Master Contract for
Management Consulting Services for Maryland State Agencies

THIS CONTRACT is made this 8th day of **July, 2004** by and between Bert Smith & Co. and the STATE OF MARYLAND, acting through the DEPARTMENT OF BUDGET AND MANAGEMENT, OFFICE OF THE SECRETARY.

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 "Contract Manager" means William M. Bowser.

1.2 "Contractor" means Bert Smith & C o. whose principal business address is 1401 New York Ave., NW, Suite 540, Washington, DC 20005, and whose principal office in Maryland is 111 South Calvert Street, Suite 2700, Baltimore, MD 21202.

1.3 "Department" means the Department of Budget and Management

1.4 "Financial Proposal" means the Contractor's Financial Proposal dated May 10, 2004.

1.5 "Procurement Officer" means Joel B. Leberknight

1.6 "RFP" means the Request for Proposals for Management Consulting Services for Maryland State Agencies, No. 050R4800277, as amended by Amendments 1 through 6:

Amendment # 1, dated March 30, 2004
Amendment # 2, dated April 12, 2004
Amendment # 3, dated April 19, 2004
Amendment # 4, dated April 26, 2004
Amendment # 5, dated May 4, 2004
Amendment # 6, dated June 30, 2004

1.7 "State" means the State of Maryland.

1.8 "Technical Proposal" means the Contractor's Technical Proposal, dated May 10, 2004.

2. Scope of Work

2.1 The Contractor, if selected for a task order award, shall, in full satisfaction of the specific requirements of the respective task order, provide Management Consulting Services as those services are described in the RFP. The Contractor performing the project shall provide specific recommendations to correct any deficiencies it discovers and to otherwise provide recommendations for:

> Improvement in the performance of the agency, program or contract, either currently or for future implementation;
> Improving the effectiveness and cost efficiency of providing services to the citizens of Maryland and other agency constituents and customers, and other services as described in the RFP.

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 – Request for Proposals –Project No. 050R4800277
Exhibit B – Contractor's Technical Proposal dated May 10, 2004.
Exhibit C – Contractor's Financial Proposal dated May 10, 2004.
Exhibit D – State Contract Affidavit Addendum.

2.2 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, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

3. Time for Performance.

Unless terminated earlier as provided in this Contract, the Contractor shall provide the services described in Contractor's Proposal in accordance with the RFP. The term of this Contract is for a period of approximately five (5) years commencing on July 8, 2004 and terminating on June 30, 2009. The Contractor shall provide services upon receipt of a Notice to Proceed from the State of Maryland Contract Manager.

4. Consideration and Payment

4.1 The consideration to be paid the Contractor shall be determined upon award of each Task Order in accordance with the RFP and the Financial Proposal. Task Order Agreements that are on labor hours or a time and material basis shall include a not to exceed ceiling for payments. Any work performed by the Contractor in excess of the ceiling amount of any Task Order Agreement without the prior written approval of the Procurement Officer is at the Contractor's risk of non-payment.

4.2 Payments to the Contractor shall be made no later than thirty (30) days after the agency's receipt of an invoice for services provided by the Contractor, acceptance by the purchasing agency of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract.

4.3 Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is [redacted] Charges for late payment of invoices other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, as from time-to-time amended, are prohibited. Invoices should be submitted to the Agency point-of-contact.

4.4 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.5 Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

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 Department and shall be available to the Department at any time. The Department shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract. Contractor shall have a nonexclusive, royalty- free license to use in other engagements all documents and materials prepared by the Contractor, solely for purposes of this Contract with the State of Maryland and which the State in its sole discretion determines to be non-confidential. Such materials and documents which the State in its sole discretion determines to be confidential may only be used by the Contractor for internal purposes, which does not include services to other clients, subject to any other State requirements. Contractor shall continue to own intellectual property it brings into its performance of

each task order, and any enhancements or modifications made to that pre-existing intellectual property.

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 Department, 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 Department 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 Agency against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided the Agency (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 management consulting 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. Indemnification

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 negligent performance of the Contractor or its subcontractors under this Contract, subject to the limitations on liability as specified in Section 27.

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 notify the Procurement Officer within 5 working days 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 pendancy 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 of the 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 Procurement 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 § 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 § 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 the total dollar amount invoiced under an applicable task order agreement 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. 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:

Joel B. Leberknight
Department of Budget and Management
Office of the Secretary
Division of Policy Analysis, Procurement Unit
45 Calvert Street, First Floor Room 106
Annapolis, Maryland 21401
Telephone: 410-260-7116
Fax: 410-974-3274
E-mail: mcsrfp@dbm.state.md.us

If to the Contractor:

[redacted]
Bert Smith & Co.
1401 New York Ave, NW
Suite 540
Washington, DC 20005

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

CONTRACTOR

By [redacted] Date 7/2/04

Witness [redacted]

MARYLAND DEPARTMENT OF BUDGET AND MANAGEMENT

By: [redacted] Cecilia Januszkiewicz
Deputy Secretary

Date Aug 27, 2004

Witness: [redacted]

Approved for form and legal sufficiency this 30th day of June, 2004.

[redacted]
Bruce P. Martin
Assistant Attorney General

APPROVED BY BPW: 7/7/04 (Date) 5-S (BPW Item #)