. **PAYMENTS.** No payment may be made under this contract unless funds for the payment have been appropriated by the Montgomery County Council. Under no circumstances will the County pay the Auditor for legal fees or for interest on amounts payable.

23. **PERSONAL PROPERTY.** All furniture, office equipment, equipment, vehicles and other similar types of personal property specified in the contract and purchased with funds provided under the contract shall become the property of Montgomery County upon the termination or expiration of this contract, unless expressly stated otherwise.

24. TERMINATION FOR CAUSE. The performance of work under the contract may be terminated by the Council in whole or in part from time to time, whenever the Auditor shall default in performance of this contract or fails to make progress in prosecution of the contract work or endangers such performance and fails to cure such default within a ten (10) day period after receipt of notification from the Council specifying the default. If the County determines that a default contributes to the curtailment of an essential service or poses an immediate threat to life or property, the Council may terminate the contract immediately upon issuing oral or written notice to the Auditor without any prior notice or opportunity to cure. Any termination for cause shall be considered a termination for convenience as of the date the Auditor was advised of the termination for cause, if there as no cause.

25. TERMINATION FOR CONVENIENCE. The performance of work or services under this Agreement may be terminated immediately upon written notice in whole or in part, when the Council determines this to be in its best interest. The termination shall be effective 10 days after the notice is issued. The County shall be liable only for payment for acceptable work performed in accordance with the Agreement or furnished prior to the effective date of such termination.

26. TIME. Time is of the essence.

27. WORK UNDER THE CONTRACT. Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements and issuance of any required notice to proceed.

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- Consultation with the MFP Committee, negotiation of contract terms with the top ranked firm, and preparation of a draft contract, as authorized by the MFP Committee.
- Preparation of a final contract, Council packets and resolutions, and follow up on behalf of the Council and the MFP Committee to obtain the necessary signatures and accomplish closure of the independent auditor selection process.

D. Recommendations

At the Council's Management and Fiscal Policy Committee meeting of February 24, 1992, OLO recommended that the Committee take the following actions:

1. Review and approve the attached contract as negotiated by OLO with KPMG Peat Marwick for provision of independent auditing services to the County for Fiscal Year 1992 (with the understanding that contract renewals may be made for Fiscal Years 1993, 1994, and 1995).
2. Recommend Council affirmation of the MFP Committee's selection of KPMG Peat Marwick and of the contract negotiated by OLO.
3. Sponsor the attached resolution for the Council to formally approve the MFP Committee recommendations and authorize the Council President to execute a contract with KPMG Peat Marwick.

Attachments:

1. Council Resolution, Contract for Annual Audit of County Financial Records.
2. Draft of Contract negotiated with KPMG Peat Marwick. (For purposes of economy, limited distribution is being made of this document. For anyone wishing to review the draft Contract, copies are available at the Council's Legislative Information Services Office).

COUNTY COUNCIL
For Montgomery County, Maryland

By: Management and Fiscal Policy Committee

Subject: Contract for Annual Audit of County Financial Records

Background

1. Section 315 of the Montgomery County Charter states as follows:

"The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post-audit of all financial records and actions of the County, its officials and employees. The complete report of the audit shall be presented to the Council and copies of it shall be made available to the public".

2. Section 11B-7(b) of the Montgomery County Code provides that the Council selection of the independent Auditor shall be solely the responsibility of the County Council acting according to procedures prescribed by the Council.

3. The Council by Resolution No. 12-154, adopted April 9, 1991, established council Procedures for the selection of the independent auditor. These Council Procedures direct that the Council's Management and Fiscal Policy Committee shall perform the functions of the Contractor Qualification and Selection Committee for the review and evaluation of proposals and the recommendation of an independent auditor to the County Council.

4. The Management and Fiscal Policy Committee, after careful review and evaluation of the top three proposals, unanimously recommends that the firm of KPMG Peat Marwick be selected for the four-year engagement.

Action

The County Council for Montgomery County, Maryland, approves the Management and Fiscal Policy Committee recommendation to appoint KPMG Peat Marwick to perform the annual independent audit of the County's financial records and actions. The County Council authorizes the President of the Council to execute on its behalf a contract with KPMG Peat Marwick to perform the independent audit services for the fiscal year ending June 30, 1992, and may renew this contract for fiscal years 1993, 1994, and 1995.

This is a correct copy of Council action.

Kathleen A. Freedman, CMC
Secretary of the County Council

