

**UNIVERSITY OF MARYLAND, BALTIMORE**  
**INVITATION FOR BID**  
**FOR**  
**ROOF REPLACEMENT AT UMB SCHOOL OF MEDICINE BIOMEDICAL**  
**RESEARCH FACILITY**  
**IFB 88682WG**

**ISSUE DATE:** **October 10, 2018**

**PRE-BID  
CONFERENCE** **Thursday, October 18, 2018 at 10:30 a.m.**  
UMB STRATEGIC SOURCING AND ACQUISITION  
SERVICES  
220 Arch Street, Room 02-101  
Baltimore, MD 21201

**CUTOFF FOR  
QUESTIONS:** **Thursday, October 25, 2018 by 4:00 p.m.**

**BID DUE DATE:** **Friday, November 2, 2018 by 2:00 p.m.**  
UMB STRATEGIC SOURCING AND ACQUISITION  
SERVICES  
220 Arch Street, Room 02-100  
Baltimore, MD 21201

**PROCUREMENT/  
ISSUING OFFICE:** UNIVERSITY OF MARYLAND, BALTIMORE  
STRATEGIC SOURCING AND ACQUISITION SERVICES  
220 Arch Street, Room 02-100  
BALTIMORE, MD 21201

**THIS IS A SMALL BUSINESS RESERVE PROCUREMENT**

**All bids must be returned on the University forms attached or responses will  
be considered nonresponsive.**

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**ATTACHMENT A** Bid/Proposal Affidavit;  
Bid Bond Form (if price is \$100,000.00 or more);  
Certification Regarding Investment Activities in Iran;  
Acknowledgement of Receipt of Addenda (if required).

**ATTACHMENT B** UMB Construction Contract;  
Contract Affidavit;  
Performance Bond (if price is \$100,000.00 or more);  
Payment Bond (if price is \$100,000.00 or more);

**ATTACHMENT C** Schedule EFT

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**ATTACHMENT E** UMB Campus Map

**ATTACHMENT F** Intentionally Omitted

**ATTACHMENT G** Bid Price Form

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**PACKAGED SEPARATELY** Informational purpose only - Building Drawings: building elevations, roofing details, rooftop and penthouse floor plans and Infrared Roof Inspection.

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## SECTION 00100

### I. INSTRUCTIONS TO BIDDERS FOR THE CONSTRUCTION CONTRACT

#### A. OBJECTIVES:

1. The objective of this Invitation for Bid is for the University of Maryland, Baltimore (herein referred to as the "University" or "UMB") to select a qualified Contractor to furnish labor, materials, equipment, supplies, supervision, subcontracting and other necessary resources as required to provide complete design services, supply and install new roofing system at UMB, School of Medicine Biomedical Research Facility located at 108 N. Greene St. Baltimore, MD 21201 in accordance with these bid documents.

This is a Small Business Reserve Procurement.

2. The work includes, but is not limited to the scope as defined in Section 00400 of this Invitation to Bid document.
3. The University anticipates awarding the contract on or about **November 2, 2018**. Work is to be completed no later than six (6) months from issuance of Notice to Proceed.
4. All work performed under this contract shall be in accordance with the University of Maryland at Baltimore " Standard General Conditions of Construction Contract," dated October 31, 2017 as modified or supplemented by any amendments, the Contract Drawings, the Technical Specifications, any Addenda, and other components of the Contract.

#### B. ISSUING OFFICE:

1. UNIVERSITY OF MARYLAND, BALTIMORE  
STRATEGIC SOURCING AND ACQUISITION SERVICES  
220 Arch Street, Room 02-100  
Baltimore, Maryland 21201  
Attn: Wesley Gordon  
Phone # 410-706-2427  
Fax # 410-706-8577  
Email: [wgordon@umaryland.edu](mailto:wgordon@umaryland.edu)
2. The Issuing Office shall be the sole point of contact with the University for purposes of preparing and submittal of this bid.
3. All questions on this procurement are to be directed to the Issuing Office via e-mail.

**C. PRE-BID CONFERENCE:**

1. A Pre-Bid Conference will be held on **Thursday, October 18, 2018 at 10:30 a.m.** at the University of Maryland, Baltimore Strategic Sourcing and Acquisition Services Offices, The Saratoga Building, 220 Arch Street, Room 02-101, Baltimore, MD 21201.

Note: Parking is available in the Saratoga Street Garage.

2. A walk through of the site will be conducted immediately following the Pre-Bid Conference. This is the only opportunity for a site inspection which will consist of seeing the actual locations and a sampling of the areas where work is to be performed. Please dress appropriately to access areas.
3. While attendance at the Pre-Bid Conference is not mandatory, information presented may be very informative; therefore, all interested vendors are encouraged to attend in order to be able to better prepare acceptable Bids. We ask that a maximum of two (2) representatives from each company attend this meeting.
4. Appropriate auxiliary aids and services for qualified individuals with disabilities will be provided upon request. Please contact Wesley Gordon at (410) 706-2427 with specific requests at least 48 hours or 2 business days prior to the conference.

**D. TERMINOLOGY:**

All references in this Invitation for Bid to Contractor, Bidder, Architect, and other person or persons are made relative to the singular person, male gender (e.g. "he", "him", "his", etc.) These are intended only as generic terms relative to number and gender, and are employed solely to simplify text and to conform with commonly used construction specifications language.

**E. QUESTIONS AND INQUIRIES:**

1. Questions and inquiries shall be submitted by email to the directed individual referenced with the Issuing Office above. The Issuing Office will be open from 8:00 a.m. to 5:00 p.m. weekdays. The cutoff date for questions is **Thursday, October 25, 2018 by 4:00 p.m.**
2. Items affecting the scope of work or conditions of the contract shall be subject to the conditions of Addenda, below.

**F. BID DUE DATE AND TIME:**

1. One original, plus one (1) copy (total of two), of the Bid must arrive at the Issuing Office **Friday, November 2, 2018 by 2:00 p.m.** in order to be considered. Contractors are requested to submit bids in sealed envelopes,

and clearly mark the original copy as such. A public bid opening will be held on **November 2, 2018 at 2:00 p.m.** at the University of Maryland, Baltimore Strategic Sourcing and Acquisition Services, 220 Arch Street, Room 02-101. Note: Parking is available in the Saratoga Street Garage.

2. Bidders mailing bids shall allow sufficient mail delivery time to insure timely receipt by the Issuing Office. Bids or unsolicited amendments to Bids arriving after the due date and time will not be considered.
3. Access to the issuing office is only available to the public by elevator. Bidders will be required to sign in at the security desk before entering the elevator. Bidder's hand delivering Bids must allow sufficient time once inside the building to insure timely receipt by the Issuing Office. If you park in the parking garage of the Saratoga Building, you must take the garage elevators down to the ground level and then enter the Lobby, where the guard's desk is located and utilize the elevators located in the lobby in order to ascend to the Office Level 02.
4. **LATE BIDS CANNOT BE ACCEPTED.** Bids are to be delivered to the Strategic Sourcing and Acquisition Services, Room 02-100, 220 Arch Street, Baltimore, MD. 21201. UMB recommends against use of mail or delivery services, which will not guarantee delivery directly to Room 02-100. Bids delivered to the campus central mail facility or to locations other than Room 02-100 will not be considered "received" by Strategic Sourcing and Acquisition Services until they arrive at Room 02-100. UMB will not waive delay in delivery resulting from need to transport a bid or proposal from another campus location to Room 02-100, or error or delay on the part of a carrier.
5. **THE USE OF UMB FORMS IS MANDATORY.** All forms should be filled out completely, "See Attached" is considered insufficient.

**G. SITE INVESTIGATION:**

By submitting a bid the vendor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, and electric power. Any failure by the contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the cost of successfully performing the work. The University shall not be responsible for any conclusions or interpretations made by the contractor of the information made available by the University.

**H. BID SECURITY:**

1. If the Bidder's total Bid Price is \$100,000.00 or more, each Bidder shall furnish with his bid price a "bid bond" issued by a surety company licensed to issue bonds in the State of Maryland. The bond must be in an

amount not less than five percent (5%) of the total amount of the base bid price and shall be in the form specified (see sample in Attachment A of this Invitation for Bid document).

2. Acceptable security shall be limited to: a) a bond in a form satisfactory to the State underwritten by a surety company authorized to do business in the state; b) a bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account; c) pledges of securities backed by full faith and credit of the United States government or bonds issued by the State of Maryland; d) Irrevocable letters of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer; and e) the grant of a mortgage or deed of trust on real property located in the State when it is satisfactory to the procurement officer, the face amount of the instrument does not exceed 75% of the contractor's equity interest in the property, and the assignment of the mortgage or deed of trust is recorded in the county land records pursuant to Real Property Article, 30193, Annotated Code of Maryland.
3. Assistance in obtaining bid, performance, and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFA). The Surety Bond Program assists eligible small businesses in obtaining bid, performance, or payment bonds necessary to perform contracts funded by a government agency, a regulated public utility, or a private entity. MSBDFA may act as surety and issue direct bid, performance, or payment bonds up to \$5,000,000, or may guarantee a commercial surety's losses under a bid, performance, or payment bond up to the lesser of 90% of the loss or \$5,000,000. Bonds issued directly or guaranteed by MSBDFA remain in effect for the duration of the qualified contract and any related maintenance or warranty period. A surety bonding line of credit may be established for a qualified business within pre-approved terms, conditions, and limitations. Bonding lines of credit are generally renewable on an annual basis.

The applicant, or the individual owners of applicant, must be of good moral character, and a majority of the individual owners must have a reputation for financial responsibility and must be a resident of Maryland or have its principal place of business in Maryland. The applicant must also be unable to obtain adequate bonding on reasonable terms through normal channels and must be unable to obtain a bond on reasonable terms without assistance from MSBDFA. Finally, the applicant must agree that it will not subcontract more than 75% of the dollar value of the contract. MSBDFA may only issue or guaranty a bond if the contract for which the bond is sought will have substantial economic impact, measured by the amount of the guaranty obligation, the terms of the bond to be guaranteed, the number of new jobs created, or any other factor that MSBDFA considers relevant. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Business and Economic Development  
Maryland Small Business Development Financing Authority  
401 E. Pratt Street  
Baltimore, Maryland 21202  
Phone: 1-888-Choose-MD or 410-767-6300

4. Should the Bidder to whom the contract is awarded fail or be unable to execute the contract, for any reason, within ten (10) days after notification of award, then an amount equal to the difference between the accepted price, and that of the bidder to whom the award subsequently is made shall be paid to the University as liquidated damages.
5. The Bidder to whom a contract in excess of \$100,000.00 is awarded also must furnish Performance and Payment Bonds, each in the amount of one hundred percent (100%) of the contract price, including executed Change Orders, in the form specified (see samples in Attachment B). These must be provided at the time of the signing of the contract and prior to the start of any work.
6. Bid Bonds remain in effect a minimum of one hundred twenty (120) days from the due date of the Invitation for Bid Prices as all Invitation for Bid prices shall remain firm for one hundred twenty calendar days (refer to Section 00100, J. below).

**I. RIGHT TO REJECT BIDS AND WAIVE INFORMALITIES:**

The University reserves the right to reject any and all bids or to accept any bid in the interest of the State of Maryland. For the same reason, the University reserves the right to waive any technicality or minor irregularity in an Invitation for Bid.

Further, the University reserves the right to make a whole award, multiple awards, a partial award, or no award at all.

**J. BIDS FIRM FOR 120 DAYS:**

All bid prices shall be firm for one hundred twenty (120) calendar days from the Invitation for Bid Price due date. This period may be extended by written mutual agreement between the Bidder and the University.

**K. LICENSES AND QUALIFICATIONS:**

1. Bidders must be licensed as required by the Maryland Business Regulation Article of the Annotated Code of Maryland, Title 17, Subtitle 6 and must submit proof of current "Construction License" and/or "Nonresidential Construction License" with their bid submission.
2. The University reserves the right to require that the contractor demonstrate that it has the skills, equipment and other resources to satisfactorily

perform the nature and magnitude of work necessary to complete the project within the proposed contract schedule.

**L. CLARIFICATIONS AND ADDENDA:**

1. Should a Bidder find discrepancies in the bid documents, or should he be in doubt as to the meaning or intent of any part thereof, he must, not later than **Thursday, October 25, 2018 by 4:00 p.m.** request clarification in writing from the UMB Issuing Office, who will issue a written Addendum to the Bid Documents. Failure to request such clarification is a waiver to any claim by the Bidder for expense made necessary by reason of later interpretation of the bid documents by the University. Requests shall include the bid number and name.
2. Oral explanations or instructions will not be binding; only written Addenda will be binding. Any Addenda resulting from these requests will be posted on the UMB eBid Board at:  
<http://www.umaryland.edu/procurement/> (click on eBid Board).

**M. CANCELLATION OF THE INVITATION FOR BID**

The University may cancel this Invitation for Bid, in whole or in part, at any time before the opening of the bids.

**N. ECONOMY OF PREPARATION**

Invitation to Bids should be prepared simply and economically, providing a straightforward, concise description of the bidder's offer to meet the requirements of the Invitation for Bid.

**O. INCURRED EXPENSES**

The University will not be responsible for any costs incurred by any vendor/firm in preparation and submittal of a bid.

**P. MINORITY BUSINESS ENTERPRISE NOTICE:**

**1.1 Establishment of Goal and Subgoals.**

An overall MBE subcontractor participation goal of **10%** of the total contract dollar amount has been established for this procurement.

There are no MBE subcontractor participation subgoals for this procurement.

Notwithstanding any subgoals established above, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.



**1.2 Attachments H-1 to H-6** – The following Minority Business Enterprise participation instructions, and forms are provided to assist Bidders/Offerors:

Attachment H-1A	MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule ( <b>must submit with Bid/Proposal</b> )
Attachment H-1B	Waiver Guidance
Attachment H-1C	Good Faith Efforts Documentation to Support Waiver Request
Attachment H-2	Outreach Efforts Compliance Statement
Attachment H-3A	MBE Subcontractor Project Participation Certification
Attachment H-3B	MBE Prime Project Participation Certification
Attachment H-4A	Prime Contractor Paid/Unpaid MBE Invoice Report
Attachment H-4B	MBE Prime Contractor Report
Attachment H-5	Subcontractor/Contractor Unpaid MBE Invoice Report
Attachment H-6	Liquidated Damages Provisions for Construction Contracts Containing MBE Participation Goals

**1.3** A Bidder/Offeror shall include with its Bid/Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment H-1A**) whereby:

- (a) The Bidder/Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
- (b) The Bidder/Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Bid/Proposal submission. The Bidder/Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
- (c) A Bidder/Offeror requesting a waiver should review Attachment H-1B (Waiver Guidance) and H-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

***If a Bidder/Offeror fails to submit a completed Attachment H-1A with the Bid/Proposal as required, the Procurement Officer shall determine that the Bid is non-responsive or the Proposal is not reasonably susceptible of being selected for award.***

**1.4** Bidders/Offerors are responsible for verifying that each of the MBE(s) (including any MBE primes and/or MBE primes participating in a joint venture), selected to meet the goal and any subgoals and subsequently identified in **Attachment H-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

**1.5** Within ten (10) Working Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Bidder/Offeror must provide the following documentation to the Procurement Officer.

- (a) Outreach Efforts Compliance Statement (**Attachment H-2**).
- (b) MBE Prime/Subcontractor Project Participation Certification (**Attachment H-3A/3B**).
- (c) If the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.
- (d) Any other documentation required by the Procurement Officer to ascertain Bidder/Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

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

**1.6** A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

**1.7** The Contractor, once awarded a Contract, will be responsible for submitting or requiring its subcontractor(s) to submit the following forms to provide the State with ongoing monitoring of MBE Participation:

- (a) **Attachment H-4A** (Prime Contractor Paid/Unpaid MBE Invoice Report).
- (b) **Attachment H- 4B** (MBE Prime Contractor Report)
- (c) **Attachment H-5** (MBE Subcontractor/Contractor Unpaid MBE Invoice Report).

**1.8** A Bidder/Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment H -1C) and all documentation within ten (10) Working Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in **COMAR 21.11.03.11**.

**1.9** All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment H-1A**), completed and

submitted by the Bidder/Offeror in connection with its certified MBE participation commitment shall be considered a part of the resulting Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes.

**1.10** The Bidder/Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See **Attachment H-6**)

**1.11** As set forth in COMAR 21.11.03.12-1(D) when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation sub-goals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 3A of the MBE Participation Schedule (Attachment H-1A) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the sub-goals, the MBE prime must also identify other certified MBE subcontractors (see Section 3B of the MBE Participation Schedule (Attachment H-1A) used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE classifications but can self-perform up to 100% of the stated sub-goal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract.

**1.12** With respect to Contract administration, the Contractor shall:

- (a) Submit by the 10<sup>th</sup> of each month to the Agency's designated representative:
  - i. A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment H-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - ii. (If Applicable) An MBE Prime Contractor Report (Attachment H-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- (b) Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit by the 10<sup>th</sup> of each month to the Department's designated representative an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment H-5) that identifies the Contract

and lists all payments to the MBE subcontractor received from the Contractor in the preceding 30 days, as well as any outstanding invoices, and the amounts of those invoices.

- (c) 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.
- (d) 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.
- (e) 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.
- (f) The liquidated damages provisions of Attachment H-6 for construction procurements shall apply for all contracts awarded with MBE participation goals.

**Q. MODIFICATIONS AND WITHDRAWAL OF BIDS:**

- 1. Withdrawal of, or modifications to, Bid Prices are effective only if written notice thereof is filed to the Issuing Office prior to the time Bid Prices are due. A notice of withdrawal or modification to a Bid Price must be signed by an officer with the authority to commit the company.
- 2. No withdrawal or modifications will be accepted after the time Prices are due.

**R. FINANCIAL DISCLOSURE BY PERSONS DOING BUSINESS WITH THE STATE:**

Bidders providing materials, equipment, supplies or services to the University must comply with Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland which requires that every business which enters into contracts, leases or other agreements with UMB and receives in the aggregate \$100,000, or more, during a calendar year shall, within 30 days of the time when the \$100,000 is reached, file with the Secretary of State a list containing the names and address of its resident agent, each of its officers, and any individual who has beneficial ownership of the contracting business.

**S. CONFIDENTIALITY/PROPRIETARY INFORMATION:**

Bidders should give specific attention to the identification of those portions of their offer which they deem to be confidential, proprietary information or trade secrets, and provide any justification of why such materials, upon request, should not be disclosed by the State under the Public Information Act, Part III, Title 4, General Provisions Article, Annotated Code of Maryland. Bid prices will publicly opened. Bidders must clearly indicate each and every section that is deemed to be confidential, proprietary or a trade secret (it is NOT sufficient to preface your entire proposal with a proprietary statement).

**T. BID AFFIDAVIT**

The Proposal/Bid affidavit enclosed in this document (see Attachment A) must be executed by each responding contractor and submitted with their bid.

**U. ARREARAGES**

By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland, including the payment of taxes and employee benefits, and that it shall not become so delinquent during the term of the contract.

**V. MULTIPLE/ALTERNATIVE BIDS**

Bidders may not submit more than one (1) bid nor may bidders submit an alternate to this bid.

**W. ADDENDUM**

Any addendum/amendments to the Bid must be acknowledged by persons and entities known to have been issued or otherwise to have received the Bid. An Acknowledgement of Receipt of Addendum form is provided in **Attachment A**.

**X. SMALL BUSINESS**

This is a Small Business Reserve Procurement for which award is limited to certified Small Business Reserve vendors. Only businesses that meet the requirements set forth in State finance and Procurement Article, Title 21 – Subtitle 11 – Chapter 01, §§ 14-501 – 14-505. Annotated Code of Maryland, and who are registered with the Department of General Services Small Business Reserve Program herein as Schedule SBR (see Attachment D) are eligible for an award.

If you are NOT currently a registered SBR vendor or currently qualified as a SBR vendor on the eMaryland Marketplace (eMM) website, you must login for a new SBR certification. The eMaryland Marketplace (eMM) website is at <https://emaryland.buyspeed.com/bso/>.

**Y. BID EVALUATION**

An Award of the Bid will be based on the lowest responsive and responsible bidder meeting the specifications and requirements set forth in the bid document. The University reserves the right to make an award for all items, or any parts thereof, as determined by the Procurement Officer to be in the best interest of the University

**Z. TERMS OF CONTRACT**

By submitting a response to this solicitation, a firm shows acceptance of all terms and conditions contained in the bid document.

**AA. MARYLAND PUBLIC ETHICS LAW, TITLE 5**

The Maryland Public Ethics Law prohibits, among other things: State employees or officials (and in some cases, former employees) and businesses in which such an individual is employed or holds a financial interest from (i) submitting a bid or proposal, (ii) negotiating a contract, and (iii) entering into a contract with the governmental unit with which the individual is affiliated per §5-502 of the Maryland Public Ethics Law, Title 5, General Provisions Article, Annotated Code of Maryland.

If the bidder/offeror has any questions concerning application of the State Ethics Law to the bidder/offeror's participation in this procurement, it is incumbent upon the bidder/offeror to seek advice from the State Ethics Commission, 45 Calvert Street 3<sup>rd</sup> Floor Annapolis , MD 21401, 410-260-770.

The procurement officer may refer any issue raised by a bid or proposal to the State Ethics Commission. The procurement officer may require the bidder/offeror to obtain advice from the State Ethics Commission and may reject a bid or proposal that would result in a violation of the Ethics Law.

The resulting contract is cancelable in the event of a violation of the Maryland Public Ethics Law by the vendor or any State of Maryland employee in connection with this procurement.

**BB. USE OF AFFILIATES TO AVOID TAXATION ON INCOME FROM STATE CONTRACTS**

Contractor may not for any period during the Contract term, seek to reduce the amount of Contractor's income subject to Maryland income tax by payment made to an affiliated entity or affiliate's agent for the right to use trademarks, trade names, or other intangible property associated with Contractor.

Contractor agrees that during the course of this contract it shall not make any such royalty or similar payment to any affiliated company; and if any such royalty or similar payments are made, Contractor and the affiliated company shall file separate Maryland income tax returns and pay their respective Maryland income taxes in such

a manner that Contractor does not claim a deduction against Maryland income tax for such payments, and the affiliated company receiving the royalty or similar payment files Maryland income tax returns and pays Maryland tax, under a formula that reasonably apportions the income of the affiliated company among the states, including Maryland, in which the Contractor does business. Contractor agrees that it is authorized to bind its affiliated entities to the terms hereof.

**CC. JOINT VENTURE BIDDERS**

If the Bidder is a joint venture firm, the Bidder must provide all identification information for all parties and all requirements for all parties (i.e., licenses, insurance, etc.) as requested. As part of the bid submission (see Section 00300 for details), the bidder must identify the responsibilities of each joint venture party with respect to the scope of services/work (per section 0400) inclusive of the requirements for each entity based on such services as described in this bid solicitation document.

**DD. PAYMENTS TO CONTRACTORS BY ELECTRONIC FUNDS TRANSFER (EFT)**

By submitting a response to this solicitation, the Bidder agrees to accept payments by electronic funds transfer (see Attachment C) unless the State Comptroller's Office grants an exemption. The selected firm(s) shall register using form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. The web address is:

[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/X-1020130403.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/X-1020130403.pdf).

**EE. "eMARYLAND" MARKETPLACE**

The successful bidder/offeror under this solicitation must be registered on eMaryland Marketplace prior to receiving a contract award. The instructions for registration can be found on the eMaryland Marketplace website at:

<https://emaryland.buyspeed.com/bso/>.

**FF. MANDATED CONTRACTOR REPORTING OF SUSPECTED CHILD ABUSE & NEGLECT**

Maryland law contains mandatory reporting requirements for all individuals who suspect child abuse or neglect. Contractors performing work on campus also must comply with USM Board of Regents (BOR) VI-1.50 – *Policy on the Reporting of Suspected Child Abuse and Neglect*, as well as the UMB *Procedures for Reporting Suspected Child Abuse and Neglect*. A copy of the USM Policy and UMB Procedures are available at:

<https://www.umaryland.edu/oac/areas-of-responsibility/report-a-concern/report-suspected-child-abuse-or-neglect/>

The Policy and Procedures are incorporated herein.

UMB reserves the right to terminate this contract if Contractor fails to comply with the above-referenced policy or procedures, or if, in the judgment of UMB,

termination is necessary to protect the safety and welfare of children who come into contact with the UMB community.

**GG. CERTIFICATION REGARDING INVESTMENT ACTIVITIES IN IRAN**

Offerors must complete, sign and return in Attachment A, Certification Regarding Investment Activities in Iran with their solicitation response. Companies appearing on the Investment Activities In Iran list are ineligible for award.

**END OF SECTION 00100**



## SECTION 00200

### INFORMATION AVAILABLE TO BIDDERS

#### A. CONTRACT DOCUMENTS

1. Contract Documents consisting of:
  - A. the Procurement Specifications (Sections 00100, 00200, 00300 and 0400),
  - B. the UMB Standard General Conditions of Construction Contract dated 10/31/17 (Section 00700),
  - C. Attachment A, Attachment B, Contract documents (i.e., contract and bond forms, etc. found in Attachment B),
  - D. Scope of Work and the Contract Document and any Addenda which may be issued prior to the Bid Price Due Date, all of which describe the scope of work to be furnished, shall be furnished to all interested parties on the UMB Strategic Sourcing and Acquisition Services eBid Board:  
<http://www.umaryland.edu/procurement/ebid-board/>
2. The following Contract Documents are package separate from this IFB.
  - UMB Design Standards  
<http://www.umaryland.edu/designandconstruction/documents/>
3. All of these materials will be included in the Contract which the University awards as a result of this Bid and will be among the Contract Documents. The bidder by submitting its bid agrees that, if awarded the Contract, it will be bound under the Contract to all the terms and conditions of the Contract Documents.

#### B. PRE-BID CONFERENCE

A Pre-Bid Conference and inspection tour of the site will be conducted for all interested parties early in the Invitation for Bid phase of the project as indicated in Section 00100 Instructions to Bidders for the Construction Contract.

#### C. AVAILABLE RECORD DOCUMENTS:

1. The University upon request will make accessible to the Bidders any available record drawings, utility plans, and other data pertinent to existing conditions to the extent that such material is available. The University, however, can offer no assurances that such drawings, property description,

or other data are accurate, current or complete.

2. Such documents must be used, or copied, at the University unless permission is granted in writing from the University otherwise. The Bidders shall assume the responsibility for cost of reproduction as well as replacing any damaged or lost documents.

**END OF SECTION 00200**

## **SECTION 00300**

### **BIDS AND FORMS**

#### **A. TRANSMITTAL LETTER:**

A transmittal letter prepared on the Bidder's business stationery should accompany the Bid Price. The purpose of this letter is to transmit the Bid Price; therefore, it should be brief, but shall list all items contained within each volume as defined below. The letter must be signed by an individual who is authorized to bind his firm to all statements, including services and prices, contained in the Bid.

#### **B. SIGNING OF FORMS:**

The Bid Price, if submitted by an individual, shall be signed by the individual; if submitted by a partnership, they shall be signed by such member or members of the partnership as have authority to bind the partnership; if submitted by a corporation, they shall be signed by an officer, and attested by the corporate secretary or an assistant corporate secretary. If not signed by an officer there must be attached a copy of that portion of the by-laws or a copy of a board resolution, duly certified by the corporate secretary, showing the authority of the person so signing on behalf of the corporation. Signatures shall be under seal, i.e.: indicated by the word "(Seal)" following signature of individual and partner bidders, and indicated by affixing the Corporate Seal at corporate signatures.

The Bid form(s) shall be filled out in ink or typed. Any erasures and/or alterations shall be initialed in ink by the signer.

#### **C. ONE PART SUBMISSION:**

Bidder shall submit with their bid all required documentation and all required bid submissions in a single sealed envelope.

#### **D. DOCUMENTATION:**

The following submittals are required to be completed as indicated and included with your bid response:

1. Letter of Transmittal;
2. Minority Business Attachment H-1A, 1-4, (**see Attachment H for forms**);
3. Bid/Proposal Affidavit;
4. Bid Price Form;
5. Bid Bond (if price is \$100,000.00 or more);
6. Certification Regarding Investment Activities in Iran;
7. Acknowledgement of Receipt of Addenda (if required);
8. Copy of Bidder's Contractor License (Construction License" and/or "Nonresidential Construction License);

**Note: It is the Bidder's responsibility to fully review the bid documents to insure his bid submittal contains all requested information.**

END OF SECTION 00300

## **SECTION 00400**

### **SCOPE OF WORK**

#### **A. BACKGROUND**

The University of Maryland, Baltimore (UMB) is a public university that is a part of the University System of Maryland, a public corporation and an instrumentally of the State of Maryland. The 71-acre research and technology complex encompasses 67 buildings located in West Baltimore; a city that has become a model for urban rebirth and vitality. The UMB complex has over 7,119 faculty members and staff and 6,329 students enrolled in six professional and graduate schools; School of Dentistry, School of Law, School of Medicine, School of Nursing, School of Pharmacy, School of Social Work and a Graduate School.

#### **B. SCOPE OF WORK**

1. The objective of this project is to select a qualified Contractor to provide all labor, materials, equipment, supplies, supervision, subcontracting and any other necessary resources as required to provide complete design services, supply and install new roofing system at UMB School of Medicine Biomedical Research Facility in accordance with these bid documents.

Biomedical Research Facility roof size is approximately 125' by 100' and has four (4) floors of use occupied space.

2. The Contract is to be completed no later than six (6) months from issuance of Notice to Proceed.
3. All work performed under this contract shall be in accordance with the University of Maryland at Baltimore " Standard General Conditions of Construction Contract," dated October 31, 2017 as modified or supplemented by any amendments, the Contract Drawings, the Technical Specifications, any Addenda, and other components of the Contract.
4. The Contractor shall complete his work in the time required by the University and in accordance with the requirements stated within the contract.
5. Owner: University of Maryland, Baltimore
6. The National Roofing Contractors Association (NRCA) current guidelines and the selected roofing System manufactures guidelines regarding system detail shall be followed.
7. Rooftops included are the main roof and a mid-level stair tower roof at the northeast corner of the building.

**NOTE: The upper penthouse roof and doghouse roofs on the upper penthouse are excluded.**

8. Identified roof system is an SBS Polymer-modified Bitumen Roof System, Two-layer, Cold-Applied.
9. Remove existing BUR roof system down to deck on all roof areas (main, stair towers & doghouse roofs)
10. Supply and install new roof system per the contractor provided and UMB approved construction documents.
11. Also of note, the University does not have a preferred manufacturer. Whatever manufacture is chosen, their relevance (with these documents) must be identified within the proposers bid price submission.
12. The items within the System shall include (*but not limited to*) the following; system components identified by chosen System manufacture, base flashing, equipment flashing, insulation required to meet warranty requirements and for proper drainage, blocking, cant strips, tapered edge strips, replacement scuppers, replacement roof drain & components including drain pipe flange with gasket, clamping ring and strainer for retro-installation into lower drain body of existing cast-in-place drainage systems, walkway cap-sheet strips.
13. It is the intention of UMB to have the awarded contractor fully engaged with the UMB team in clarifying the various details within these base documents. It's also intended that once designed and constructed, the newly installed roof System will achieve a watertight rooftop for the duration of the warranty period.
14. Roof System
  - a. SBS Polymer-modified Bitumen Roof System, Two-layer, Cold-applied
    - i. Air and Vapor Retarder
    - ii. Insulation
      - (a) As required to achieve warranty requirements by selected System manufacturer.
    - iii. Roof Membrane
      - (a) Primer: Asphalt primer
      - (b) Adhesive: Cold-applied polymer-modified asphalt adhesive
      - (c) Interply Sheet: Smooth SBS polymer-modified bitumen polyester-mat sheet
      - (d) Cap Sheet: SBS polymer-modified bitumen polyester-mat sheet

*\* A compatible solvent-free adhesive and primer shall be used at/around building air intake vents; similar to Johns-Manville MBR® Bonding Adhesive or similar by chosen System manufacture*

iv. Flashings

- (a) Sheet-applied Flashing
- (b) Backer Layer: Smooth SBS polymer-modified bitumen polyester-mat sheet
- (c) Cap Sheet: SBS polymer-modified bitumen polyester-mat sheet

v. Liquid-applied Flashing

- (a) Liquid-applied Flashing Resin: Two-component resin
- (b) Flashing Reinforcement: woven polyester fabric reinforcement
- (c) Flashing Surfacing: Coating

vi. Surfacing

- (a) Aggregate Surfacing: Cold-applied polymer-modified asphalt adhesive – *(SBS Modified Cap Sheet with factory granule surfacing)*

vii. Roof Accessories

- (a) Walk pads; providing walk path from roof access points to major mechanical components
- (b) Roof drains; type shall be “Superdome Retrodrain” as offered by Johns Manville or similar by other manufacture

15. Design notes:

- a. Building is fully occupied by UMBs School of Medicine as a research facility – and as such, interior spaces must not be disrupted
- b. Service access is from the rear of the building – Chicago Alley
- c. Complete roofing System shall be warrantied as an NDL (No Dollar Limit) system for no less than 25-years, and shall include all primary roofing components. The roofing System shall include, but not be limited to; roofing membranes, insulation, felts, edge metals, flashings and flashing tie-ins, vents and drains, etc., as part of the roof system and shall be guaranteed and warranted as a total System. The warranty period for the roofing System shall be covered for the first two years by the installing contractor.
- d. Insulation as required by selected system manufacture to comply with warranty requirements.
  - i. Roof Insulation Notes: Roof insulation shall be part of the complete roofing system, and shall be included in the roofing system warrantee. Installation of the insulation material to be in two (2) layers with staggered joints. At no point shall the insulation be less than two inches in thickness. Roof slope to drains shall be a minimum of ½ inch per foot. The roof slope should be achieved by tapered insulation. Roof design shall provide for the gravity removal of all standing water from the roof within a forty-eight (48) hour period. Conditions which could cause snow drifting or ice build-up should be avoided.

- ii. Building roof level decks are flat, existing taper is achieved with tapered insulation.
- e. Termination(s) point of roof replacement areas;
  - i. Stone/masonry coping, including coping sealants, are not included.
  - ii. Existing wall panels are not included.
  - iii. Replacement of metal copings are not included; lap-seams and rivets on existing metal coping(s) shall be cleaned, prepped and caulked with high quality silicone appropriate for the detail.
  - iv. Equipment support bases/legs/stands; liquid flashing shall be used, either one (1) or two (2) part, and shall comply with System warranty.
  - v. Detail at top of base flashings where the wall panels meet; terminate base flashing as high as possible, below or behind the wall panels. Material used shall comply with System manufacture in regards to warranty.
  - vi. Detail at top of base flashing without the wall panels; install proper termination, including counterflashing – complying with System manufacture guidelines.
- f. The existing roof insulation on the main roof ranges in thickness from ~3 to ~4.5 inches. The as-build R-Value is unknown.
- g. Include all temporary roofing as-necessary to keep the building water tight during the contract period and prior to final acceptance of the new installation.
- h. Existing deck;
  - i. Main roof; concrete
  - ii. Other roofs; steel pan

16. MEP Design Narratives:

- a. Mechanical/Plumbing Narrative and Guide Lines
  - i. Existing services to remain
  - ii. Any outages coordinated with UMB
- b. Electrical:
  - i. Existing services to remain
  - ii. Any outages coordinated with UMB

17. Deliverables:

Provide 1 electronic copy and 4 hard copies of drawings (1/2 size), specifications and applicable calculations, 3-days prior to the scheduled on-board review meetings.

On-Board review meetings will be scheduled at the end of DD, and 95% CD. At each meeting, UMB reviewers / department representative(s) will offer comments and discuss with the awarded firm, and reach the agreement for the next phase.

For Bid-Documents and As-Build documents, the firm shall submit drawings and specifications in the following format in addition to the requirements stated in the UMB Design Standards and UMB's Master Specifications in effect at time of bid.



Drawings: 1 copy in AutoCAD format (dwg)  
1 copy in pdf format

Specifications: 1 copy in Microsoft word format (doc)  
1 copy in pdf format

Required design submissions:

- Design Development (DD)
- 95% CD
- 100% CD

**C. ADDITIONAL INFORMATION**

The following documents are provided for informational purpose only.

1. Building Drawings: building elevations, roofing details, and rooftop and penthouse plans
2. Infrared Roof Inspection, dated December 28, 2018

**D. CONTRACTOR USE OF PREMISES**

1. General: During the construction period the Contractor shall have full use of the premises for construction operations, including use of the site. The Contractor's use of the premises is limited only by the University's right to perform work or to retain other contractors on portions of the Project. Contractor's use of interior portions of the building shall be limited to those operations necessary for work related to this contract. Interior work shall be scheduled in advance with the Owner and required written authorization.
2. Use of the Site: Limit use of the premises to work in areas indicated. Confine operations to areas within contract limits indicated. Do not disturb portions of the site beyond the areas in which the Work is indicated.
  - a. Driveways and Entrances: Keep driveways and entrances serving the premises clear and available to the University, the University's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials. Schedule deliveries to minimize space and time requirements for storage of materials and equipment on-site.
3. Use of the Existing Building: Maintain the existing building in a weathertight condition throughout the construction period. Repair damage caused by construction operations. Take all precautions necessary to protect the building and its occupants during the construction period.

**E. OCCUPANCY REQUIREMENTS**

1. Full University Occupancy: The University will occupy the site and existing buildings during the entire construction period. Cooperate with the University during construction operations to minimize conflicts and facilitate University usage. Perform the Work so as not to interfere with the University's operations.
2. Coordinate with the Owner to perform work producing dust, or hazards to occupants in occupied areas.
3. Comply with regulations of the Owner pertaining to circulation, sanitation, and behavior of Contractor's personnel.
4. Working hours:  
Normal Working hours: 7:00 a.m. to 3:30 p.m.  
Any noise related work inside the buildings – Working hours: 6:00 a.m. – 7:00 a.m.

**F. ALTERATIONS TO EXISTING SYSTEMS**

1. Removal and/or relocation of existing services shall be closely coordinated with the UMB Project Manager or designee if they impact adjacent areas which shall remain operational.
2. While performing connections and alternations to existing work, the Contractor shall take extreme care to protect all existing materials, equipment, casework, etc. from dirt, debris and damage. Any damage caused by the Contractor to existing materials, equipment, casework, etc. shall be repaired to UMB's satisfaction and specifications at the Contractor's expense.

**END OF SECTION 00400**

**SECTION 00500**

(INTENTIONALLY OMITTED)

**SECTION 00600**

(INTENTIONALLY OMITTED)



## **SECTION 00700**

### **UNIVERSITY OF MARYLAND, BALTIMORE**

#### **STANDARD GENERAL CONDITIONS OF CONSTRUCTION CONTRACT**

Revised: 12/14/81 - UMAB

03/04/82 - UMAB

01/03/85 - UMAB

11/04/88 - UMAB

03/22/91 - UMAB

06/20/91 - UMAB

11/06/91 - UMAB

07/02/92 - UMAB

08/04/93 - UMAB

01/14/94 - UMAB

12/10/96 – UMAB

08/12/13 - UMAB

02/05/14 – UMB

12/02/16 – UMB

10/31/17 - UMB

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## **SECTION 1: DEFINITIONS AND RESPONSIBILITIES**

### **1.01 DEFINITIONS (these definitions shall apply to the entire Contract unless specifically noted):**

"Addendum" -- Means a revision or clarification to the original forms, conditions, Specifications and Drawings, made prior to execution of the Contract. Addendums are part of the Bid Documents.

"Any" -- Means 'any and all' whenever more than one item would be applicable or required to complete the Work of the Project in accordance with the Contract Documents.

"The Architect" -- A person registered in the State of Maryland to practice architecture and commissioned by the University to serve as architect on this project. If no person is appointed to serve as Architect, from time to time, then the term "Architect" shall refer to the Office of Facilities Management of the University. Whenever the contract documents are prepared by a registered Engineer in independent practice, and no Architect is employed, each reference to "Architect" refers to the Engineer. If Design/Build project, the term "Architect" shall refer to the person registered in the State of Maryland to practice architecture and commissioned by the Design/Build Contractor to serve as Architect on this project.

"Architect/Engineer (A/E)" -- Means the Architect as defined above.

"As indicated", "As Shown," "As Specified" -- Means "as indicated", shown or specified in the Contract Documents.

"Chancellor" -- Refer to definition of The President noted below.

"Change Order" -- A written order signed by the responsible procurement officer, directing a Contractor to make changes in implementation of the construction phase of the project which the Contract authorizes the procurement officer to order with or without the consent of the Contractor.

"Contract" -- The written agreement executed between the University and the Contractor, covering the performance of the work and furnishing of labor, services, equipment, and materials, and by which the University is obligated to compensate him at the mutually established and accepted rate or price. The Contract shall include the Procurement Request, the Procurement Response, contract forms and bonds, these Standard Conditions, and special conditions pertaining to work on the campus involved, drawings, specifications, addenda, supplemental specifications, all special provisions, all technical provisions, all plans and notices to proceed, any Change Orders and Supplemental Agreements (and any amendments or modifications of any of these from time to time) that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, and any other matter agreed to as being part of the contract in a component of the contract. In the event that, the Procurement Request requires an amendment of the Contract as a condition to the performance of or payment for any portions of the work such amendment shall be a part of the Contract. ("Construction Amendment") (Said documents are sometimes referred to as the "contract documents.")

"The Contractor" -- The person or entity having direct contractual relation with the University for the execution of the Work. If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder. The Contractor shall indicate its Federal Tax Identification or Social Security Number following its name on the first page of the Contract. Sometimes the successful Procurement Responder shall be referred to as the Contractor in connection with the period prior to effectiveness of the Contract but after the Contract has been awarded, as the context may require.

"Contract Time and Completion Date" -- The number of calendar days shown in the specifications indicating the time allowed for the completion of the Work. In case a calendar date of completion is shown, instead of the number of calendar days, such work shall be completed on or before that date.

Critical Path Method (CPM) - A scheduling/management tool showing a network of work elements or activities for a construction project.

"Day" -- Means calendar day unless otherwise designated.

"Drawings" -- The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the work, generally including plans, elevations, sections, details, schedules and diagrams.

"Or Equal," "Similar To," or similar expressions -- Means the judgment of "equality" or "acceptability" rests with the University.

"Indicated" -- See "As indicated" above.

"Notice to Proceed" -- A written notice to the Contractor of the date on or before which he shall begin the prosecution of the Work.

"Owner" -- Means the University as defined below.

"Performance Bond and Payment Bond" -- The security in the form approved by the University and executed by the Contractor and his surety, and paid for by the Contractor, as a guarantee that he will pay in full all his bills and accounts for materials and labor used in the construction of the work, as provided by law, and completely perform the Work.

"Plans" -- The official drawings approved by the University as part of the contract documents, including those incorporated in the contract documents by reference.

"The President" -- Shall be understood to mean the President of the University of Maryland at Baltimore or his or her designee.

"Procurement Officer" -- The person designated by the President and authorized by the University in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them.

"Procurement Request" -- Refers to the Invitation to Bid, or Request for Proposal or other procurement solicitation in connection with the Work.

"Procurement Responder" -- Refers to the person or entity submitting a Procurement Response. The "Successful Procurement Responder" refers to the Procurement Responder to whom the Contract is awarded.

"Procurement Response" -- Refers to the response submitted to a Procurement Request.

"Project" -- The Project is the total construction of which the work performed under the Contract Documents may be the whole or a part and which may include construction by the University or by separate contractors.

"Related Sections" -- A phrase in the specifications to direct the reader to find provisions on other work which is directly related to the subject section."

"Repair" -- Where used in the contract documents shall be taken to mean to restore after injury, deterioration, or wear; to mend, to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable. Upon completion of such repair the items must be, unless otherwise stated, rendered to such conditions as to present a first class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first class finish, to be applied without extra cost to the University. When the word "repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient ready for normal use for which it was intended originally.

"Replace," "Restore," "Renew," "Make Good," "Reconstruct" and similar expressions -- Means to "provide", using new materials, as applicable to the type of work involved.

"Specifications" -- The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the work, and performances of related services.

"State" -- Refers to the State of Maryland.

"Subcontractor" -- As employed herein includes only those having a direct contract with the Contractor. It includes one who furnishes material worked to a special design according to the plans and specifications for the Work. It excludes one who merely furnishes material not so worked.

"Supplemental Agreement" -- A written agreement covering added or changed work which is beyond the scope of the Contract and Change Orders. A Supplemental Agreement becomes a part of the Contract when approved and properly executed by all parties to the Contract.

"Surety" -- The corporate body bound with and for the Contractor, for the full and complete performance of the Contract and for the payment of all debts pertaining to the Work.

"University" -- Refers to the University of Maryland, a body corporate and an agency of the State of Maryland. In particular, the University refers to the University of Maryland at Baltimore or another campus of the University as specified in the Contract, or the authorized representative that issues the Procurement Request.

"Work" -- Work shall be understood to mean the furnishing of all labor, materials, equipment, services, utilities, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the Contract.

"Written Notice" -- Shall be deemed to have been duly served if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is intended, or if delivered to or sent by registered mail, to the last business address known to him who gives notice.

## **1.02 UNIVERSITY'S RESPONSIBILITIES:**

- A. The University shall furnish, upon request, any available record drawings, utility plans, and other data pertinent to existing conditions to the extent that such material is available. The University, however, can offer no assurances that such drawings, property description, or other data are accurate, current or complete.
- B. Information under the University's control shall be furnished by the University with reasonable promptness to avoid delay in the orderly progress of the work.
- C. The foregoing are in addition to other duties and responsibilities of the University

enumerated in the Contract.

- D. The State shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this agreement [21.07.03.23]

**1.03**     **CONTRACTOR'S RESPONSIBILITIES:** Notwithstanding anything in this Contract to the contrary, the following items are in addition to the Contractor's obligation set forth elsewhere in the Contract.

- A. The Contractor shall supervise and direct the Work, using his best skill and attention. He solely shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract.
- B. The Contractor shall be responsible to the University for acts and omissions of his employees, his agents or subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.
- C. The Contractor shall not be relieved from his obligation to perform the Work in accordance with the contract documents, either by the Contract, or by inspections, tests, or approvals required or performed any person in connection with the Work.
- D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, and the contract documents, and shall not encumber the site unreasonably with any materials or equipment. The Contractor shall submit proof of a Confined Space Program to UMB's Office of Environmental Health & Safety (EHS), 714 W. Lombard Street, Baltimore, MD 21201-1041.
- E. Cutting and Patching of Work:
  - (1) The Contractor shall be responsible for all cutting, fitting, or patching that may be required to complete the Work or to make its several parts fit together properly.
  - (2) The Contractor shall not alter damage or endanger any portion of the Work of the University or any separate contractors by cutting, patching, otherwise altering any work or excavation. The Contractor shall not cut or otherwise alter the work of the University and of such separate contractor.
  - (3) The Contractor shall not unreasonably withhold from the University or any separate contractor his consent to cutting or otherwise altering the Work.
- F. The Contractor shall perform the Work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the contract documents as modified from time to time, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.

G. Indemnification:

- (1) To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the University System of Maryland, the University and any Client University, the State of Maryland, the Architect, the Engineer, and the local government of the city or county where the Project is located (if requested by the University), and their agents and employees, from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, damage, or loss or expense: (1) is attributable to bodily injury, sickness, disease, death, or personal injury or injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent or willful act or omission of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, regardless of whether or not the claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section. This obligation is not intended to be or to imply a waiver of the sovereign or governmental immunity of the University, the State, the Client University, or any local jurisdiction where the Project is located.
- (2) In any and all claims against the University or the State of Maryland or the Architect or any of their agents or employees by any employee of the Contractor, any Subcontractor or Sub-subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor or Sub-subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- (3) The obligations of the Contractor under this Section shall not extend to the liability of the Architect, Engineer, or their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect or Engineer, or their agents or employees provided such giving or failure to give directions or instructions, is the primary cause of the injury or damage.

END OF SECTION 1

## **SECTION 2: AWARD AND EXECUTION OF CONTRACT**

### **2.01 AWARD**

- A. The University reserves the right to cancel the award of any Contract before the execution of the Contract by all parties without any liability on its part.
- B. The successful Procurement Responder will be given written notice of award stating that his Procurement Response has been accepted and that he has been awarded the Contract.
- C. When the Procurement Responder consists of more than one person or entity, each such person or entity participating in the Procurement Response will be held jointly and severally responsible as a Procurement Responder for the duties of the Contractor.

### **2.02 EXECUTION OF CONTRACT AND AMENDMENT**

The University's Department of Procurement Services, after a Notice of Award has been issued, shall forward the formal contract form, and other applicable contract forms (including but not limited to, Contract Affidavit, Minority Business Participation Exhibit II, Performance and Payment Bonds,) to the Contractor for execution and from time to time shall forward to Contractor the forms required in connection with any Construction Amendment. The Contractor shall execute the contract form and other applicable forms and return them along with required certificate(s) of insurance to the Department of Procurement Services within ten (10) days after receipt of same.

After receipt of the properly executed contract forms, and other applicable forms, the Department of Procurement Services will execute the Contract or the Construction Amendment, as applicable, within sixty (60) days and forward the Contractor a copy. In the event that the University fails to execute the Contract, or the Construction Amendment within the sixty (60) day period, the Contractor will have, as it's only remedy, the option to declare the Contract terminated without any liability by the University or the State of Maryland or to accept an extended period for execution by the University.

The Contract or the Construction Amendment shall not be in effect until and unless it is executed by all parties and approved by the Board of Public Works (if required).

### **2.03 FAILURE TO EXECUTE CONTRACT:**

Failure of the Contractor to execute the Contract or the Construction Amendment and file acceptable bonds within the time provided in Section 2.02 and Section 2.04D shall be just cause for the payment of damages guaranteed by the bid bond or other securities at an amount equal to the increased contract price paid by the University as a result of the failure of the Contractor to execute the Contract, or the Construction Amendment, or the amount set forth in The Procurement Response as liquidated damages, whichever is higher.

In the event that the damages sustained by the University exceed the amount of the bid security, the University reserves the right to proceed against the Contractor for the balance of its damages.

### **2.04 PERFORMANCE AND PAYMENT BONDS:**

(Required when initial contract exceeds \$100,000.00) [21.07.02.10]

- A. The University shall provide to the Contractor for execution copies of the Performance and Payment Bonds along with the contract form. The bonds must be executed and returned to the University as provided in the Contract. The premium for the bonds shall

be paid by the Contractor.

- B. The bonds shall be in the full amount of the contract price.
- C. The Contractor shall adjust the amount of the bonds from time to time to reflect any increase or decrease in the contract price over the amount of \$100,000. For any such additions, the Contractor will be reimbursed by the University in the amount of the actual amount of the increased bond cost. For any such decrease, the Contractor will credit the University the actual amount of the decreased bond cost. The Contractor shall provide updated bonds that reflect the increase or decrease within ten (10) working days of the fully executed contract modification.
- D. The Contractor shall deliver fully executed 100% Performance and Payment Bonds to UMB's Department of Procurement Services within ten (10) working days after the fully executed Contract is sent to the Contractor.

## **2.05 CERTIFICATIONS REQUIRED BY LAW:**

### **A. Cost and Price Certification: [21.07.01.23]**

- 1. The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete and current as to a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
  - (a) a negotiated contract, if the total contract price is expected to exceed \$100,000 or a smaller amount set by the Procurement Officer; or
  - (b) a change order or contract modification expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.
- 2. The price under the contract and any change order, 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 agreed upon between the parties, was inaccurate, incomplete or not current.
- 3. If the parties are negotiating for a change order which is expected to exceed \$100,000, the Contractor shall truthfully execute a cost and price information certificate on a form provided by the University. The certificate will provide, in relevant part that the Contractor's price and cost information is accurate, complete and current as of mutually determined date prior to the change order.

### **B. Contingent Fee Prohibition:**

At the time the parties execute the Contract, if not sooner, the Contractor shall truthfully execute a certificate on a form provided by the University which provides that he has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent, or paid any fee or any other consideration contingent on the making of the Contract.



C. **Corporation Registration and Tax Payment Certification:**

The Contractor represents and warrants, and shall truthfully execute a certificate on a form provided by the University so stating, (1) that 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, and (2) that it is not in arrears with respect to the payment of any monies due and owing the University or the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and it shall not become so in arrears during the term of this Contract.

**2.06 CONTRACT DOCUMENTS:**

- A. The contract documents are complementary. That which is called for by any one shall be as binding as if called for by all.
- (1) Intent of the documents is to include all work necessary for proper completion of the Project (excluding any part that is excluded from the Contract) ready for continual efficient operation. It is not intended, however, to include any work not reasonably inferable that is not explicitly described in the Contract Document.
  - (2) Clarification - Whenever the Contractor has questions, the Contractor should obtain clarification of all questions which may have arisen as to intent of the contract documents or any actual conflict between two or more items in the contract documents. Should the Contractor have failed to obtain such clarification, then the University may direct that the Work proceed by any method indicated, specified, or required by the contract documents in the interest of maintaining the best construction practice. Such direction by the University shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that it has had the opportunity to request clarification prior to submitting its bid to the University and therefore agrees that he is not entitled to claim extra costs as a result of such clarification.
  - (3) Jargon -- Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.
  - (4) Identification -- The Contract documents shall be signed in triplicate by the University and the Contractor.
  - (5) Singular or plural references shall mean one or more like terms of work as necessary to complete the Work, unless specifically directed otherwise.
  - (6) Typographical and spelling errors in the specifications will be interpreted by the A/E for their meaning and intent.
  - (7) The following order of precedence shall be used when there is a conflict in the Contract Documents. When the order of precedence cannot be used to resolve a conflict, then the more expensive labor, material or equipment shall be provided.
    - (a) The written agreement between the University and the Contractor
    - (b) Supplementary Conditions (Section 00800)
    - (c) General Conditions (Section 00700)
    - (d) Specifications, Divisions 1 through 16
    - (e) Drawings, in the following order of precedence:

- (i) Notes on Drawings in order of scale with largest first
- (ii) Details in order of scale with largest first
- (iii) Figured Dimensions
- (iv) Scaled Dimensions

- B. Drawings -- The Contractor shall do no Work without proper drawings and instructions. Drawings are in general drawn to scale and symbols are used to indicate materials and structural and mechanical requirements. When symbols are used those parts of the drawings are of necessity diagrammatic and it is not possible to indicate all connections, fittings, fastenings, etc., which are required to be furnished for the proper execution of the work. Diagrammatic indications of piping, ductwork and conduit, and similar items in the work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments at no increased cost to the University.
- (1) Copies Furnished -- The University will furnish the Contractor without cost, five (5) sets of drawings and five (5) sets of specifications. Additional copies may be obtained by the Contractor upon payment of the cost of reproduction of documents.
  - (2) Copies At The Site -- The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the Architect and the University.
  - (3) Ownership -- All contract documents remain the property of the University. The Contractor shall not use any of them on other work and shall return to the University upon completion of the work.
- C. Large Scale Detail Drawings -- When the University directs, the Architect shall furnish additional instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the Work. These shall be true developments of the bidding documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith.
- D. Dimensions -- The Contractor shall carefully check all dimensions prior to execution of the particular portion of the Work affected. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Architect prior to any construction or demolition. Should any dimensions be missing, the Architect will be consulted and supply them prior to execution of the Work unless, under the specifications, the Contractor is responsible for determining dimensions. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may be in conflict therewith. Whenever a stock size manufactured item or place of equipment is specified by its normal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra cost will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment
- E. Whenever new work, building, addition, or portions thereof are not accurately located by plan dimensions, the Architect will supply exact position for execution of the Work.

## 2.07 **SHOP DRAWINGS:**

- A. The Contractor shall submit, for the Architect's approval at such time as agreed in the Contractor's schedule, shop drawings, including setting drawings, and schedules as required by the University or the Architect for the work of the various subcontractors. These drawings shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.
- B. All shop drawings must show the name of the project and the University Contract number.
- C. Size of Drawings -- All shop drawings and details submitted to the Architect for approval shall be printed on sheets of the same size as the contract drawings prepared by the Architect. When a standard of a fabricator is of such size to be printed more than one drawing on a sheet of the size of the Architect's drawing, this is acceptable. Sheets larger than the Architect's drawing will not be accepted except when specifically permitted by the University. Shop detail supplied on a sheet of letter size 8-1/2" x 11" is acceptable for schedules and small details.
- D. Items For Which Shop Drawings Will Be Required -- Shop drawings will be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all items designated in the contract specifications, for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, or moldings, marble and slate, special rough hardware, and all heating, ventilating, plumbing, and electrical items requiring special fabrication, or detail connections including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc. Refer to submittal section(s) of the specifications.
- E. Copies Required -- Contractor shall supply two (2) copies for the Architect's file and eight (8) copies for the University's Office of Facilities Management, in addition to such copies as the Contractor may desire for his own use.
- F. Examination and Approval -- The Architect will examine shop drawings with reasonable promptness, noting desired corrections or granting approval or rejecting them.
- G. Field Dimensions and Conditions -- The Architect is not responsible for the check of dimensions or existing conditions in the field. This is the sole responsibility of the Contractor.
- H. Resubmission -- When the Architect or the University notes desired corrections or rejects the drawings, the Contractor shall resubmit the drawings promptly with corrective changes, without additional compensation.
- I. Contractor's Responsibility -- Unless the Contractor has, in writing, notified the Architect to the contrary, at the time of submission, the University and the Architect may and will assume that the drawings are in conformity with the existing contract documents and do not involve any change in the contract price or any change which will alter the space within the structure or alter the nature of the building from the contemplated in the contract documents.
- J. University's and Architect's Notations -- Should the Contractor consider any rejection of the University's and Architect's notation on the shop drawings to require an increase in the cost of the work from that contemplated in the Contract documents, then the Contractor shall desist from further action relative to the item it questions and shall notify the Project Manager, Procurement Officer and Architect, in writing, within five (5) days of the additional or less cost involved. No work relative to the item shall be executed until the

entire matter is clarified and the Contractor is ordered by the University to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto. Similarly, should the University's and Architect's notation or change involve less work than is covered by the contract drawings, the Contractor shall allow the University an equitable credit resulting from the change in the work.

END OF SECTION 2

### **SECTION 3: SCOPE OF THE WORK**

#### **3.01 INTENT OF THE CONTRACT DOCUMENTS:**

It is the intent of the contract documents to show all the work necessary to complete the project.

#### **3.02 GENERAL CONDITIONS CONTROLLING:**

Subject to Section 2.06 A (7), in event of a conflict between these General Conditions and any other provision of the contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

#### **3.03 DIFFERING SITE CONDITIONS: [21.07.02.05]**

- A. The Contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer in writing of: (1) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract. The Procurement Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in paragraph A above provided, however, the time prescribed therefore may be extended by the University.
- C. No claim by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

#### **3.04 SITE INVESTIGATION: This provision is in addition to any other provision in the Contract relating to Site Investigation. [21.07.02.06]**

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment, and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the University, as well as from information presented by the drawings and specifications made a part of the Contract. Any failure by the Contractor to acquaint himself with the available information may not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing this work. The State assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the University.

#### **3.05 CONDITIONS AFFECTING THE WORK:**

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the Work and the general and local conditions which affect the Work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the Work without additional expense to the University. The Contractor agrees not to place any credence in any understanding or representation concerning

conditions made by any University employee or agents prior to the execution of this Contract unless such understanding or representation is expressly stated in the Contract.

**3.06 CHANGES IN THE WORK: [21.07.02.02]**

- A. A procurement officer of the University's Office of Procurement and Supply may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
  - (1) In the specifications (including drawings and designs);
  - (2) In the method or manner of performance of the Work;
  - (3) In the University-furnished facilities, equipment, materials, services, or site; and/or,
  - (4) Directing acceleration in the performance of the Work.
- B. Any other written order or oral order (which terms as used in this paragraph B shall include direction, instruction, interpretation, or determination from the Procurement Officer which causes any such change) shall be treated as a Change Order under this clause, provided that the Contractor gives the procurement officer written notice stating the date, circumstances, and source of the order, and that the Contractor regards the order as a Change Order.
- C. Except as herein provided, no order, statement, or conduct of the Procurement Officer or other University personnel shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. 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 under this Contract, whether or not changed by any order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, that except for claims based on defective specifications, no claim for any change under paragraph B above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required: provided further, that in the case of defective specifications for which the University is responsible, the equitable adjustment shall include any increased cost reasonable incurred by the Contractor in attempting to comply with such defective specifications.
- E. If the Contractor intends to assert a claim for an equitable adjustment under this Section, it shall within thirty (30) days after receipt of a written Change Order under paragraph A above or the furnishing of written notice under paragraph B above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of such claim unless this period is extended by the University. The statement of claim hereunder may be included in the notice under paragraph B above.
- F. No claim by the Contractor for an equitable adjustment hereunder shall be allowed or asserted after final payment under this Contract.
- G. In order to facilitate review of quotations for extras or credits, all proposals (except those so minor that their propriety can be seen by inspection) shall be accomplished by a complete itemization of costs including labor, materials and Subcontracts. Where major cost items are Subcontracts, they shall also be itemized. In no case will a change involving over \$200.00 be approved without such itemization.
- H. Each Contractor and subcontractor shall furnish labor and materials for any additional work ordered by the University (and for which no pre-agreed price has been fixed) for the

net cost of all labor and materials furnished, plus an overhead and profit amount not to exceed 15% on work performed by its own forces. In addition each Contractor and each subcontractor shall be entitled to mark up by an amount not to exceed 10% any invoice received from another subcontractor for work performed by the other subcontractor's forces.

- I. Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate University authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.

**3.07 UNAUTHORIZED WORK:**

Contractor shall not be paid for any work not authorized in writing by the Procurement Officer.

END OF SECTION 3

## **SECTION 4: CONTROL OF THE WORK**

### **4.01 AUTHORITY OF THE ARCHITECT:**

- A. Under the direction of the University, the Architect shall be the initial interpreter of any drawings included among the contract documents. He will furnish with reasonable promptness such clarifications as he may deem necessary for the proper execution of the Work; such clarifications to be consistent with the intent of the contract documents. He is the agent of the University only to the extent provided in the contract documents. When in special instances he is authorized by the University so to act, he has authority to recommend to the University to stop work whenever such stoppage may be necessary to insure the proper execution of the Contract.
- B. Except as otherwise provided in the contract documents, all the Architect's decisions are subject to review by the University.

### **4.02 CONFORMITY WITH CONTRACT REQUIREMENTS:**

- A. All work performed and all materials furnished by the Contractor shall be in conformity with the Contract requirements.
- B. In the event the University finds the materials or the finished product in which the materials are used or the work performed are not in complete conformity with the Contract requirements and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expenses of the Contractor.
- C. In the event the University finds the materials or the finished product in which the materials are used are not in complete conformity with the Contract requirements, but have resulted in a satisfactory product, the University shall then make a determination if the work shall be accepted. In this event, the University will document the basis of acceptance by a change order which will provide for an appropriate adjustment in the Contract price. Acceptance of the work will be contingent upon the Contractor's acceptance of a Contract Amendment incorporating the Change Order.

### **4.03 ADJACENT WORK:**

- A. The University shall have the right, at any time, to contract for and perform other work on, near, over, or under the work covered by the Contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other contractors and carefully fit his own work to such other as may be directed by the Architect.
- B. The Contractor agrees that in event of dispute as to cooperation or coordination with adjacent contractors, the University will act as referee and decisions made by the University will be binding. The Contractor agrees to make no claims against the University or the State of Maryland for any inconvenience, delay, or loss experienced by him because of the presence and operations of other contractors.

### **4.04 CONTROL BY THE CONTRACTOR:**

- A. The Contractor shall constantly maintain efficient supervision of the work, using the best skill and coordinating ability. He shall carefully study and compare all drawings, specifications, and other instructions and check them against conditions existing, or being constructed on the project. He shall at once report to the University and the Architect any error, inconsistency, or omission which he may discover.



- B. The Contractor shall schedule and conduct regular progress meetings every other week, and as directed by the University, at which Subcontractors (Sub-subcontractors if necessary), University, Architect, and other designated representatives, and the Contractor can discuss such matters as progress, scheduling, and construction-related issues. The Contractor is responsible for taking meeting notes and distributing these to all invited parties within three (3) working days after such meetings. The meeting notes are the product of the Contractor. Failure of the University to respond to such notes is not deemed to be acceptance.

#### **4.05 COOPERATION WITH UTILITIES:**

- A. It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances, the operation of moving them, or the making of new connections thereto if required by the Contract documents.
- B. The Contractor shall have responsibility for notifying all affected utility companies prior to the necessity of performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, communication, water, and power companies, or are adjacent to other property, damage to which might result in expense, loss, or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor.
- D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.
- F. Utility outages shall be kept to a minimum and will be permitted only with the written approval of the University's Office of Facilities Management. All requests for outages shall be made a minimum of ten (10) working days in advance of their need. Requests for outages will not be considered unless they include an identification of all areas which will be affected by the proposed outage.

#### **4.06 AUTHORITY AND DUTIES OF UNIVERSITY INSPECTORS:**

- A. University inspectors shall be authorized to inspect all work done and all material furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector is not authorized to revoke, alter, or waive any requirements of the Contract, nor is he authorized to approve or accept any portion of the complete project. He is authorized to call the attention of the Contractor to any failure of the work or materials to conform to the contract. He is authorized to reject materials or suspend the work (after review with the procurement officer) until any questions at issue can be referred to and decided by the University. Inspectors shall perform their duties at such times and in such manner as will

not unnecessarily impede progress on the Contract.

- B. The inspector shall in no case act as foremen or perform other duties for the Contractor, nor interfere with the management of the work by the latter.
- C. Any advice which the inspector may give the Contractor shall not be construed as binding the University in any way or releasing the Contractor from fulfilling all the terms of the Contract. The duty of the inspector on the project is to observe the progress of the work and to report any deviations from the requirements of the Contract documents; however, should the inspector fail to report any such deviation from the Contract requirements, this does not release the Contractor from fulfilling all of the terms of the Contract.
- D. Where there is disagreement between the Contractor and the inspector, the inspector will immediately direct the University's and the Architect's attention to the issues of disagreement, and if the Contractor still refuses to make corrections, comply or suspend work, the Procurement Officer will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the work and explaining the reason for such shutdown. Any work performed during the inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at Contractor's expense.

#### **4.07     INSPECTION OF THE WORK:**

- A. Work, including the fabrication and source of supply, is subject to observation by the Architect and to the University's Office of Facilities Management's right to inspect specific items.
- B. The Contractor shall provide facilities for access and inspection as required by the University.
- C. If the specifications, the Office of Facilities Management's instructions, law, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Office of Facilities Management timely notice of its readiness for inspection, and if inspection is by another authority, the date fixed for such inspection. Inspections by the Office of Facilities Management shall be made promptly and where practicable at the source of supply. Any work covered without approval of the University must, if required by the Architect or the Office of Facilities Management, be uncovered for examination, and then recovered, both at the Contractor's expense.

#### **4.08     REMOVAL OF DEFECTIVE WORK:**

- A. All work and materials which do not conform to the requirements of the Contract will be considered unacceptable.
- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause, found to exist shall be removed and replaced by work and materials which shall conform to the Contract requirements or shall be remedied otherwise in an acceptable manner authorized by the University.
- C. Upon failure on the part of the Contractor to comply promptly with any order of the University, made under the provisions of this section, the University shall have authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from any monies due or to become due the Contractor under this Contract.

#### **4.09 MAINTENANCE OF WORK DURING CONSTRUCTION:**

- A. The Contractor shall maintain the Work during construction and until acceptance. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- B. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage shall be diverted or dispensed when necessary to prevent damage to excavation, embankments, surfaces, structures, or property. Suitable measures shall be taken by the Contractor to prevent the erosion of soil in all construction areas where the existing ground cover has been removed. Such measures shall be in compliance with the requirements of any governmental entity having jurisdiction.
- C. All cost of maintenance work during construction and before final acceptance shall be included in the base bid and the Contractor will not be paid any additional amount for such work.
- D. In the event that the Contractor's Work is halted by the University for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided herein, and provide such ingress and egress for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work or until the Contractor has been declared in default.
- E. On projects where pedestrian or vehicular traffic flow is maintained, the Contractor shall be responsible for repair and restoration of all traffic damage to the work, either partially or totally completed, until such time as the work is accepted by the University.

#### **4.10 FAILURE TO MAINTAIN ENTIRE PROJECT:**

If the Contractor shall at any time, fail to comply with the provisions of paragraph 4.09, the University shall immediately notify the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance within 24 hours after receipt of such notice, the University will immediately proceed with adequate forces and equipment to maintain the project, and the entire cost of this maintenance may be deducted from monies due the Contractor, without in anyway limiting the right of the University to enforce any and all other remedies to which it is entitled by law or under the Contract.

#### **4.11 UNIVERSITY'S RIGHT TO DO WORK:**

If the Contractor should neglect to prosecute the work properly or fail to perform any provision of this Contract, the University after three (3) days' written notice to the Contractor may make good such deficiencies and may deduct the cost thereof from the monies then or thereafter due the Contractor, without in anyway limiting the right of the University to enforce any and all other remedies to which it is entitled by law or under the Contract.

#### **4.12 AUTHORITY OF OFFICE OF ENVIRONMENTAL HEALTH AND SAFETY**

- A. The University of Maryland, Baltimore's Office of Environmental Health and Safety ("EHS") is responsible for promoting a safe and healthful work environment for the project and for verifying the Contractor's compliance with Federal and State environmental protection regulations and University safety and health practices. To carry out these responsibilities, EHS is authorized to inspect the project, all work done and being done, and all material to be furnished and being furnished. In the event that EHS learns of an unsafe condition, EHS is authorized to suspend work (after notice to the Procurement

Officer and the Office of Facilities Management) until the unsafe condition is cured by the Contractor. "Unsafe condition" shall mean any practice that represents a significant risk of injury or health hazard to University employees, a significant adverse environmental impact or a physical hazard which could result in damage to University property and/or the public. The authority of EHS is in addition to any other rights of the University set forth herein.

- B. Prior to the Contractor proceeding with the Work, he is to submit proof of a Confined Space Program to UMB's Office of Environmental Health and Safety for verification.

**4.13 IDENTIFICATION:**

- A. The Contractor shall obtain identification for its employees from the University or the Client University where the Project is located. The rules and changes of the institution apply; costs are the Contractor's responsibility. The University Project Manager must approve all applications for campus identification. Employee identification of work persons assigned to the University Project shall be visible at all times.
- B. All vehicles and mobile equipment shall be identified with the Contractor's name displayed in a highly visible manner.
- C. The Contractor shall require all trade contractors' personnel to wear identification badges at all times on campus.

**4.14 NOISE CONTROL:**

- A. The Contractor shall execute the Work in this Contract as quietly as practicable to avoid unnecessary disturbances. Use of audio devices is not allowed on the Project site. Two-way communication radios are allowed.
- B. Any complaints duly registered by the University of Unacceptable Noise Levels shall be cause for the use of special precautions and methods of operation by the Contractor to reduce noise to acceptable levels. The University shall be the sole judge of the tolerability of noise levels.

**4.15 PARKING:** Parking of employees of the Contractor and/or subcontractor(s) is the responsibility of the applicable Contractor and/or subcontractor. UMB's Parking Office may be contacted as to designated public parking facilities on campus with any costs thereof to be borne by the Contractor or subcontractor, dependent on whose employees utilize such public parking.

**4.16 KEYS:**

- A. Keys needed by Contractor for 7 days or less:

The Contractor must sign out a key from Work Control and return the key each day to Work Control.

- B. Keys needed by Contractor for more than 7 days:

A \$10.00 deposit (amount subject to change without notice) shall be paid to UMAB by the Contractor for each key. The deposit is refundable when the key is returned to Work Control after the project is completed. The deposit is forfeited if the key is lost and cannot be returned.

- 4.17**     **PRESS RELEASES**: The Contractor shall not issue any press release for any publication, including newspaper or media, without first clearing the text with UMB and obtaining the prior written approval of UMB in each instance.

END OF SECTION 4

## **SECTION 5: MATERIALS**

### **5.01     GENERAL:**

- A. All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the University and the Architect in writing of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work as soon as possible after receipt of notification of award of the Contract.
- B. Materials include all manufactured products and processed and unprocessed natural substances required for completion of the Contract. The Contractor, in accepting the Contract, is assumed to be thoroughly familiar with the materials required and their limitations as to use, and requirements for connection, setting, maintenance, and operation. Whenever an article, material, or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed, or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in these specifications shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes, or regulations.
- C. Approval -- All materials are subject to the University's approval as to conformity with the specifications, quality, design, color, etc. No material for which approval is necessary shall be used until written approval is given by the University and Architect. Approval of a subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications.
- D. New Materials -- Unless otherwise specified, all materials shall be new. Old materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by the University.
- E. Quality -- Unless other specified, all materials shall be of the best quality of the respective kinds.
- F. Samples -- The Contractor shall furnish for approval all samples as directed. The materials used shall be the same as the approved samples.
- G. Proof of Quality -- The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. He shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in paragraph 5.03 of these General Conditions.
- H. Standard Specifications -- When no specification is cited and the quality, processing, composition, or method of installation of a thing is only generally referred to, then:
  - (1) For items not otherwise specified below, the latest edition of the applicable American Society for Testing Materials specification is the applicable specification.
  - (2) For items generally considered as plumbing and those items requiring plumbing connections, the applicable portions of the latest edition of the B.O.C.A. Code are the applicable specifications.
  - (3) For items generally considered as heating, refrigerating, air-conditioning, or ventilating, the applicable portions of the latest edition of the A.S.H.R.A.E. Handbook published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., are the applicable specifications.

- (4) For items generally considered as site work, the applicable portions of the Maryland S.H.A. Standard Specifications are the applicable specifications.
  - (5) For items generally considered as electrical, the applicable provisions of the latest edition of the National Electric Code are the applicable specifications.
  - (6) For items generally considered as fire protection, the applicable portions of the latest edition of the National Fire Protection Association Code are the applicable specifications.
- I. The Contractor shall provide the University with Material Safety Data Sheets (MSDS) as required by law. The Contractor shall provide EHS with a material safety data sheet ("MSDS") for all products and materials which (i) contain hazardous chemical and (ii) to which OSHA Regulations (29 CFR, 1910.1200) apply. The Contractor must submit a binder of all applicable MSDS's to EHS within forty-five (45) days of issuance of the Notice to Proceed. EHS will review this binder and return it to the Contractor accordingly. The Contractor shall maintain in its possession on the project site, at all times, a copy of each MSDS required to be submitted in connection with the chemicals, compounds, or materials used in the project. In the event EHS has questions arising from any MSDS, in each instance, notwithstanding anything herein to the contrary, EHS shall have the right to contact the Contractor and the vendor of the chemical, compound or material in question.

## **5.02 STORAGE AND HANDLING OF MATERIALS:**

- A. Materials shall be so stored as to assure the preservation of their quality and acceptability for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment. Such storage areas must be restored to their original condition by the Contractor at his expense. If off-site storage is used, Contractor shall provide the necessary copy of the insurance policy with the University as the certificate holder. See Section 6.05 and Section 6.06 for further details.
- B. Materials shall be handled in such a manner as to preserve their quality and acceptability for the Work.
- C. Contractor shall confirm his apparatus and the storage of materials to the area delineated in the Contract documents as the "Limit of Contract."
- D. Explosives:
  - (1) Explosives shall not be stored upon any property belonging to the University.
  - (2) Should the Contractor desire to use explosives on any University property he shall first receive written approval of the University. The approval will stipulate time, place, and quantity to be used and manner of use.
  - (3) The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use and/or transportation of explosives. The Contractor must comply with any and all ordinances, regulations, and restrictions in relation to the use of explosives.
- E. Paints
  - (1) Oil base paints and liquids shall not be stored in large quantities on the project site. Containers shall be limited to five (5) gallon size. Any liquid with a flash point of

less than one hundred (100) shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans. Glass containers shall not be used.

- (2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

#### **5.03      SUBSTITUTION:**

- A. Should the Contractor desire to substitute another material for one or more specified by name he shall apply to the University, in writing, for permission, stating the credit or extra cost that will result from the use of such material and explaining all potential benefits to the University from the substitution. The University will not consider the substitution of any material different in type or construction methods unless such substitution affects a benefit to the University.
- B. The Contractor shall not submit requests for approval of materials other than those specified without a written statement that a substitution is proposed. Approval of a "substitute material" by Architect when the Contractor has not designated such material as a "substitute", shall not be binding on the University, and will not release Contractor from any obligations of the Contract. The University, at its discretion, may approve a "substitute material" as a Substitution after the fact. Such approval, if given, must be set out in writing.
- C. A material which is an approved equal (see #5.04) is not a substitution under this Section 5.03.

#### **5.04      APPROVED EQUALS:**

The terms "Or Equal", "Equal", "Approved Equal" are used as synonyms throughout the specifications. They are implied in reference to all named manufacturers in the specifications unless otherwise stated. Only materials fully functionally equal or superior in all details and characteristics will be considered to be approved equals. The Contractor shall apply to the University in writing for confirmation that a material is an approved equal. The University's Office of Facilities Management is the final judge as to equality.

#### **5.05      CONTRACTOR'S OPTIONS:**

When several products or manufacturers are named in the specifications for the same purpose of use, then the Contractor may select any of those so named. However, all of the units required for, and used in, the project must be the same in material and manufacture.

#### **5.06      TESTS:**

- A. If the contract documents, laws, ordinances, rules, regulations, or orders of any public authority having justification require any portion of the work to be inspected, tested, or approved, the Contractor shall give the University and the Architect timely notice of its readiness so the Architect may observe such inspection, testing, or approval. The Contractor shall bear all costs of such inspections, tests, or approvals conducted by public authorities.
- B. The University reserves the right to require special inspection, testing or approval which the contract documents do not include, and instruct the Contractor to order such special inspection, testing, approval, and the Contractor shall give notice as provided in 5.06 A above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the contract documents, the Contractor shall bear all costs of testing, inspection, and replacement or remediation, including compensation for the Architect's



additional services made necessary by such failure; otherwise the University shall bear such costs and an equitable adjustment will be made.

- C. Required certificate of inspection, testing, or approval shall be secured by the Contractor and promptly delivered by him to the University and the Architect.

**5.07 BUY AMERICAN STEEL:**

Only steel products made in the United States shall be used or supplied in the performance of the Contract or any subcontract. Steel products include products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from steel made in the United States. This requirement shall not apply if the University has determined that the cost of such steel products is unreasonable or inconsistent with the public interest and has communicated this determination in writing to the Contractor. The provisions of this Section shall not apply where they are in conflict with any Federal grant or regulation affecting this Contract.

**5.08 SALES TAX:**

Supplies and materials purchased in connection with the Contracts will not be tax exempt.

**5.09 HAZARDOUS MATERIALS:**

- A. The use or handling of regulated materials, including asbestos or PCB, shall be strictly governed by Federal, State and Local regulations.
- B. No Contractor furnished material or product containing any asbestos in any form may be used on this project.
- C. Contractor must remove any and all materials covered under the hazardous waste regulations upon completion of the project or more often as directed by EHS or required by law or regulation.
- D. It is assumed that hazardous materials are not present within the areas of work in the existing buildings but the Contractor is advised to remain alert to the possibility of encountering hazardous materials during the course of the Work. In the event that hazardous materials are encountered and must be handled, the Contractor shall immediately stop all work within the affected area and notify the University's Project Manager for instructions. The Contractor shall coordinate and cooperate with the hazardous material removal contractor in the removal of hazardous materials within the areas of work under the Contract.

END OF SECTION 5

## **SETTING 6: LEGAL RELATIONS AND RESPONSIBILITIES**

### **6.01 LAWS TO BE OBSERVED:**

- A. The Contractor shall keep fully informed of all Federal, State, and Local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees, and shall protect and indemnify the University, any Client University, and the State of Maryland and its representatives against such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by the Contractor, its employees or subcontractors.
- B. The Contractor must comply with the provisions of the Workmen's Compensation Act and Federal, State, and City laws relating to hours of labor.
- C. The provisions of this Contract shall be governed by the Laws of Maryland. [21.07.01.07]
- D. The Contractor shall give all notices and comply with all applicable State, Federal and local laws, ordinances, rules, and regulations bearing on the conduct of the work as drawn and specified.
- E. If the Contractor observes that the drawings and specifications are at variance with any law, he shall promptly notify the University, and any necessary changes shall be adjusted as provided in the Contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules, and regulations, and without such notice to the University, the Contractor shall bear all costs arising therefrom, including without limitation fines, penalties and correction or replacement of work and materials.

### **6.02 PERMITS AND LICENSES:**

- A. The University will file with the appropriate local authority drawings and specifications and any pertinent data reasonably proper for their information. No permits are applicable for work on University property with the exception of (i) any permits required in the specifications as noted in 6.02, C. below and (ii) Cutting & Welding permit noted in 6.02, D. below.
- B. Any permits required for work on non-University property are the responsibility of the Contractor in terms of the permit acquisition, cost thereof and all obligations and liability under the permit.
- C. Any permits required by the specifications (i.e., Air and Radiation Management Administration boiler permits, etc.) are the responsibility of the Contractor in terms of the permit acquisition, cost thereof and all obligations and liability under the permit.
- D. Before any welding, burning, pipe sweating or brazing is started at the University of Maryland, Baltimore, a "CUTTING & WELDING PERMIT" must be obtained from EHS, 714 W. Lombard Street, Baltimore, MD 21201-1041, or for a Project at a Client University from the appropriate office there. This permit must be requested from EHS at least two days prior to the anticipated hot work. The cardboard portion of the permit shall be secured to either the cutting or welding equipment. At the end of the requested time, the cardboard portion of the permit must be returned to EHS.
- E. The Contractor must be licensed as required by the Laws of the State of Maryland (Art. 56, Sec. 180, Annotated Code of Maryland) and must be qualified by submission and

approval of a qualification Questionnaire when requested.

**6.03 PATENTED DEVICES, MATERIALS, AND PROCESSES:**

The Contractor shall pay for all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the University, and Client University, and the State of Maryland harmless from loss on account thereof, except that the University or Client University shall be responsible for any such loss when a particular process or the product of a particular manufacturer or manufacturers is specified by the Contract as the University's responsibility; however, if the Contractor has information that the process or articles specified is an infringement of a patent, then the Contractor shall be responsible for such loss unless he promptly gives such information to the Procurement Officer.

**6.04 LAND, AIR, AND WATER POLLUTION:**

- A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- B. Temporary pollution control may include measures outside the project site where such work is necessary as a direct result of project construction. The University's Office of Facilities Management shall be notified of all such off-site control measures taken by the Contractor. This notice shall not relieve the Contractor of responsibility for such work.
- C. In case of failure on the part of the Contractor to control erosion, pollution, and/or siltation, the reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the in the performance of such duties for the Contractor shall be withheld from monies due to the Contractor.
- D. The Contractor must submit evidence to the University's Office of Facilities Management that the governing Federal, State, and local air pollution criteria will be, and were, met. This evidence and related documents will be retained by the University's Office of Facilities Management for onsite examination.
- E. If the performance of all or any part of the Work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, the Procurement Officer, at the request of the Contractor, shall determine whether the order is due in any part to the acts or omissions of the Contractor required by the University's as one of the terms of this Contract. If it is determined that the order is due in any part to acts or omissions of the Contractor required by the terms of the Contract, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer in the administration of this Contract under the terms of the "Suspension of Work" Section of this Contract. The period of such suspension, delay, or interruption shall be considered reasonable, and an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) as provided in that Section, subject to all the provisions thereof.
- F. The term "environmental litigation", as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that the University has not duly considered, either substantively or procedurally, the effect of the Work on the environment, or that the University and/or Contractor has not complied with applicable environmental laws and regulations.

**CONTRACTOR'S LIABILITY INSURANCE:**

A. From and after the execution of the Contract by the Contractor in connection solely with Worker's or Workmen's Compensation Insurance and from and after the execution of the Contract Amendment by the Contractor in connection with all insurance enumerated in this Section 6.05.A, the Contractor shall purchase and maintain under the General Conditions allowance for this Project (see Attachment C) insurance required by this Section 6.05.A, applicable to all claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor, by any Subcontractor or Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance except Workmen's Compensation shall name the University of Maryland, Baltimore, any Client University, the University System of Maryland, and the State of Maryland as additional insured's. The Contractor shall purchase and maintain at its own expense insurance required by this 6.05A. applicable to all claims which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor, by any agent or subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All insurance except Workmen's Compensation shall name the University of Maryland and the State of Maryland as an additional insured.

- (1) Worker's or Workmen's Compensation Insurance.
- (2) Employer's Liability Insurance.
- (3) Comprehensive General Liability Insurance for bodily injury and property damage, including loss of use of property, arising out of any occurrence. This insurance should include the following extensions:
  - (a) Products and completed operations coverage for a period of at least two years (see Section 00700, #7.17 Guarantees for further information and/or details regarding the guarantee period).
  - (b) Personal injury liability coverage (including contractual coverage);
  - (c) Contractual liability insurance to cover the Contractor's obligation to the University and the State of Maryland under Section 1.03 G.
  - (d) Broad form property damage (including completed operations);
  - (e) Independent contractor's coverage.
  - (f) "X", "C", and "U" coverage applying to explosion, collapse of other structures and underground foundations;
  - (g) If the work involves containment or removal of asbestos, pollution liability (environmental protection liability) coverage.
- (4) Business automobile liability insurance which will pay for liabilities arising out of accidents involving the ownership, operation, maintenance or use including the loading or unloading of any automobile.
- (5) Umbrella liability

- B. The coverage listed in paragraph 6.05 A shall be written for not less than the following limits of liability.
- (a) Comprehensive general liability insurance including all extensions –  
\$2,000,000 each occurrence;  
\$2,000,000 personal injury;  
\$2,000,000 products/completed operations;  
\$2,000,000 general aggregated
  - (b) Worker's Compensation Insurance and Unemployment Insurance as required by the laws of the State of Maryland.
  - (c) Employer's liability insurance - - \$1,000,000 each accidental injury or disease and \$2,000,000 aggregate.
  - (d) Property damage liability insurance with a limit of not less than \$2,000,000 for each accident.
  - (e) Business automobile bodily injury liability insurance with limits of not less than \$1,000,000 for each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 for each accident.
  - (f) Umbrella liability - - \$5,000,000 limit.
- C. Satisfactory proof of purchase of required insurance shall be furnished on the Accord format for certificates prior to execution of the Contract and upon renewal of any policy, and upon obtaining any new insurance policy. Certificates must be amended to indicate: "Should any of the described policies be canceled before the expiration date thereof, or non-renewed, the issuing company will give forty-five (45) days prior written notice to the certificate holder," each Certificate should indicate the insurer, the appropriate policy number(s), the policy expiration date(s), the limits of liability in effect, and the Best's rating and financial rating of the insurer. A certificate will be accepted only if signed by an authorized representative of the insurer.
- D. Insurance certificates will be accepted only from an insurer having a minimum Best's rating of Class A for the policy holders' rating and Class IX for the financial rating. Insurers must be authorized to do business under the laws of the State of Maryland.
- E. No work shall be started at the site until appropriate certificates of insurance are filed with and approved by the procurement officer.

**6.06 BUILDER'S RISK INSURANCE:**

- A. The Contractor shall purchase and maintain at its own expense builder's risk insurance naming as additional insured the University of Maryland, Baltimore, any Client University, the University System of Maryland, the State of Maryland, the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them. The University, the Client University and the State shall be loss payees as their interests may appear.
- B. The builder's risk policy shall cover any and all materials, equipment, machinery, and supplies of any nature whatsoever, intended to be used in or incidental to the completion of the Contract, but coverage shall apply to property on the Project site, property in transit, and property in temporary storage at locations other than the Project site which property is designated to become a permanent part of the insured project.

- C. The limits of insurance (without any coinsurance conditions applying) shall be the full value of the project when completed. Deductibles are allowed only if reported to the University, which shall not unreasonably withhold consent. The Contractor shall be responsible for paying the amount of the deductible to the University or State in the event of a claim by either or both of them which are within the coverage of the builder's risk policy. Coverage shall be on a full replacement cost basis with no deductions for actual physical depreciation.
- D. Insurance should be against all risks of direct physical loss of or damage to the insured property including theft; earthquake; flood; and settling, shrinkage or expansion of buildings or foundations other than normal settling shrinkage or expansion. Any fault, defect, error or omission exclusion should not apply to damage resulting from such fault, defect, error or omission in the design plans or specifications. Any faulty or defective workmanship or internal exclusion clause should not apply to damage resulting therefrom.
- E. The term of the builder's risk insurance shall continue until issuance of the substantial completion certificate on the project by the University.
- F. Contractor shall deliver to University a copy of each policy of the required insurance prior to execution of the Contract, upon execution of the Contract amendment and upon renewal of any policy, and upon obtaining any new insurance policy. All policies of insurance shall provide that the policy shall not be subject to cancellation, termination, or reduction in coverage, except after forty-five (45) days' prior written notice to University.
- G. Upon request, Contractor shall also furnish a certificate(s) of the required insurance. Certificates must be amended to indicate: Should any of the described policies be canceled before the expiration date thereof, or non-renewal, the issuing company will give thirty (30) days prior written notice to certificate holder." Each certificate should indicate the insurer, the appropriate policy number(s), the policy expiration date(s), limits of liability in effect, and the Best's rating and financial rating of the insurer. A certificate will be accepted only if signed by an authorized representative of the insurer.
- H. Insurance will be accepted only from an insurer having a minimum best's rating of Class A for the policy holders' rating and Class IX for the financial rating. Insurers must be authorized to do business under the laws of the State of Maryland.
- I. No work shall be started at the site until appropriate policies of insurance are filed with and approved by the Procurement Officer. Policies and certificates of insurance shall be submitted to the Procurement Officer for review and approval and shall be held by the Procurement Officer for the duration of the Contract. The University shall have the absolute right to terminate the Contract if a required policy of insurance is canceled at any time for any reason and a new policy effective immediately thereafter is not obtained by the Contractor and approved by the Procurement Officer.
- J. The Contractor shall adjust the amount of the builders risk insurance from time to time to reflect any increase or decrease in the Project over the amount of \$100,000.00. For any such additions, the Contractor will be reimbursed by the University in the amount of the actual amount of the increased insurance cost. For any decrease, the Contractor will credit the University the actual amount of the decreased insurance cost. The Contractor shall provide updated certificate that reflect the increase or decrease within ten (10) working days of the fully executed contract modification.

#### **6.07 ASSIGNMENTS:**

The Contractor shall not assign its rights or responsibilities under this Contract. The Contractor shall not assign monies due or to become due to it hereunder.

**6.08      SEPARATE CONTRACTS:**

- A.     The University reserves the right to let other contracts in connection with this work. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs.
- B.     If any part of the Contractor's Work depends for proper execution or results upon the work of any other contractor, the contractor shall inspect and promptly report to the University any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to the defects which may develop in the other contractor's work after the execution of the Contractor's Work.
- C.     To insure the proper execution of its subsequent Work, the Contractor shall measure work of others already in place and shall at once report to the University any discrepancy between the executed work and the drawings.

**6.09      PAYMENT OF SUBCONTRACTORS:**

- A.     Neither the final payment or any part of the retained percentage shall become due until the Contractor shall deliver to the University receipt for full payment to all subcontractors and any principal suppliers identified by the University.
- B.     If any subcontractor or supplier refuses to provide a receipt for payment, the Contractor may obtain final payment by providing the University with a bond satisfactory to the University for payment to subcontractors or suppliers as a condition of fulfilling any contractual obligation (including warranties) or losses resulting from subcontractors' or suppliers' failure to fulfill such obligations. Under the bond the Contractor shall refund the University all monies paid to subcontractors or losses incurred, including all costs and reasonable attorney's fees.
- C.     The contractor shall promptly pay a subcontractor (and shall cause Subcontractors to pay Sub-subcontractors) any undisputed amount to which the subcontractor (or Sub-subcontractor) is entitled for work under this contract within 10 days of receiving a progress or final payment from the University. In the event the contractor (or Subcontractor) fails to pay promptly, a subcontractor (or Sub-subcontractor) may request remedy in accordance with COMAR 21.10.08. In each subcontract under this contract, the contractor shall include a clause that contains substantially the same provisions as this Section.

**6.10      RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIAL AND EMPLOYEES:**

- A.     In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the University, it being understood that in all such matters they act solely as agents and representatives of the University.
- B.     The University may terminate the right of the Contractor to proceed under this Contract if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the University with a view toward securing a contract or securing a favorable treatment with respect to the awarding or amending or the making of any determination with respect to the performing of such contract. The facts upon which the Procurement Officer makes such findings may be reviewed in any competent court.

- C. In the event this Contract is terminated as provided in paragraph B hereof, the University shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three(3) nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.
- D. The rights and remedies of the University provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- E. Conflict of Interest - No official or employee of the State of Maryland whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract.

**6.11 NO WAIVER OF LEGAL RIGHTS:**

- A. The University and the State of Maryland shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, for from showing that the work or materials do not in fact conform to the requirements of the Contractor. The University and the State of Maryland shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate, and payment from recovering from the Contractor or its sureties, or both, such damage as the University may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the University nor acceptance by any representative of the University shall operate as a waiver of any portion of the Contract or of any power herein or of any right to damages.
- B. The waiver by the University of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

**6.12 COVENANT AGAINST CONTINGENT FEES: [21.07.01.09]**

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 Contract, 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 fees or any other consideration contingent on the making of this Contract.

**6.13 ASSIGNMENT OF ANTITRUST CLAIMS:**

The Contractor sells, transfers, and assigns to the University and the State of Maryland all right, title, and interest in any cause of action arising at any time before the date of this assignment or during the performance of this Contract under the Antitrust Laws of the United States, including Section 1 of the Sherman Act and the Antitrust Law of Maryland relating to the purchase by the Contractor or the University and the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this Contract. The Contractor certifies that the above causes of action are lawfully owned, that no previous assignment of the causes of action has been made, and that the causes of action have not been attached or pledged in any manner whatsoever.



**6.14 FEDERAL PARTICIPATION:**

If the United States Government pays all or any portion of the cost of a project, the work under this Contract shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party to this Contract and will not interfere in any way with the rights of either party hereunder.

**6.15 DISPUTES: [21.07.01.06]**

- A. This Contract is subject to the provisions of Title 7, Article 21 (Administrative and Civil Remedies) of the Code (the "Act") and COMAR 21.10. As noted therein, unless a lesser period is provided by applicable statute, regulation, or by this Contract, the Contractor shall file a written notice of a claim relating to the Contract with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days after, the filing of a notice of a claim, Contractor shall submit the written claim to the Procurement Officer. If Contractor requests, the Procurement Officer, on conditions the Procurement Officer deems satisfactory to the University, may extend the time in which Contractor must submit a claim. An example of when a Procurement Officer may grant an extension includes a situation in which the Procurement Officer finds that contemporaneous or timely cost quantification following the filing of the notice of claim is impossible or impractical.
- B. Except as may otherwise be provided in the Act or COMAR, all disputes arising under or as a result of a breach of this Contract which are not disposed of by mutual agreement shall be resolved in accordance with this Section 6.15.
- C. As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of Contract terms or other relief arising under or relating to this Contract.
  - (1) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this Section. However, where the submission subsequently is not acted upon in a reasonable time or disputed as to liability or amount, it may be converted to a claim for the purpose of this Section.
  - (2) A claim by the Contractor shall be made in writing and submitted to the Procurement Officer for decision. A claim by the University shall be the subject of a decision by the Procurement Officer in consultation with the Office of the Attorney General.
- D. When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.
- E. In connection with any claim under this Section, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his claim to the Procurement Officer.
- F. The procurement officer shall render a written decision on all claims within 180 days of receipt of the Contractor's written claim; unless the procurement officer determines that a longer period is necessary to resolve the claim. This decision shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provided evidence of receipt. The Procurement Officer's decision shall be deemed the final action of the University. If a decision is not issued within 180 days, the Procurement Officer shall notify the Contractor of the time within which such a decision shall be rendered and the reasons for such time extension.

- G. The procurement officer's decision shall be final and conclusive unless the Contractor files a written appeal with the Maryland State Board of Appeals within thirty (30) days of receipt of said decision.
- H. Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- I. The final decision may award a contract claim only for those expenses incurred not more than thirty (30) days before Contractor was initially required to have filed the notice of claim or sixty (60) days before Contractor was required to have filed the claim initially, even if the Procurement Officer extends the time in which Contractor must submit the claim.

**6.16 CLAIMS:**

- A. If the Contractor claims that any instructions by drawings or otherwise involve or may involve extra cost under this Contract, he shall give the University written notice thereof within fifteen (15) calendar days after receipt of such instructions or after the occurrence of an emergency. No claim shall be valid unless so made.
- B. Under no circumstances will overhead or profit be permitted as items of a claim (if permitted at all under this Contract) if such overhead or profit is for periods during which a "Stop Work" order is in effect due to an act, error, omission for which the Contractor is responsible.
- C. No profit or overhead which includes rental of equipment and the salaries of supervisory personnel (if permitted at all under this Contract) will be allowed the Contractor for stoppage of work when written notice of such stoppage or impending stoppage is not given reasonably in advance by the Contractor so that the University can take action to prevent such stoppage.
- D. No claim for extra costs will be granted which includes cost of delays or work stoppage due to strikes, lockouts, fire, unusually severe weather, avoidable casualties, or damage or delay in transportation for which the University is not responsible; only time extensions in accordance with Section 7.03 will be granted.
- E. The Contractor and the University agrees that no prejudgment or post judgment interest on any claims asserted by either party will be allowed.
- F. No claim for damage caused by a delay (if permitted at all under the Contract) will be allowed unless the Contractor notifies the University of the existence of the delay within five (5) days of the act or omission causing the delay.
- G. No payment will be made for increased payment or performance bond premiums as a result of any act or omission by the University which results in a claim.

**6.17 VARIATIONS IN ESTIMATED QUANTITIES: [21.07.02.03]**

Where any quantity of major pay item as defined in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than twenty-five percent (25%) above or below the estimated quantity in the Contract an equitable adjustment of the stated price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the procurement officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the procurement officer before the date of final settlement of the Contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.

**6.18     PRE-EXISTING REGULATIONS: [21.07.01.17]**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article of the Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of the execution of this Contract are applicable to this Contract.

**6.19     FINANCIAL DISCLOSURE: [21.07.01.19]**

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

**6.20     POLITICAL CONTRIBUTION DISCLOSURE: [21.07.01.20]**

The Contractor shall comply with, and require its officers, director, and partners to comply with Sections 14-101 through 14-108 of the Election Law Article, Annotated Code of Maryland, which requires that every person doing public business (as there defined), and every individual whose contributions are attributable to the person entering into such an agreement, during a calendar year in which the person receives cumulative consideration of \$100,000 or more from public business, shall file with the State Administrative Board of Election Laws a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Administrative Board of Election Laws: (1) 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 lease or 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.

**6.21     COMPLIANCE WITH LAWS: [21.07.01.22]**

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 to 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.

**6.22     RECIPROCITY:** As set out in the Specifications, if the Contractor is an out-of –state firm from a state which gives a preference to in-state firms when evaluating their price proposals, the University has applied a corresponding preference to price proposals from Maryland firms that competed with the Contractor. Contractor warrants that it fully and accurately described price preferences of its home state during the procurement process.

**6.23     DEWATERING**

The Contractor shall obtain all necessary Water Appropriations and Water Discharge permits prior to activation of dewatering systems.

END OF SECTION 6

## **SECTION 7: PROSECUTION AND PROGRESS OF THE WORK**

### **7.01 NOTICE TO PROCEED:**

- A. After the Contract has been executed, the University will issue to the Contractor a "Notice to proceed" and this notice will stipulate the date on or before which the Contractor is expected to begin the Work. The specified Contract time shall begin on the day work actually starts (other than the erection of the inspector's office, construction stakeout and mobilization) or on the day stipulated in the "Notice to Proceed" whichever is earlier. Any preliminary work started or materials ordered before receipt of the "Notice to Proceed", shall be at risk of the Contractor.

### **7.02 PROJECT SIGNS:**

- A. General -- For all University construction contracts over \$50,000, provide, erect, maintain, and remove upon final acceptance of work, two (2) project signs. Sign locations and mounting systems (ground-supported posts or attached to existing structure) will be established at the Work Initiation Conference by the University's Project Manager. The University-mandated logo, graphic dimensions, state prescribed text (Board of Public Works, Governor; and State Legislature), colors, letter fonts, and size of basic sign panel are either shown on Contract Documents or will be provided at the Work Initiation Conference. Wording of project-specific text shall be directed by the University's Project Manager.
- B. Products --
  - 1. Sign Panel--Provide panel five (5) feet high by ten (10 feet long by 3/4" thick, exterior grade, MDO surface on sign face.
  - 2. Posts (if used -- Provide 4"x 4" construction grade lumber, pressure-preservative treated, of sufficient length for minimum 3'- 6" burial into ground and for minimum of 3'- 0" clearance from bottom of sign panel to grade.
  - 3. Fasteners--Provide non-corrosive bolts, nails, screws and other fasteners throughout.
  - 4. Paint--Provide one (1) coat of white primer-sealer and two (2) coats of white semi-gloss for sign background. Paint back and edges of sign panel also.
- C. Execution --
  - 1. Submit, for review and approval, shop drawing indicating size, materials, construction, details, color graphics and text.
  - 2. Provide signs by skilled, established sign manufacturer having a minimum of five (5) years' experience in the production of quality signs.

### **7.03 PROSECUTION OF THE WORK:**

- A. Time is an essential element of the Contract and all time limits in the contract documents are of the essence of the Contract. Contractor shall prosecute the Work and its obligations under the contract vigorously until full completion. It is expressly understood and agreed by and between the Contractor and the University that the time for the completion of the work is a reasonable time for completion of the same, taking into consideration the average climatic range and the usual business conditions prevailing in the locality of the project.

- B. The date of commencement of the Work is the date established in a Notice to Proceed authorized by the Procurement Officer, however time limits shall commence pursuant to Section 7.01.
- C. If the Contractor is delayed at any time in the progress of the work by any act or omission of the University or any of its officers, agents, or employees or by any separate Contractor employed by the University, or by any changes ordered in the work, or by labor disputes, fire, unusual delay in transportation, unavoidable casualties, or by a cause which the Procurement Officer determines may justify any delay, then the Contract time will be extended for such time as the Procurement Officer may authorize.
- D. No such extension shall be made for delay occurring more than five (5) days before claim therefore is made in writing to the Procurement Officer. In the case of continuing cause of delay, only one claim is necessary.
- E. Total Float belongs to the Project and shall not be for the exclusive benefit of either party. "Total Float" is the number of days an activity may be delayed before commencement or from its early dates without extending the Contract period. Total Float shall be available to owner or Contractor and is intended to accommodate changes in the Work or to mitigate the effect of events which otherwise may delay Substantial Completion. Use of Total Float shall be monitored by the Project Manager. Use of Total Float is available to either party on a first come, first serve basis.

#### **7.04 PUBLIC CONVENIENCE AND SAFETY:**

The Contractor at all times shall conduct the Work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project site shall be placed so as to cause a minimum of obstruction to the public. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project site under construction or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossing of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no materials or obstruction shall be placed within fifteen (15) feet of any such fire hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets, and portions of the project including the work under construction shall not be obstructed more than is absolutely necessary.

#### **7.05 BARRICADES AND WARNING SIGNS:**

- A. The Contractor shall provide, erect, and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs, and other control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights.
- B. The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the facility by vehicular or pedestrian traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the FHWA Manual on Uniform Traffic Control Devices or as directed.
- C. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular or pedestrian traffic, the Contractor will, at the

direction of the University's Office of Facilities Management and at no additional cost to the University, provide suitable substantial guardrail to the extent determined by that office.

**7.06      PRESERVATION, PROTECTION, AND RESTORATION OF PROPERTY:**

- A.     The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect University property from injury or loss arising in connection with this Contract. The Contractor shall repair and indemnify against any such damage, injury, or loss, except such as may be directly due to errors in the Contract documents or caused by agents or employees of the University. The Contractor shall adequately protect adjacent property as provided by law and the Contract documents.
- B.     The Contractor shall box all trees along the way of access, also all trees surrounding the Project site which are liable to injury by the moving, storing, and working up of materials. The Contractor shall use no tree for attachment of any ropes or derricks.
- C.     The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials.
- D.     In any emergency affecting the safety of life or the work or of the adjoining property, the Contractor without special instruction or authorization is hereby permitted to act, at his discretion, to prevent such threatened loss or injury. If is specifically instructed by the University's Office of Facilities Management to do work in an emergency, the Contractor shall do the work and will be paid compensation as outlined in Section 3.06.

**7.07      PROGRESS SCHEDULE AND TIME:**

- A.     The Work under the Contract shall be planned, scheduled, executed and reported by the Contractor in accordance with the Contract Documents for the University's review and approval using the Critical Path Method (CPM) Schedule unless otherwise agreed to in writing by the Procurement Officer in consultation with the University's Project Manager. The University's review and approval of the Contractor's schedule does not constitute an agreement to specific dates, durations or sequences for activities. The purpose of the project schedule shall be to:
  - 1.     Assure adequate planning, scheduling and reporting during execution of the Contract;
  - 2.     Assure coordination of the Work of the Contractor and the various subcontractors and suppliers;
  - 3.     Assist the Contractor in monitoring the progress of the Work and evaluating proposed changes to the Contract and the project schedule; and,
  - 4.     Assist the Contractor in the preparation and evaluation of the subcontractors' monthly progress payment requests.
- B.     When multiple subcontractors are involved, the Contractor will incorporate the schedules of all subcontractors in its schedule to produce a unified project schedule. The Contractor shall make all submissions required in the Contract Documents.
- C.     The CPM schedule diagram shall include, but not necessarily be limited to, the following:

1. The order and interdependencies of the Contractor's and subcontractors' activities and the major points of the interface or interrelation with the activities of others, including specific dates for completion.
  2. Activities should be linked between major area separations of the project so that the individual areas do not imply complete independence. The critical path should run through all major areas, since the entire project must be completed.
  3. Conformance with and identification of the Specific Dates specified in the Contract Documents.
  4. The description of work by activity.
  5. Delivery of Owner-furnished material and equipment, if any.
  6. Shop fabrication and delivery.
  7. Critical Path (or Paths).
  8. Testing of equipment and materials.
  9. Seasonal weather conditions, utility coordination, no-work periods (if any), expected job learning curves, and other such circumstances to activities of Contractor shall be considered and included in the planning and scheduling of all work. Seasonal weather conditions shall be based upon the preceding ten (10) years records published for the locality by the National Ocean and Atmospheric Administration (NOAA) and entitled "Local Climatological Data."
- D. The level of detail of the CPM schedule shall be such that activity durations over fifteen (15) working days shall be kept to a minimum except for non-construction activities such as shop drawings and sample submittals, fabrication and delivery of materials and equipment, concrete curing and General Conditions activities.
- E. If the Contractor's schedule shows the University or a separate contractor is to complete an activity by a specific date, or within certain duration, the University or separate contractor under contract with the University shall not be bound to said date or duration unless the University's Project Manager specifically agrees in writing to the same.
- F. It is to be expressly understood and agreed by the Contractor that the project schedule is a working document to be revised from time to time as Project work proceeds. However, the Contractor is responsible for completing the Work within the time frame noted in the Contract. The Contractor agrees that updating the schedule is a key component and will make every reasonable effort to provide current information to the University. Throughout the progress of the Work, the Contractor shall prepare and maintain a two week manual bar chart field schedule reflecting the schedule of work activities accomplished for the previous week and the work scheduled for the forthcoming two weeks. This manual field schedule shall be updated weekly and review and the regularly scheduled progress meetings. The University Project Manager is to be in attendance of all scheduling meetings.
- G. If the Contractor fails to prepare and submit to the University's Office of Facilities Management a schedule before the existence of a delay, then no claim for extra costs due to delay in the work shall be recognized or asserted.
- H. Materials Purchased Under Allowances -- The Contractor with approval of the University will provide schedules for all materials to be purchased from specified allowances. Any unexpended funds shall revert back to the University.



**7.08      PROGRESS PHOTOGRAPHS:**

The Contractor shall submit photographs monthly to the University's Office of Facilities Management, taken on or about the first of each month showing the status of the Work. Photographs should be sufficient in number to properly record the work. The Contractor shall photograph all disputed items of the Work. Photographs shall be digital date stamped.

**7.09      SUSPENSION OF THE WORK: [21.07.02.04]**

- A. The procurement officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as he may determine to be appropriate for the convenience of the University.
- B. If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of the Contract, or by his failure to act within the time specified in this Contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this Contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption, and the Contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for excluded under any provision of this Contract.
- C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the procurement officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the Contract.

**7.10      CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:**

If the work should be stopped under an order of any court, or other public authority, for a period of three (3) months, through no act or fault of the Contractor, or of anyone employed by him, or if the University should fail to issue any certificate for payment within seven (7) days after it is due, then the Contractor may, upon seven (7) days' written notice to the University's Office of Facilities Management and Office of Procurement & Supply (attention to the Procurement Officer), stop work or terminate this Contract and receive from the University payment of all complete work in accordance with Section 7.11 of these General Conditions.

**7.11      UNIVERSITY'S RIGHT TO TERMINATE FOR ITS CONVENIENCE: [21.07.02.09]**

- A. The performance of work under this Contract may be terminated by the University in accordance with this clause in whole or in part from time to time, whenever the procurement officer shall determine that such termination is in the best interest of the University, a Client University, or the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination issued by the Procurement Officer specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination and except as otherwise directed by the procurement officer, the Contractor shall:
  - (1) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;

- (2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of the portion of the work under the Contract as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (4) Assign to the University in the manner, at the times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontractor so terminated, in which case the University shall have the right, in its direction, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (5) Settle all outstanding liabilities and all claims arising out of such terminations or orders and subcontracts, with the approval or ratification of the procurement officer to the extent he may require, which approval or ratification shall be final for all the purpose of this clause;
- (6) Transfer title and deliver to the University in the manner, at the times, and to the extent, if any directed by the procurement officer, (a) the fabricated or unfabricated parts, work in process, completed work, supplies, and (b) other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and other property which, if the Contract had been completed, would have been required to be furnished to the University.
- (7) Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (6) above; provided, however, that the Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the University to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this Contract or paid in such other manner as the procurement officer may direct;

- (8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and,
  - (9) Take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the State has or may acquire an interest. The Contractor may submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer and may request the University to remove such items or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items or, if the items are stored, within 45 days from the date of submission of the list. Any necessary adjustment to correct the list as submitted shall be made prior to final settlement;
- C. After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- D. Subject to the provisions of paragraph C, the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in paragraph E. of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph.
- E. In the event of the failure of the Contractor and the procurement officer to agree, as provided in paragraph D., upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph D:
  - (1) With respect to all Contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:
    - (a) The cost of the work;
    - (b) The cost of settling and paying claim arising out of the termination of work under subcontracts or orders as provided in paragraph B (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor before the effective date of the Notice of Termination of work under this Contract, which amounts

shall be included in the cost on account of which payment is made under (a) above; and

- (c) A sum, as profit on (a) above, determined by the procurement officer to be fair and reasonable provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed under this subdivision (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

- (2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph B (9) and any other reasonable cost incidental to termination of work under this Contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this Contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated. Except for normal spoilage and except to the extent that the University shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the procurement officer, of property which is destroyed, lost, stolen, or damaged so as to be undeliverable to the University, or to a buyer pursuant to paragraph B (7).

- F. Costs, claimed, agreed to, or determined pursuant to C, D, E, and I hereof shall be in accordance with COMAR 21.09 as in effect on the date of the Contract.
- G. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the procurement officer under paragraph C, E, or I hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph C or I thereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph C, E, or I hereof, the University shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.
- H. In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advances or other payments or account theretofore made to the Contractor, applicable to the terminated portion of the Contract, (ii) any claim which the University may have against the Contractor in connection with this Contract; and (iii) the agreed price for, or the proceeds of sale of any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the University.
- I. If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for or an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.
- J. The University, may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor whenever in the opinion of the procurement officer the aggregate of such

payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the University upon demand together with interest computed at the legal rate for the period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the University; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of the retention or disposition, or a later date as determined by the procurement officer by reason of circumstances.

- K. Unless otherwise provided for in this Contract or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three (3) years after the final settlement under this Contract, preserve and make available to the University at all reasonable times at the office of the Contractor but without direct charge to the University, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminate hereunder, or to the extent approved by the procurement officer, photographs, or other authentic reproductions thereof.

**7.12      TERMINATION FOR DEFAULT -- DAMAGES FOR DELAY -- TIME EXTENSIONS:**  
[21.07.02.07]

- A. If the Contractor refuses or fails to prosecute the work or any separable part thereof, with such diligence as shall insure its completion within the time specified in this Contract or any extension thereof or fails to complete said work within this time, the University may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event, the University may take over the work and prosecute the same to completion, by Contract or otherwise, and may take possession of and utilize in completing the work, the materials, appliances, and plant as may be on the site of the work and necessary therefore. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the University resulting from his refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in the Contract and if the University so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned for the University in completing the work.
- C. If fixed and agreed liquidated damages are provided in the Contract and if the University does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
- D. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
  - (1) The delay in the completion of the work arises 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 University or State in either their sovereign or contractual capacity, acts of another contractor in the performance of a Contract with the University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractor or suppliers arising from unforeseeable causes beyond the control of and without the fault or negligence of both the Contractor and the subcontractor or suppliers; and

- (2) The Contractor, within 10 days from the beginning of any such delay (unless the procurement officer grants a further period of time before the date of final payment under the Contract), notifies the procurement officer in writing of the causes of delay. The procurement officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Contract.
- E. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provision of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of the University, be the same as if the notice of termination had been issued pursuant to that clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of the State, the Contract shall be equitably adjusted to compensate for the termination and the Contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Disputes."
- F. The rights and remedies of the University provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.
- G. As used in paragraph D (1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

#### **7.13 PARTIAL ACCEPTANCE:**

- A. If during the construction of work the University desires to occupy any portion of the project, the University shall have the right to occupy and use those portions of the project which in the opinion of the procurement officer can be used for their intended purposes; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the University for maintenance, heat, light, utilities, and insurance are mutually agreed to by the Contractor and the University.
- B. Partial occupancy shall in no way relieve the Contractor of his responsibilities under the Contract.

#### **7.14 FAILURE TO COMPLETE ON TIME/LIQUIDATED DAMAGES:**

- A. This Section #7.14 is in addition to provisions concerning liquidated damages set forth elsewhere in the Contract.
- B. For each day that any work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount of \$750.00 per day or, if an amount is stated in the solicitation documents, that amount provided, however, that due account shall be taken of any adjustment of specified completion time(s) for completion of work as granted by approved change orders or contract amendments..
- D. The University shall have the right to deduct/retain offset and recoup out of the monies due to or become due to the Contractor hereunder the amount of damages, and in case the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the University for the difference.



**7.15 SUBSTANTIAL COMPLETION AND FINAL INSPECTION:**

- A. When the Contractor reasonably believes the Work satisfies the requirements of 7.15B, the Contractor shall notify the Project Manager in writing that the Work will be ready for Substantial Completion Inspection and testing on a definite date. Reasonable notice shall be given by the Contractor to schedule the Substantial Completion Inspection. The Contractor shall not request Substantial Completion Inspection until the Work is in fact substantially complete. The Contractor shall deliver to the Project Manager, on the scheduled Substantial Completion Inspection date, a complete, comprehensive set of field mark-up drawings accurately documenting the As-Built Project and all of the Operation and Maintenance (O&M) Manuals required under the Contract and shall have completed all required training and demonstration of equipment as required by the Contract Documents.
- B. The Project Manager shall establish the date of Substantial Completion and shall fix the time(s) at which the warranties will begin if, on the basis of the Substantial Completion Inspection, the University determines that, at a minimum and in accordance with the Contract Documents:
  - (1) all electrical, mechanical, and life safety systems have been completed and successfully tested and successfully inspected for conformity to all requirements of the Contract Documents and all applicable codes and standards;
  - (2) complete, comprehensive field mark-up drawings of the As-Built Project, and all of the O&M Manuals required under the contract, have been delivered to the Project Manager;
  - (3) all other requirements for substantial completion, including the completion of required training and demonstration of equipment, have been met; and
  - (4) the Project is able to be occupied and usable for its intended purpose.
- C. The Work shall not be deemed substantially complete if, in the absolute discretion of the Project Manager, completion of unfinished works, whether called punch list work or otherwise, would cause inconvenience to or interfere with the use of the Premises by University personnel or others using the Premises.
- D. If the Project Manager determines that Substantial Completion has been achieved, the Project Manager shall fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (the "punch list"). All punch list work shall be completed within thirty (30) days after the date of Substantial Completion determined by the University, unless the University establishes a different period for completion of the punch list work. If the Contractor fails to complete the remaining items so listed in the time stipulated the University shall have the undisputed right to complete the Work at the Contractor's expense. The Contractor may be required to complete multiple punch lists, which may be prepared by the University or by the architect, until the Contract is performed in its entirety. Failure to complete punch list work in a timely manner shall constitute grounds for termination of the Contract for default.



- E. Prior to the determination of Substantial Completion by the University, the Architect and/or the University may prepare lists of work requiring completion as a prerequisite to the determination of Substantial Completion. These "work lists" shall not constitute punch lists and shall not be construed as indicating that the Work has been completed to the extent that it is substantially complete.
- F. Final payment shall not be made until all Contract work including all punch list work is complete to the satisfaction of the University.
- G. Acceptance of the Work as substantially complete shall not excuse or waive any failure of the Contractor to complete the Contract as required by the Contract Documents.

**7.16 CLEANING-UP:**

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulation of waste materials or rubbish and prior to completion of work, shall remove from the premises any rubbish and all tools, scaffolding, equipment, and materials, not the property of the University. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat, and workmanlike condition satisfactory to the University's Office of Facilities Management.

**7.17 GUARANTEES:**

The Contractor guarantees and warranties for a two (2) year period (unless another period is specified which shall not be less than two (2) years), commencing on the date of substantial completion as established by the University:

- A. That the work contains no faulty or imperfect material or equipment or any imperfect, careless, or unskilled workmanship.
- B. That all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, and shall operator, with ordinary care and attention, in a satisfactory and efficient manner.
- C. That he will re-execute, correct, repair, or remove and replace with proper work, without cost to the University, any work found not to be as guaranteed by this Section. The Contractor shall also make good all damages caused to other work or materials in the process of complying with this Section.
- D. That the entire work shall be water-tight and leak-proof in every particular.

The guarantee and warranty set forth herein is in addition to any implicit or explicit guaranty and warranty provided by law, if any.

**7.18 NOTICE TO UNIVERSITY OF LABOR DISPUTES:**

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the procurement officer.
- B. The Contractor agrees to insert the substance of this clause, including this paragraph B., in any subcontract hereunder, at any tier, as to which a labor dispute may delay the timely performance of this Contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential

labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

END OF SECTION 7



## **SECTION 8: PAYMENTS**

### **8.01      SCOPE OF PAYMENT: [21.07.01.03]**

- A. Payments are made on the valuation of work accomplishment and on account of materials delivered on the site, for incorporation in the work which are suitably stored and protected. The Contractor is to submit a Schedule of Values (SOV) for the University's approval within ten (10) working days of the issuance of the Notice to Proceed. The SOV must be approved by the University prior to the Contractor's use in applying for payment. The SOV will be submitted in a format as prescribed by and to the level of detail specified by the University inclusive of the following:
1. The sum of the parts of the SOV shall total to the Contract amount.
    - a. Labor will be separate from material/equipment.
    - b. Round amounts off to the nearest whole dollar.
  2. The minimum level of breakdown and order on the application for payment include, but are not limited to, the following:
    - a. Bond costs, if applicable.
    - b. General Conditions:
      1. Mobilization/Demobilization
      2. Submittals/Shop Drawings
      3. Schedule/Schedule Updates
      4. On site staff reimbursable costs
      5. Safety
      6. Clean-up
      7. Hoisting
      8. Punch List
      9. As-built Drawings
      10. Warranties and Operations & Maintenance Manuals
      11. Close out Documentation
    - c. Division 1 cost breakdown as requested/required.
    - d. Major trade work shall be broken down into labor and material line items.
    - e. A listing of approved/fully executed change orders/contract amendments, if any, in sequential order.
  3. SOV items shall have a direct and understandable relation to the Project construction schedule.
  4. Overhead and profit shall be distributed into each item of work.
  5. Once approved, the SOV shall be the basis for the Contractor's application for payment except as noted below in #6.
  6. The University shall have the right to require the Contractor to alter the value or add/delete categories on the SOV at any time for the following reasons:
    - a. The SOV appears to be incorrect or unbalanced.
    - b. A revision of the segregation of values is required due to the Contractor

revising the sequence of construction or assembly of building components.

- c. Change orders/contract amendments are issued to the Contractor and shall be incorporated into the SOV as a separate line item at the bottom of the SOV.
- 7. The Contractor is required to correlate the documentation for payment of stored materials requested in the application for payment against the agreed upon breakdown of the SOV and provide the necessary certificate of insurance for offsite storage with the University as the certificate holder.
- B. Payments shall also be made on account of materials or equipment or incorporation in the work delivered by the Contractor but stored at some off-site location agreed upon by the University; such payment to be conditioned upon submission by the Contractor of bills of sale or other procedures satisfactory to the University's Office of Facilities Management to establish the University's title to such materials or equipment or otherwise protect the University's interest, including applicable insurance certificate(s) and transportation to site.
- C. Prior to application for first payment, the Contractor shall submit to the University a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the Contract. This schedule shall be so divided as to facilitate payments to subcontractors. The form of this submission shall be as the Contractor and the University have agreed upon and shall be supported by such evidence as to its correctness as the University may direct. Unless at a later date found to be in error, this schedule shall be used as a basis for certificates of payments.
- D. Application for payment shall be submitted on or about the 25th day of each month but not less than thirty (30) days after the "Work Initiation Conference" nor before ten (10) days of job operation (job shut-down days excluded).
- E. In applying for payments the Contractor shall submit a statement, based upon the schedule of values prepared under subparagraph C above, itemized in such form and supported by such evidence as the University may require, showing the Contractor's right to the payment claimed. Payment will be for work in place by the 25th of the billing month; no projection to the month's end is to be included. Each invoice shall prominently display the Contractor's Federal Employers Tax Identification Number or (if no such number) his social security number.
  - (1) In applying for all payments, excluding the first payment and final payment, the Contractor shall submit in addition to the above a certificate he has paid:
    - (a) All labor to date;
    - (b) All vendors and material suppliers in full for all items received; and
    - (c) All subcontractors in full, less the retained amount.
  - (2) In applying for the final payment, the Contractor shall submit in addition to the statement required in E (1), the following:
    - (a) Such evidence as the University may demand as will establish the University's title to materials and give reasonable assurance that claims against materials and claims for labor and other items by others do not exist;
    - (b) An electric certificate from an independent (non-governmental) electrical inspection agency approved by the State of Maryland Fire Marshal. The Contractor must make application for the inspection, coordinate same, and

pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities;

- (c) All other guarantees are called for by the Contract;
- (d) All equipment manuals and parts lists.

## **8.02 FORCE ACCOUNT WORK:**

- A. When the Contractor is required to perform or have performed work as a result of additions or changes to the Contract for which there are no applicable unit prices in the Contract, the University's Office of Facilities Management and the Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the University's Office of Facilities Management may require the Contractor to do or have done such work on a force account basis to be compensated in accordance with the following:
- (1) Labor -- For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work. The Contractor shall receive the actual costs paid to, or in behalf of, workmen by reason of subsistence and travel allowances, health, welfare benefits, pension fund benefits, or other benefits, when such amounts are required by collective bargaining agreement or other employment Contract generally applicable to the classes of labor employed on the work.
  - (2) Materials -- For materials accepted by the Architect and used, the Contractor shall receive the cost paid by it (net any available special or trade discounts, whether or not taken and whether or not shown on "pick tickets" or invoices) for materials delivered on the work, including transportation charges paid by him (exclusive of machinery rentals as hereinafter set forth).
  - (3) Equipment -- For any machinery or special equipment rented (other than small tools, whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or the Contractor shall receive those rates which may be specified elsewhere in the Contract. For purposes of definition, equipment with a new cost of \$1,000 or less will be considered small tools.
  - (4) Materials and Supplies Not Incorporated in the Work -- For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the Architect, the Contractor shall receive the actual cost of such materials and supplies used (net any available special or trade discounts, whether or not taken and whether or not shown on "pick tickets" or invoices).
  - (5) Bond, Insurance, and Tax -- For bond premiums, property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security taxes on the force of account work, the Contractor and University shall determine an equitable percent to be applied against the labor cost (premium pay and fringes excluded).
  - (6) Subcontractors -- The Contractors shall receive the actual cost of work performed by a subcontractor. Subcontractor's cost is to be determined as in A (1-5) above. An allowance will be made to the Contractor for subcontractor's overhead and profit in an amount to be determined in accordance with Section VII. 8.02 A (8).

(7) Superintendence -- No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. The cost of Supervisory Personnel may be added only when the procurement officer finds that the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for additional time to that required by the Contract.

(8) Subcontractor's Overhead and Profit -- The allowance to the subcontractor for his overhead and profit will be at the following scale:

Value of Work   Combined Overhead and Profit

\$    0 - \$1,000	25%
\$ 1,001 - \$ 5,000	20%
\$ 5,001 - \$10,000	17%
\$10,001 - \$25,000	15%
over - \$25,000	negotiated, but not more than 15%

B. Compensation -- The compensation as set forth above shall be received by the Subcontractor as payment in full for the work done on a force account basis. At the end of each day, the Subcontractor's representative and the Architect shall compare records of the cost of work as ordered on a force account basis.

C. Statements -- No payment will be made for work performed on a force account basis until the Subcontractor furnishes the University duplicate itemized statements of the cost of such force account work detailed as to the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for laborers and foremen.
- (2) Designation dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment rented (other than small equipment).
- (3) Quantities and prices of materials.
- (4) Changes for transportation of materials paid by the Contractor.
- (5) Cost of property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (6) Statements for payments of items under paragraphs (3) and (4) shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchases for such work but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Subcontractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the materials as are claimed represent actual cost, not all discounts. Proof of cost of items in stock will be furnished upon the procurement officer's request.

### **8.03    CASH ALLOWANCES:**

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in his Contract Sum the entire amount of such specified allowances. The expenditure of these allowances is at the University's direction. However, the allowance expenditure is limited to items properly inferable from the title of the allowance. Unexpended balances are to revert to the University. The costs of installation of materials purchased are not included in the

allowance. The Contractor shall have installed (through subcontractors) all material purchased under allowances and shall include in the Contract sum a sufficient amount, in addition to the allowance, to cover the installation, other costs, and profit.

**8.04 CERTIFICATES OF PAYMENT:**

- A. If the Contractor has made application as above, the University shall, not later than the date when such payment falls due; issue to the Contractor a certificate for such amount as it decides to be properly due. In approving such partial payments, there shall be an amount retained pursuant to Section 00400 of the Request for Proposal document until completion and acceptance of all work covered by the Contract.
- B. The University shall provide the Contractor with the payment forms to be used by the Contractor.
- C. No certificate issued nor payment made to the Contractor nor partial or entire use or occupancy of the work by the University shall be an acceptance of any work or materials not in accordance with this Contract.
- D. Retainage cannot exceed 5% of the contract amount.
- E.
  - (1) In addition to retainage, a primary procurement unit may withhold from payments otherwise due a contract an amount that the unit reasonably believes is necessary to protect the State's interest.
  - (2) A contractor may not retain from a payment due a subcontractor a percentage of the payment greater than the percent for retainage retained by the University.
  - (3) A subcontractor may not retain from a payment due a lower-tier subcontractor a percentage of the payment greater than the percent for retainage retained by the University.
  - (4) A contractor and a subcontractor are not, however, prohibited from withholding an amount in addition to retainage if the contractor or subcontractor determines that a subcontractor's performance provides reasonable grounds for withholding the additional amount.
- F.
  - (1) A contractor may elect to have retainage placed in an escrow account.
  - (2) An escrow agreement would be applicable signed by the contractor, the escrow agent and, if applicable, the surety.
  - (3) The escrow agent shall be selected from among the banks approved by the State Treasurer's office.
  - (4) The Contractor is solely liable to the escrow agent for the payment of fees and charges associated with the escrow account.
  - (5) Retained funds may only be released as directed by the University.
  - (6) At the time of final payment, the University shall direct the escrow agent to settle the escrow account by paying funds as directed.
  - (7) Until payment is made, escrow accounts are State funds and are not subject to any liens.



**8.05     DEDUCTIONS FOR UNCORRECTED WORK:**

If the University deems it inexpedient to correct work injured or done in accordance with the Contract, an equitable deduction from the contract price shall be made therefore.

**8.06     PAYMENTS WITHHELD:**

- A.     The University may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any certificate to such extent as may be necessary to protect the University from loss on account of:
- (1)     Defective work not remedied;
  - (2)     Claims filed or reasonable evidence indicating probable filing of claims;
  - (3)     Failure of the Contractor to make payments properly to subcontractor for material or labor;
  - (4)     A reasonable doubt that the Contract can be completed for the balance then unpaid; or
  - (5)     Damage to another contractor.
  - (6)     Liquidated Damages or other damages or compensation due the University for claims of the University against the Contractor.
  - (7)     Any claim of the University or State against the Contractor on a debt or obligation owed the University of the State or claim by the University or the State to be owed by the Contractor to the University or State arising from any other cause or contract;
  - (8)     Retainage as provided in Section 8.04;
  - (9)     Failure to maintain as-built drawings as required by Section 7.15
  - (10)    Failure to update schedules properly as required by Section 7.07 and Section 400 of the RFP; or
  - (11)    The cost of completing unfinished warranty work.
- B.     When the above grounds are removed, payment shall be made for amount withheld because of them.

**8.07     CORRECTION OF WORK BEFORE FINAL PAYMENT:**

- A.     The Contractor shall have promptly removed from the premises all materials condemned by the Architect or the University as failing to conform to the Contract, whether incorporated in the work or not. The Contractor shall have promptly replaced and re-executed his own work in accordance with the Contract and without expense to the University and shall bear the expense of making good all work of other Contractors destroyed or damaged by such removal or replacement.
- B.     If the Contractor does not have such condemned work and materials removed within a reasonable time, fixed by written notice, the University may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten (10) days time thereafter, the University may, upon ten (10) days notice, sell such materials and shall account for the net proceeds thereof,

after deducting all the costs and expenses that should have been borne by the Contractor.

**8.08 ACCEPTANCE AND FINAL PAYMENT:**

- A. Upon completion of the Work, the Contractor shall prepare final payment forms and submit them. The University will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. The Project Manager will then reply to the Contractor's request for final payment, informing the Contractor of all deductions, damages, costs, back charges, and other charges assessed against the Contractor by the University and the reasons therefor.
- B. Notwithstanding Section 8.08 A, prior to or in the absence of a request from Contractor for final payment, the Procurement Officer may determine under Section 8.08 A(2) the amount of the final payment to the Contractor.
- C. If the Contractor disputes the amount determined by the Procurement Officer to be due the Contractor, then the Contractor shall initiate a claim under the Disputes procedures.
- D. Acceptance by the Contractor of any payment identified by the Procurement Officer as being final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against the University arising out of or connected with the Contract, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Officer.
- E. No claims by the Contractor may be asserted for the first time after final payment is made by the University.

**8.09 INTEREST:**

- A. Contractor and the University such agree that neither is entitled to any interest on any payment or judgment due it from the other.

**8.10 AUDITS BY THE UNIVERSITY:**

- A. The Contractor agrees that the University or any part of its duly authorized representatives shall, until expiration of three (3) years after final payment under this Contract or after any applicable statute of limitations, whichever is longer, have access to and the right to examine any directly pertinent books, documents, papers, and records (including all records in electronic media) of the Contractor involving transactions to this Contract.
- B. The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the University or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract or after any applicable statute of limitations, whichever is longer, have access to and the right to examine any directly pertinent books, documents, papers, and records (including all records in electronic media) of such subcontractor, involving transactions related to the subcontract.

- C. The Contractor shall retain and maintain all records and documents relating to this Contract for the period specified in paragraph A and shall make them available for inspection and audit by authorized representatives of the State of Maryland, including the University or designee at all reasonable times. [21.07.01.21]

**8.11 MULTI-YEAR CONTRACTS:** [21.07.01.10]

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

**8.12 PAYMENT OF STATE OBLIGATIONS:**

- A. Payments to the Contractor pursuant to the Contract shall be made no later than thirty (30) days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable are prohibited. [21.07.01.18]
- B. Electronic funds transfer will be used by the State to pay Contractor for this Contract and any other University payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

END OF SECTION 8

## **SECTION 9: EMPLOYEES, SUBCONTRACTORS, AND WORK CONDITIONS**

**9.01**     **EMPLOYEES AND WORKMANSHIP:** The following provisions in Section 9.01 are in addition to provisions relating to these matters set forth elsewhere in the Contract.

- A.     Qualification of Employees -- Only personnel thoroughly trained and skilled in the task assigned them may be employed on any portion of the Work. Any employee found by the Contractor, the Architect, or the University's Office of Facilities Management to be unskilled or untrained in his work shall be removed from the Work.
- B.     Licensed Employees -- When Municipal, County, State, or Federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the Work shall be so licensed.
- C.     Quantity of Labor -- The Contractor shall employ on the Work, at all times sufficient personnel to complete the Work within the time stated in the Contract.
- D.     Work Areas -- The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits, or directions of the University's Office of Facilities Management. Generally, the work area will be the same as indicated in the contract documents.
- E.     Methods and Quality:
  - (1)    All workmanship shall be of good quality. Whenever the method of the Work or manner of procedure is not specifically stated in the contract documents, then it is intended that the best standard practice shall be followed. Recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned, and conditioned as called for thereby. This, however, does not remove any requirement in these specifications to add to the manufacturer's recommendations.
  - (2)    All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level, and regularly spaced, coursed, etc. Under no circumstances, either in new or old work, shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
  - (3)    All methods and procedures and results are subject to the University's and Architect's approval as to finished result to be obtained. However, this is not to be interpreted as placing upon the University or the Architect any responsibility for the "Work" management of the Work which is solely the responsibility of the Contractor.
  - (4)    Whenever the method of work or manner of procedure is not specifically stated in the Contract Documents, the best practice shall be followed. Unless the Contract Documents expressly require stricter standards for application, installation, connection, erection, use, cleaning or conditioning, recommendations of the manufacturers of approved materials shall be considered as a part of the specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as called for by the recommendations. If any such manufacturer's recommendations are defective, faulty, inaccurate, or negligently made, Contractor shall be responsible for all loss resulting therefrom, including liability for loss incurred by the University.

- F. Scheduling: The obligations in this Section 9.01 F shall be in addition to the scheduling provision set forth elsewhere in the Contract.
- (1) The Contractor shall so schedule the Work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching and digging necessary to the execution of the work is included.
  - (2) The Contractor shall schedule the construction performed by each group or trade so that each installation or portion of the construction shall member with and join with every other new or old work required for a complete installation, all according to accepted good construction practice.
- G. Superintendent -- The Contractor shall keep on site at all times when any of the Work is being performed, a competent Superintendent (fluent in English) and any necessary assistants, all approved by the University's Office of Facilities Management prior to the commencement of the Work and from time to time prior to the assignment of any person to that position. The contractor shall submit in writing to the Office of Facilities Management, from time to time, the name of the person it intends to employ as superintendent for the execution of this Contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by the University's Office of Facilities Management and an approval or rejection will be given in writing. Persons who have previously proved unsatisfactory on work executed for the University or the State of Maryland or who are without proper qualifications will not be approved. Should it be necessary to change the superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same institution or close to each other only when approved by the University's Office of Facilities Management in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Other directions shall be so confirmed on written request in each case. Should the Superintendent be complained of by the University's Office of Facilities Management for cause, he shall be removed from the work and a new Superintendent obtained and approved as described above.
- H. Discipline -- The Contractor shall at all times enforce strict discipline and good order among its employees and its subcontractors' employees and shall not employ or permit to remain on the work any unfit person. He shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law and by the University. Employees must not be allowed to loiter on the premises before or after working hours.
- I. Employee Safety -- The Contractor shall designate a responsible member of his organization, on the work, whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of Section 9.07. The name and position of the person so designated shall be reported to the University's Office of Facilities Management with a copy to the Architect, by the Contractor at the commencement of the work.
- J. Supervisory Personnel: All supervisory personnel of the Contractor must be direct employees of the Contractor, unless otherwise approved in writing, in advance, by the University.

## 9.02 **NON-DISCRIMINATION-EMPLOYMENT POLICIES:**

- A. Acceptance of a Contract based on the University's specifications constitutes agreement by the Contractor to comply with State policy as established by Joint Resolution No. 16 of the General Assembly of 1958, which is:

That on all public works being paid for in whole or in part with State or other public funds, preference shall be given to available persons who have been residents of Maryland for a period of at least six (6) months immediately prior to availability of positions for employment of laborers, mechanics, and others not including supervisory personnel, not to exceed ten percent (10%) of the total working force.

- B. As required by Section 13-219 of the State Finance and Procurement Article, the Contractor:
- a. Shall not discriminate in any manner against any employee or applicant for employment because of sex, race, age, creed, color, or national origin and shall include a similar clause in every subcontract, except a subcontract for standard commercial supplies or raw materials. In addition, the Contractor and subcontractor shall post conspicuously a notice that sets forth the provisions of this Section in a place that is available to employees and applicants for employment.
  - b. If the Contractor fails to include the required clause in a subcontract, the University may declare the Contract void. In that event, the Contractor is entitled to the reasonable value of work that has been performed and materials that have been provided.
  - c. If the Contractor willfully fails to comply with the above non-discrimination provisions the University may, if the contract is partly executory, compel continued performances of the contract, but the University shall be liable only for the reasonable value of services performed and materials supplied from the date that the breach of contract was discovered or should have been discovered, and any sums previously paid by the State under the Contract, shall be set off against the sums to become due as the contract is performed.
  - d. If a subcontractor willfully fails to comply with the non-discrimination provisions above, the Contractor may void the subcontract and shall be liable only for the reasonable value of the services performed and materials supplied.
  - e. Any person, including an employee, prospective employee with information concerning violations of the requirements of this section may inform the Board of Public Works which shall cause an immediate investigation of the charges. If the Board concludes that the charges are true it may invoke any remedy available by law.
- C. The Governor's Executive Order pertaining to the Code of Fair Practices, dated July 9, 1976 bars discrimination by State Contractors on account of political or religious opinion or affiliation in addition to the discrimination listed above.
- D. The provisions of the Civil Rights Act of 1964 are hereby included in this Contract to the end that no person in the United States shall, on the ground of race, color, or natural origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under this Agreement.
- E. The Contractor, subcontractor(s), or their agents, insofar as possible, insofar as possible, shall secure labor through the Maryland State Employment Service of the Maryland Department of Human Resources. Where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by a union, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland State Employment Service for referral of such labor as they may mutually agree shall be referred. The Contractor shall be the sole judge of the competency or fitness for satisfactory service of any labor referred to him by the Maryland State Employment Service.
- F. Each Contractor with the University will submit to the Board of Public Works, at the Board's request, information as to the composition of the Contractor's work force. This information will be furnished on a form to be prescribed by the Board of Public Works.

- G. The Contractor and all subcontractors will develop and maintain an Affirmative Action Plan directed at increasing the utilization of women and members of minority groups on State Public Works projects. Approval of the plan by the Board of Public Works shall be a prerequisite to the award of any Contract for Public Works by the State or any agency of the State. The Affirmative Action Plan referred to in the preceding sentence shall contain written provisions and procedures for each of the following:
- (1) Notification of established community organizations of employment opportunities, and the maintenance of records on responses by such organizations and their disposition.
  - (2) Maintenance of records, including names and address, of woman and members of minority groups applying or referred for employment. The records shall indicate what disposition was made of the application. If such an applicant was not sent to a union hiring hall for referral or if such an applicant was not employed by the Contractor, the records shall indicate the reasons therefore.
  - (3) Notification by the Contractor to the University if any union or unions with whom the Contractor has a collective bargaining agreement has not referred to the Contractor a woman or member of a minority group sent by the Contractor, or if the Contractor has other information that the union referral process is impeding efforts for the utilization of women and members of minority groups.
  - (4) Participation in training programs, including those funded by the United States Government.
  - (5) Procedures for disseminating notice of the Contractor's equal employment opportunity policy by publicizing it through company newspapers and annual reports, conducting staff, employee and union representatives' meetings, posting, and by specific review with employees who are women or members of minority groups.
  - (6) Procedures for disseminating notice of the Contractor's equal employment opportunity policy externally through review with all recruitment sources, advertising in news media, and discussion with subcontractors and suppliers.
  - (7) Recruitment efforts directed at minority organizations, schools with minority students, and minority recruitment and training organizations.
  - (8) Validation of all specifications, selection requirements, and tests relating to employment.
  - (9) Procedures for promoting after-school, summer, and vacation employment to minority youth.
  - (10) Programs for the development of on-the-job training opportunities and participation and assistance in any association or employer group training programs.
  - (11) Programs for evaluating women and minority personnel for promotion opportunities and encouragement of such employees to seek those opportunities.
  - (12) Review of seniority practices and job classifications to insure that they do not have an improper discriminatory effect.
  - (13) Monitoring of personnel activities to insure that the Contractor's equal employment opportunity policy is being carried out.
  - (14) Proposals for soliciting bids for subcontracts for available minority subcontractors engaged in the trades covered by the bid conditions.
- H. 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 physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a), above, in any subcontract 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.

### **9.03     SUBCONTRACTS:**

- A. The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Architect and the University's Office of Facilities Management in writing of the names of subcontractors proposed for the principal parts of the work and for such others as the Architect may direct and shall not employ any that the Architect or the University's Office of Facilities Management may object to as incompetent, unfit, or irresponsible.
- B. The Contractor agrees that he is as fully responsible to the University for the acts and omissions of his subcontractor and of persons directly employed by them as he is for the acts and omissions of persons directly employed by him.
- C. Nothing contained in the Contract documents shall create any contractual relation between any subcontractor at any tier, and the University and nothing in the contract documents is intended to make the subcontractor a beneficiary of the Contract between the University and the Contractor.

### **9.04     RELATION OF CONTRACTOR AND SUBCONTRACTOR:**

- A. The Contractor agrees to bind every subcontractor and will see that every subcontractor agrees to be bound by the terms of the Contract and Contract Documents and each of these as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing as adequate by the University's Office of Facilities Management.
- B. The Contractor agrees to include the following provisions in all subcontracts and supply contract, applicable to the work:
  - (1) Subcontractor agrees to be bound to the Contractor by the terms of the Contract and the Contract Documents and each of these, and to assume toward the Contractor all obligations and responsibilities that the Contractor, by those documents, assumes toward the University.
  - (2) The subcontractor agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of the Standard Conditions.
  - (3) The subcontractor agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the Standard Conditions for like claims by the Contractor upon the University except that the time for making claims for extra cost is five (5) days.
  - (4) The subcontractor agrees, upon completion of his work to promptly pay all labor, material suppliers, vendors, subcontractors, and others, and to permit simultaneous final payment by the Contractor and execution of the "Waiver of Liens" by the subcontractor.
- C. The Contractor agrees to be bound to the subcontractor by all the obligations that the University assumes to the Contractor under the Contract, the Contract Documents and each of these, and all the provisions thereof affording remedies and redress to the Contractor from the University. The Contractor also agrees:
  - (1) To pay the subcontractor, upon the presentation of certificates, if issued under the schedule of values prescribed in Section 8 of these Standard Conditions, the amount allowed to the Contractor on account of the subcontractor's work to the extent of the subcontractor's interest herein.
  - (2) To pay the subcontractor, upon the presentation of certificates, so that at all times his total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
  - (3) To pay the subcontractor to such extent as may be provided by the Contract documents or the subcontract, if either of these provides for earlier or larger payments than the above.



- (4) To pay the subcontractor on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time a certificate should be issued, even though the Architect fails to issue it for any cause not the fault of subcontractor.
  - (5) To pay the subcontractor a just share of any fire insurance money received by the Contractor.
  - (6) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
  - (7) To give the subcontractor an opportunity to be present and to submit evidence in any matter involving his rights.
- D. Contractor may not withhold from subcontractor or supplier, wholly or in part, any payment otherwise due and owing to the subcontractor or supplier for labor or material furnished for this Contract, on account of (1) any claim of the Contractor against the subcontractor, or supplier or (2) any debt owed or claimed to be owed by the subcontractor, or supplier to the Contractor to the extent the claim or debt arose out of contracts, disputes, or other transactions between the Contractor and subcontractor or supplier which did not arise out of this Contract.
  - E. When the University withholds money from the Contractor under Section 8.06 for delays or other causes, the Contractor may withhold payment from a Subcontractor or supplier, on account of the amount withheld by the University from the Contractor, only to the extent that the Subcontractor or supplier contributed to the delay or other cause for which the University withheld payment from the Contractor. For example, if the University withholds from the Contractor liquidated damages for delay, the Contractor may withhold payment only from the Subcontractor, or suppliers that caused or contributed to the delay; all other Subcontractor, or suppliers shall be paid promptly by the Contractor notwithstanding the University's withholding from the Contractor.
  - F. No claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claims originated.
  - G. The Contractor and the subcontractor agree that nothing in this section shall create any obligation on the part of the University to pay to or to see to the payment of any sums to any subcontractor.

#### **9.05 MINORITY BUSINESS ENTERPRISE UTILIZATION:**

- A. The provisions of this Section are applicable to Contracts with a value of \$50,000 or more. The Contractor shall structure his procedures for the performance of the construction services required by this Contract to achieve the result that a minimum of 30 percent (30%) minority business enterprise (MBE) participation of the total contract award is achieved. Such performance by MBE's shall be in accordance with this Section.
- B. Definitions:
  - (1) "Socially or Economically Disadvantaged Individual" - A member of a socially or economically disadvantaged group, which for purposes of this Section includes African-Americans, Hispanics, American Indians, Native Americans, Asians, women, and the physically or mentally disabled.
  - (2) "Minority Business Enterprise" (MBE) -- Any legal entity, except a joint venture, (a) organized to engage in commercial transactions, (b) at least 51 percent (51%) owned and controlled by one or more individuals who are socially or economically disadvantaged; and (c) managed by, and the daily operations of which are controlled by, one or more of the socially or economically disadvantaged individuals who own it. Also, a nonprofit entity organized to promote the interests of physically or mentally disabled individuals. All MBEs must be certified by the State of Maryland or the State of Maryland's Department of Transportation with applicable certification numbers provided for each MBE firm applicable on this project by the Contractor.
  - (3) Ownership:
    - (a) For a sole proprietorship to be deemed an MBE, the sole proprietor must be a socially or economically disadvantaged individual. For a partnership to be deemed an MBE at least 51 percent (51%) of the partnership's assets or interests must be owned by a socially or

economically disadvantaged individual or persons who are socially or economically disadvantaged. For a corporation to be deemed an MBE, legal and equitable ownership of at least 51 percent (51%) of each class of stock, bonds, and other securities issued by the corporation must be owned by a person or persons who are socially or economically disadvantaged.

- (b) For purposes of this definition, any interest held by a person who is socially or economically disadvantaged, but subject to an option in that interest held by a person not socially or economically disadvantaged, or a business entity not an MBE, affecting the incidents of ownership, operation and control, shall not qualify as being an interest held by any person who is a socially or economically disadvantaged individual.
- (4) Control -- Control means that the primary power, direct, or indirect, to influence the management of an MBE shall rest with persons who are socially or economically disadvantaged. In addition, this term shall be construed to mean that the business enterprise is not subject to any formal or informal restrictions which would limit the customary discretion of the proprietor, partners, or the stockholders, as the case may be. In addition, the term "control" shall be construed to mean that there are no restrictions through bylaw provisions, partnership agreements, or charter requirements for cumulative voting rights, or otherwise, which would prevent the proprietor, partners, or stockholders, without the cooperation or vote of any co-owner, partner, or stockholders who are not socially or economically disadvantaged individuals, from abrogating a business decision of the enterprise which otherwise favors the proprietor's, partner's, or stockholder's share of said enterprise.

C. Contractor Responsibilities:

- (1) The Contractor must submit the Certified MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule (MBE Attachment H-1A) with its technical proposal/offer.
- (2) The Contractor must assure that MBEs shall have the maximum practical opportunity to compete for subcontractor work under the Contract.
- (3) The Contractor shall comply with all requirements set forth in Schedule MBE Minority Business Enterprise Requirements regarding the MBE requirements.
- (4) The Contractor must enter into an agreement or award subcontracts or procure supplies and services with MBEs, or take other appropriate action, to achieve the result that a minimum of 30 percent (30%), or other amount stipulated by the solicitation, of the total dollar value of the Contract is performed by MBEs.
- (5) The Contractor must submit an MBE subcontractor project participation statement signed by both the bidder or offeror and each MBE listed in the schedule of participation which shall include the following:
  - (a) A statement of intent to enter into a contract between the prime contractor and each subcontractor or supplier if a contract is executed between the procurement agency and the prime contractor, or if the prime contract has been awarded, copies of the subcontractor agreement or agreements; and,
  - (b) The amount and type of bonds required of MBE subcontractors or suppliers, if any.
- (6) If the Contractor will be unable to enter into an agreement or subcontract with, or procure supplies and materials from MBEs as required by paragraph 5, above, the Contractor must submit with his Procurement Response a request for a waiver to the 30 percent (30%) requirement or part thereof, using the Certified MBE Utilization and Fair Solicitation Affidavit.
- (7) A request for waiver of the goal or part thereof, by the apparent successful bidder or offerer, shall be processed in accordance 21.11.03.11 of the State Procurement Regulations.
- (8) The Contractor shall cooperate with the University in any reviews of the Contractor's procedures and practices with respect to minority business enterprises which the University may from time to time conduct.

D. Records and Reports:

- (1) The Contractor shall maintain such records as are necessary to confirm compliance with its MBE utilization obligations. These records shall indicate the identity of minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work, services, and/or supplies and materials secured by the Contractor from each MBE subcontract and/or supplier.
- (2) The Contractor shall submit information with its monthly cost breakdown for progress payments which indicates dollar value of Contracts awarded to minority business enterprises as a supplement to the Cost Breakdown for Progress Payments. Failure of the Contractor to submit the required supplementary MBE participation information may result in delays in processing progress payments.
- (3) All records concerning MBE participation must be retained by the Contractor for a period of three (3) years after final completion of the Contract, or termination of the Contract, whichever is later, and will be available for inspection by the University or its representatives.

E. Enforcement:

- (1) The University is responsible for conducting inspections to confirm compliance with the terms of this Section. If the University determines that the Contractor is not in compliance with this Section, the University will notify the Contractor of those measures which cure default. If the Contractor or subcontractor fails to take corrective action, the University may report the noncompliance to the Board of Public Works for appropriate action.
- (2) If the documentary material submitted by the Contractor to determine MBE status contains false, misleading information, or other misrepresentations, the matter will be referred to the Attorney General of the State for appropriate action.
- (3) Attachment H -6, Liquidated Damages Provisions for Construction Contracts Containing MBE Participation Goals, shall apply to the Contract.

F. Contractor Assistance -- Contractors requiring assistance in locating minority business enterprises are encouraged to contact the following offices:

Minority Business Officer  
Maryland State Department of Transportation  
P. O. Box 8755,  
10 Elm Road  
BWI Airport, Maryland 21240-0755  
410-859-7328  
<http://www.mdot.maryland.gov/>

**9.06 PREVAILING WAGE RATES:**

- A. All Contracts in the base bid amount of \$500,000 or more shall be subject to the provisions of Sections 17-201 to 17-226, State Finance & Procurement Article, Annotated Code of Maryland. If the original Contract is in an amount less than \$500,000, the cited terms shall not apply even where subsequent change orders shall increase the total Contract in excess of \$500,000. Wage rates applicable to projects of \$500,000 or more are bound into the specifications under Section entitled "Prevailing Wage Rates." Federal Wage Rates shall be in effect where applicable.
- B. The Contractor shall submit two (2) complete copies of its payroll records and the payroll records of each of his subcontractors - one (1) copy to the University's Office of Facilities Management and the second to the Commissioner of Labor and Industry, 1100 N. Eutaw Street, Room 607, Baltimore, Maryland 21201, where they will be available for inspection during regular business hours. These payroll records must be submitted within two weeks after each payroll period, and shall contain the following employee information: Name, address, and social security number, work classification, hours straight time and overtime worked each day, total hours worked, rate of pay, and gross amount earned. The Contractor shall be responsible for the submission of all subcontractors' payroll records covering

work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or the subcontractor, as the case may be, indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the Contract; that the classification set forth for each employee conforms with the work performed by that employee; and that the Contractor or the subcontractor, as in the case may be, has complied with the provisions of this section and the requirements of section 17-220, State Finance and Procurement Article, Annotated Code of Maryland.

- C. If the Contractor is delinquent in submitting his or any of his subcontractor's payroll records, processing of partial payment estimates may be held in abeyance pending receipt of the payroll records. In addition, if the Contractor is delinquent in submitting his or any subcontractor's payroll records, the Contractor shall be liable to the University for Liquidated Damages. The liquidated damages shall constitute the sum of ten dollars (\$10.00) for each calendar day that the payroll records are late.
- D. The Contractor shall follow any guidelines of the State Department of Labor, Licensing and Regulation in effect at the time of the Contract.

## **9.07 APPRENTICESHIP REQUIREMENTS FOR PUBLIC WORKS CONTRACTS**

- A. Effective July 1, 2013, the State Apprenticeship and Training Fund law requires that contractors performing work on public work contracts \$500,000 or more and subcontractors performing work \$100,000 or more for a covered project are required to make contributions toward apprenticeship.
- B. The contractor and subcontractor shall individually provide written verification to the Procurement Officer of one of the below three options of contribution prior to commencement of performance under the procurement contract. (1) Participates in an apprenticeship training program for each covered craft in which it will employ persons for the covered project.
  - (2) Will make payments to the Fund.
  - (3) Will make payments in amounts determined under §17-605 of the State Finance and Procurement Annotate Code, to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.
- C. Contractors shall include this requirement for written verification by the subcontractor in all of its contracts \$100,000 or more with subcontractors under a covered project.
- D. It is the responsibility of the contractor and its subcontractors to review Title 17, Subtitle 6, Annotate Code of Maryland, State Finance and Procurement, as well as Code of Maryland Regulations 21.11.12 for implementation and compliance with the law.
- E. Contractors and subcontractors who hire subcontractors performing work valued at \$100,000 or more on a covered project subject to the Maryland Prevailing Wage Law shall provide the subcontractors written notice of the following:
  - (1) Subcontractors shall complete the registration process at the Division of Labor and Industry's website at <https://www.dllr.state.md.us/PrevWage/web/content/ERegistration.aspx?Type=ContractorReg>
  - (2) Prior to commencement of the work, a subcontractor shall log onto the Division of Labor and Industry's website at <https://www.dllr.state.md.us/prevwage> and complete the required project log information.

- (3) Subcontractors performing work on a covered project are required to make payments to approved apprenticeship programs or to the Fund for each employee employed in classifications listed on the prevailing wage determination.

F. The contractor shall use the affidavit prescribed in Attachment F entitled “**Apprenticeship Training Fund Verification Contractor Affidavit**” and the subcontractor shall use the affidavit prescribed in Attachment F entitled “**-Apprenticeship Training Fund Verification Contractor Affidavit**” to provide written verification to the Procurement Officer.

**9.08 CONSTRUCTION SAFETY AND HEALTH STANDARDS:**

It is a condition of this Contract and shall be made a condition of each subcontract and lower tier subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanical employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety, as determined under construction safety and health standards, laws and regulations of the locality in which the work is done, the State, and the Federal government. Further, the Contractor and each Subcontractor at any tier consent to inspection of work conditions at any time by the University and the State.

END OF SECTION 9

END OF UMB STANDARD GENERAL CONDITIONS FOR CONSTRUCTION

**SECTION 00800**

(INTENTIONALLY OMMITED)

## **SECTION 00830**

### **PREVAILING WAGE RATES**

**All bids over \$500,000 must be submitted using Prevailing Wage Rates.**

You must notify UMB Procurement in writing if you are certain your bid will be over \$500,000.

## **ATTACHMENT A**

### **Bid Forms**

The following forms must be included within the bid. **Completion of these forms is not the entire Bid.**

- Bid/Proposal Affidavit;
- Bid Bond Form (if price is \$100,000.00 or more);
- Certification Regarding Investment Activities in Iran;
- Acknowledgement of Receipt of Addenda (if required).



## BID/PROPOSAL AFFIDAVIT

### A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

### B. 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.

### 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):

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### 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):

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**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).

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**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):

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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 hat 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. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

J. 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.

K. 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 whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

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

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

(i) The dangers of drug and alcohol abuse in the workplace;

(ii) The business' policy of maintaining a drug and alcohol free workplace;

(iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

(h) Notify its employees in the statement required by §K(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 §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §K(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 §K(2)(a)—(j), above.

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

#### L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

(If not applicable, so state).

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

#### M. 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.

N. Repealed.

O. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

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

Date: \_\_\_\_\_ By: \_\_\_\_\_ (Authorized Representative and Affiant)

## **BID BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_ as Principal, hereinafter called the Principal, and \_\_\_\_\_ a corporation duly organized under the laws of the state of \_\_\_\_\_ as Surety, hereinafter called the Surety, are held and firmly bound unto the State of Maryland, hereinafter called "State", for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), for the payment of which sum, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for.

NOW, THEREFORE, if the Principal, upon acceptance by the State of its bid identified above, within the period specified herein for acceptance (one hundred and twenty (120) days, if no period is specified), shall execute such further contractual documents, if any, and give such bond (s) as may be required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the State for any cost of procuring the work which exceeds the amount of its bid, then the above obligation shall be void and of no effect.

The Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the State, notice of which extension(s) to the Survey being hereby waived; provided that such waiver of notice shall apply only with respect to extensions aggregating not more than one hundred and twenty (120) calendar days in addition to the period originally allowed for acceptance of the bid.

<b>In Presence of Witness</b>	<b>Individual Principal</b>
-------------------------------	-----------------------------

.....as to	..... (SEAL)
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<b>In Presence of Witness</b>	<b>Co-Partnership Principal</b>
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	.....(SEAL) (Name of Co-Partnership)
--	---

.....as to	By: .....(SEAL)
------------	-----------------

.....as to	.....(SEAL)
------------	-------------

.....as to	.....(SEAL)
------------	-------------

	<b>Corporate Principal</b>
--	----------------------------

<b>Attest:</b>	..... (Name of Corporation)
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..... <b>Corporate Secretary</b>	By: ..... <b>President</b>
	AFFIX <b>CORPORATE</b> SEAL

	..... (Surety)
--	-------------------

<b>Attest:</b>	AFFIX <b>CORPORATE</b> SEAL
----------------	-----------------------------------

..... <b>Signature</b>	Title: .....
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Bonding Agent's Name: .....	..... (Business Address of Surety)
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Agent's Address .....

Approved as to legal form and sufficiency

this .....day of .....20.....

\_\_\_\_\_ Asst. Attorney General \_\_\_\_\_

## CERTIFICATION REGARDING INVESTMENT ACTIVITIES IN IRAN

### **Ref: Maryland Board of Public Works Advisory Number 2013-1**

1. The undersigned certifies that, in accordance with State Finance & procurement Article §17-705:

(i) it is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in §17-702 of State Finance & Procurement Article; and

(ii) it is not engaging in investment activities in Iran as described in State Finance & Procurement Article §17-702.

Or;

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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Company Name

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Signature

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Title

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Print

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Date

Note: List is available at:

<http://bpw.maryland.gov>

Click on "Debarments"

BID NO: IFB 88682WG  
BID PRICE DUE: **November 2, 2018 by 2:00 p.m.**  
BID FOR: ROOF REPLACEMENT AT UMB SCHOOL OF MEDICINE BIOMEDICAL  
RESEARCH FACILITY

NAME OF BIDDER: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

The undersigned, hereby acknowledges the receipt of the following addenda:

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ dated \_\_\_\_\_

Signature \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_



## **ATTACHMENT B**

### **Contract Documents**

NOTE: These are provided for information. **ONLY the successful Contractor will be required to complete these forms.**

- UMB Construction Contract;
- Contract Affidavit;
- Performance Bond (if price is \$100,000.00 or more);
- Payment Bond (if price is \$100,000.00 or more);

STANDARD FORM OF CONSTRUCTION CONTRACT  
CONTRACT # C\_\_\_\_\_

This Standard Form of Construction Contract (SFCC) is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the University of Maryland Baltimore ("University") and \_\_\_\_\_, \_\_\_\_\_, Maryland \_\_\_\_\_ FID # \_\_\_\_\_ ("Contractor").

WITNESSETH:

1. The University has issued a procurement solicitation in connection with a certain project known as the complete design services, supply and install new roofing system at School of Medicine Biomedical Research at the University of Maryland Baltimore.
2. The Contractor has responded to that solicitation and has been awarded the contract to perform work in connection with that project.

Now therefore for good and valuable consideration the parties agree as follows:

1. The Contract consists of the following documents:

IFB #88682WG dated \_\_/\_\_/\_\_\_\_;  
IFB #88682WG Addendum #1 dated \_\_/\_\_/\_\_\_\_; and  
\_\_\_\_\_’s Bid Price and MBE commitment of \_\_\_\_ dated \_\_/\_\_/20\_\_;

all of which are collectively referred to as the Contract Documents all of which are incorporated into this SFCC as it is fully set forth.

2. The Contractor shall completely perform its obligations under the Contract in a timely manner.
3. The Contractor shall diligently prosecute the Work from and after the issuance of the Notice to Proceed and shall substantially complete the work not later than six (6) months for the completion of the project.
4. Total monetary compensation to the Contractor under the Contract is \$\_\_\_\_\_ for the complete design services, supply and install new roofing system at School of Medicine Biomedical Research Facility at the University of Maryland Baltimore.

(Signatures on following page)

IN WITNESS WHEREOF the parties hereto have executed this Contract the day and year first above written

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_ (Seal)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

University of Maryland, Baltimore

By: \_\_\_\_\_

Print Name: Joseph Evans

Title: Assist Vice President, Strategic Sourcing and  
Acquisition Services

BUDGETARY DATA:

Requisition No. \_\_\_\_\_

Fund: \_\_\_\_\_

Budget: \_\_\_\_\_

Approved by Board of Public Works:

Item No. \_\_\_\_\_ Date: \_\_\_\_\_

Revised 9/18/96

Approved for legal form and sufficiency on 9/25/96 by Rachel E. Zelkind, Assistant Attorney General

## CONTRACT AFFIDAVIT

### A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) \_\_\_\_\_ possess the legal authority to make this Affidavit.

### 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 items):

- (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), of this regulation;

(h) Notify its employees in the statement required by §E(2)(b), of this regulation, 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), of this regulation, or otherwise receiving actual notice of a conviction;

(j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, 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), of this regulation.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, 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: \_\_\_\_\_ (printed name of Authorized Representative and affiant)

\_\_\_\_\_ (signature of Authorized Representative and affiant)

## PERFORMANCE BOND

Principal	Business Address of Principal
Surety	Obligee
a corporation of the State of .....	STATE OF MARYLAND
and authorized to do business in the State of Maryland	By and through the following
Penal Sum of Bond (express in words and figures)	Administration ..... Date of Contract
	, 20.
Description of Contract	Date Bond Executed
	, 20.
Contract Number:	

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the cosureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

*In Presence of Witness*

*Individual Principal*

*as to*

*(SEAL)*

*In Presence of Witness*

*Co-Partnership Principal*

.....  
*(Name of Co-Partnership)*

*(SEAL)*

..... *as to* *By:* .....

*(SEAL)*

*as to*

*(SEAL)*

..... *as to* .....

*(SEAL)*

*Corporate Principal*

*Attest:*

.....  
*(Name of Corporation)*

*Corporate Secretary*

*as to*

*By: President*

**AFFIX  
CORPORATE  
SEAL**

*(Surety)*

*Attest:*

*(SEAL) By: .*

**AFFIX  
CORPORATE  
SEAL**

*Title: .*

*Signature*

*Bonding Agent's Name:* .....  
*(Business Address of Surety)*

*Agent's Address* .....

*(Contractor shall fill in all blank spaces above this line)*

*Approved as to legal form and sufficiency*

*this day of.*

*20*

.....  
*Asst. Attorney General*



# PAYMENT BOND

Principal	Business Address of Principal
Surety	Obligee
a corporation of the State of ..... and authorized to do business in the State of Maryland	STATE OF MARYLAND By and through the following Administration .....
Penal Sum of Bond (express in words and figures)	Date of Contract
	, 20.
Description of Contract	Date Bond Executed
Contract Number:	20.

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, being authorized to do business in Maryland, and having business addresses as shown above, are held and firmly bound unto the Obligee named above, for the use and benefit of claimants as hereinafter defined, in the Penal Sum of this Payment Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns jointly and severally, firmly by these co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials furnished, supplied and reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

1. A claimant is defined to be any and all of those persons supplying labor and materials (including lessors of the equipment to the extent of the fair market value thereof) to the Principal or its subcontractors and sub-contractors in the prosecution of the work provided for in the Contract, entitled to the protection provided by Section 9-113 of the Real Property Article of the Annotated Code of Maryland, as from time to time amended.

2. The above named Principal and Surety herby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been paid in full may, pursuant to and when in compliance with the provisions of the aforesaid Section 9-113, sue on this Bond for the use of such claimant, prosecute the suit to final judgement for such sum or sums as may be justly due claimant and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this Payment Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Payment Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Payment Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

*In Presence of Witness*

*Individual Principal*

*as to*

*(SEAL)*

*In Presence of Witness*

*Co-Partnership Principal*

.....  
*(Name of Co-Partnership)*

*(SEAL)*

..... *as to*

*By: .....*

*(SEAL)*

*. as to*

*(SEAL)*

..... *as to*

*(SEAL)*

*Corporate Principal*

*Attest:*

.....  
*(Name of Corporation)*

*AFFIX*

..... *as to*  
*Corporate Secretary*

*By: .....*

*President*

*CORPORATE  
SEAL*

*(Surety)*

*Attest:*

*(SEAL)*

*By: .*

*AFFIX*

*CORPORATE  
SEAL*

*Title: . .*

*Signature*

*Bonding Agent's Name: .....*

.....  
*(Business Address of Surety)*

*Agent's Address .....*

*(Contractor shall fill in all blank spaces above this line)*

*Approved as to legal form and sufficiency*

*this          day of.*

*20*

.....  
*Asst. Attorney General*

**ATTACHMENT C**

**SCHEDULE EFT**

**SCHEDULE EFT**  
**University of Maryland, Baltimore**  
**Payments to Contractors by Electronic Funds Transfer (EFT)**  
**March 2004**

If the annual dollar value of this contract will exceed \$500,000.00, the Bidder/Offeror is hereby advised that electronic funds transfer (EFT) will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants the Contractor an exemption.

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by EFT. The selected Bidder/Offeror shall register using the attached form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption.

The form is available as a pdf file on the web site of the General Accounting Division of the Comptroller of Maryland. That web address is: [http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/X-1020130403.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/X-1020130403.pdf)

**ATTACHMENT D**

**SCHEDULE SBR**

## SCHEDULE SBR

### NOTICE TO BIDDERS/OFFERORS SMALL BUSINESS RESERVE PROCUREMENT

This is a Small Business Reserve procurement for which award is limited to certified small business vendors. Only businesses that meet the requirements set forth in State Finance and Procurement Article, §§ 14-501 - 14-505, Annotated Code of Maryland, and who are registered with the Department of General Services Small Business Reserve Program are eligible for award.

For the purposes of a Small Business Reserve procurement, a small business is a for-profit business, other than a broker, that meets the following criteria:

- It is independently owned and operated;
- It is not a subsidiary of another business;
- It is not dominant in its field of operation.

AND

- Its wholesale operations did not employ more than 50 persons.
- Its retail operations did not employ more than 25 persons.
- Its manufacturing operations did not employ more than 100 persons.
- Its service operations did not employ more than 100 persons.
- Its **construction** operations did not employ more than 50 persons.
- The architectural and engineering services of the business did not employment more than 100 persons.

OR

- The gross sales of the wholesale operations of the business did not exceed an average of \$4,000,000 in its most recently completed three fiscal years.
- The gross sales of the retail operations of the business did not exceed an average of \$3,000,000 in its most recently completed three fiscal years.
- The gross sales of the manufacturing operations of the business did not exceed an average of \$2,000,000 in its most recently completed three fiscal years.
- The gross sales of the service operations of the business did not exceed an average of \$10,000,000 in its most recently completed three fiscal years.
- The gross sales of the construction operations of the business did not exceed an average of \$7,000,000 in its most recently completed three fiscal years. The gross sales of the architectural and engineering services of the business did not exceed an average of \$4,500,000 in its most recently completed 3 fiscal years.

\*If a business has not existed for three years, the employment and gross sales average(s) is the average for each year or part of a year during which the business has been in existence.

Further information on the certification process is available at *eMarylandMarketplace* <https://emaryland.buyspeed.com/bsa>.

**ATTACHMENT E**

**UMB Campus Map @**

<http://www.umaryland.edu/maps/>

**ATTACHMENT F**

(INTENTIONALLY OMITTED)



**ATTACHMENT G**  
**BID PRICE FORMS**

BID NO: IFB 88682WG  
BID PRICE DUE: **Friday, November 2, 2018 by 2:00 p.m.**  
BID FOR: ROOF REPLACEMENT AT UMB SCHOOL OF MEDICINE BIOMEDICAL  
RESEARCH FACILITY

NAME OF BIDDER: \_\_\_\_\_

FID NUMBER: \_\_\_\_\_

**BID PRICE FORMS**

DATE \_\_\_\_\_

Mr. Wesley Gordon  
Strategic Sourcing and Acquisition Services  
The Saratoga Building  
University of Maryland, Baltimore  
220 Arch Street, Rm. 02-100  
Baltimore, MD 21201

Dear Mr. Gordon:

The undersigned, hereby submits a bid price to provide all labor, materials, equipment, supplies, supervision, subcontracting and any other necessary resources as required for the scope of work of complete design services, supply and install new roofing system at UMB School of Medicine Biomedical Research Facility project as set forth in Bid documents IFB #88682WG, dated October 10, 2018.

Having received clarification on all matters upon which any doubt arose, the undersigned Bidders are to complete the work for the guaranteed pricing listed below. The lowest responsible bid for the contract will receive award. **BIDDERS ARE NOT TO ALTER, ADD TO, OR DELETE ANYTHING FROM THIS BID PRICE FORM.**

**BASIS OF AWARD – An Award of the Bid will be based on the lowest responsive and responsible bidder meeting the specifications and requirements set forth in the bid document.**

A. Complete design services, supply and install new roofing system at UMB School of Medicine Biomedical Research Facility: Manufacture: \_\_\_\_\_

\_\_\_\_\_/ \_\_\_\_\_ Dollars  
(Words)

\$ \_\_\_\_\_  
(Figures)

MBE Dollars: \$ \_\_\_\_\_

MBE Percentage: \_\_\_\_\_ %

Initials of signer to Identify Page \_\_\_\_\_

BID NO: IFB 88682WG  
BID PRICE DUE: **Friday, November 2, 2018 by 2:00 p.m.**  
BID FOR: ROOF REPLACEMENT AT UMB SCHOOL OF MEDICINE BIOMEDICAL  
RESEARCH FACILITY

NAME OF BIDDER: \_\_\_\_\_

The bidder shall state all contract pricing in dollars and cents, in both words and figures where indicated. If there is any question or difference between the written words and figures, the written words shall govern.

We understand that this Bid Price can be rejected if it is not received with the necessary 5% Bid Bond. We further understand that the Bid Price will remain in effect for a minimum of 120 days from the due date of the Bid Price.

We understand that the University reserves the right to award a contract (or contracts) for all items, or any parts thereof, as set forth in detail under the information furnished in the solicitation documents.

As well, all terms and conditions as set forth in the bid documents, including those documents issued to solicit Bids, all addenda since that issuance, and our Bid Price are a part of any resulting contract.

(Signatures should be placed on following signature page).

Initials of Signer to Identify Page\_\_\_\_\_

The offeror represents and it is a conditions precedent to acceptance of this bid, that the offeror has not been a party to any agreements to submit a fixed or uniform price. Sign where applicable below.

**A. INDIVIDUAL PRINCIPAL**

In Presence of Witness: \_\_\_\_\_

FIRM NAME:

ADDRESS:

TELEPHONE NO.

SIGNED: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**B. CO-PARTNERSHIP PRINCIPAL**

(Name of C-Partnership)

ADDRESS \_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

In Presence of Witness:

\_\_\_\_\_ as to

BY \_\_\_\_\_ (Partner)

Printed Name:

\_\_\_\_\_ as to

BY \_\_\_\_\_ (Partner)

Printed Name:

\_\_\_\_\_ as to

BY \_\_\_\_\_ (Partner)

**C. CORPORATE PRINCIPAL**

\_\_\_\_\_  
(Name of Corporation)

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE NO. \_\_\_\_\_

\_\_\_\_\_  
[Printed Name of Corporate (or Assistant Corporate) Secretary]

\_\_\_\_\_  
[Corporate (or Assistant Corporate) Secretary Signature for Identification]

BY:

\_\_\_\_\_  
Signature or Officer and Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**ATTACHMENT H**

**Minority Business Enterprise (MBE) Forms**

**MBE ATTACHMENT H-1A:  
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT  
& MBE PARTICIPATION SCHEDULE**

**PART 1 - INSTRUCTIONS**

*PLEASE READ BEFORE COMPLETING THIS DOCUMENT*

**This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") Code **and** the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals.  
**CAUTION:** If the firm's NAICS Code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS Code is in the graduated status if the term "Graduated" follows the Code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.
  - ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.

- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment H-1B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
- ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.  
[http://www.goMDsmallbiz.maryland.gov/Documents/MBE\\_Toolkit/MBEPrimeRegulation\\_QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf)

6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.

7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ **Regular Dealers:** Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions. Generally, a Regular Dealer will be identified as a wholesaler or supplier in the MDOT Directory.
- ✓ **Manufacturers:** A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ **Brokers:** With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.
- ✓ **Furnish and Install:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS Code(s) to furnish and install materials necessary for successful contract completion may be counted in full.



9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.

10. **CAUTION:** The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in PART 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in PART 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in PART 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).
11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

### **Subgoals (if applicable)**

Total African American MBE Participation:	_____ %
Total Asian American MBE Participation:	_____ %
Total Hispanic American MBE Participation:	_____ %
Total Women-Owned MBE Participation:	_____ %

### **Overall Goal**

Total MBE Participation (include all categories):	_____ %
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## **PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT &**

### **MBE PARTICIPATION SCHEDULE**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed in its entirety and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

In connection with the bid/proposal submitted in response to Solicitation No. \_\_\_\_\_, I affirm the following:

**1. MBE Participation (PLEASE CHECK ONLY ONE)**

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of **10** percent and all of the following subgoals:

There are no MBE subcontractor participation subgoals for this procurement.

Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete PART 3 - MBE Participation Schedule in order to be considered for award.

**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 I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete PART 3, the MBE Participation Schedule for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award.

### **Additional MBE Documentation**

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment H-1C)
- (b) Outreach Efforts Compliance Statement (Attachment H-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments H-3A and H-3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

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.

### **Information Provided to MBE firms**

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

## PART 3 - MBE PARTICIPATION SCHEDULE

SET FORTH BELOW ARE THE (I) CERTIFIED MBEs I INTEND TO USE, (II) THE PERCENTAGE OF THE TOTAL CONTRACT VALUE ALLOCATED TO EACH MBE FOR THIS PROJECT AND, (III) THE ITEMS OF WORK EACH MBE WILL PROVIDE UNDER THE CONTRACT. I HAVE CONFIRMED WITH THE MDOT DATABASE THAT THE MBE FIRMS IDENTIFIED BELOW (INCLUDING ANY SELF-PERFORMING MBE PRIME FIRMS) ARE PERFORMING WORK ACTIVITIES FOR WHICH THEY ARE MDOT-CERTIFIED.

Prime Contractor	Project Description	Project/Contract Number

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

### SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p> <input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification         </p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p> <input type="checkbox"/> Supplier  <input type="checkbox"/> Manufacturer  <input type="checkbox"/> Broker  <input type="checkbox"/> Furnish and Install  <input type="checkbox"/> Services  <input type="checkbox"/> Other         </p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p>Description of the Work to be performed with MBE prime's own forces:</p> <p>_____</p> <p>_____</p> <p>_____</p>
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### SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p> <input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification         </p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p> <input type="checkbox"/> Supplier  <input type="checkbox"/> Manufacturer  <input type="checkbox"/> Broker  <input type="checkbox"/> Furnish and Install  <input type="checkbox"/> Services  <input type="checkbox"/> Other         </p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
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<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____ % <b>Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____ % <b>Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____ % <b>Please refer to Item #8 in PART 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier</p> <p><input type="checkbox"/> Manufacturer</p> <p><input type="checkbox"/> Broker</p> <p><input type="checkbox"/> Furnish and Install</p> <p><input type="checkbox"/> Services</p> <p><input type="checkbox"/> Other</p> <p>Description of the Work to be Performed:</p> <p>_____</p> <p>_____</p> <p>_____</p>

**Continue on separate page if needed**

**I solemnly affirm under the penalties of perjury that: (i) I have reviewed the instructions for the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule, and (ii) the information contained in the MBE Utilization & Fair Solicitation Affidavit and MBE Schedule is true to the best of my knowledge, information and belief.**

\_\_\_\_\_  
Bidder/Offeror Name  
(PLEASE PRINT OR TYPE)

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

# **MBE ATTACHMENT H-1B WAIVER GUIDANCE**

## **GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS**

In order to show that it has made good faith efforts to meet the Minority Business Enterprise (MBE) participation goal (including any MBE subgoals) on a contract, the bidder/offeror must either (1) meet the MBE Goal(s) and document its commitments for participation of MBE Firms, or (2) when it does not meet the MBE Goal(s), document its Good Faith Efforts to meet the goal(s).

### **I. Definitions**

**MBE Goal(s)** – “MBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s).

**Good Faith Efforts** – The “Good Faith Efforts” requirement means that when requesting a waiver, the bidder/offeror must demonstrate that it took all necessary and reasonable steps to achieve the MBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE participation, even if those steps were not fully successful. Whether a bidder/offeror that requests a waiver made adequate good faith efforts will be determined by considering the quality, quantity, and intensity of the different kinds of efforts that the bidder/offeror has made. The efforts employed by the bidder/offeror should be those that one could reasonably expect a bidder/offeror to take if the bidder/offeror were actively and aggressively trying to obtain MBE participation sufficient to meet the MBE contract goal and subgoals. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements. The determination concerning the sufficiency of the bidder's/offeror's good faith efforts is a judgment call; meeting quantitative formulas is not required.

**Identified Firms** – “Identified Firms” means a list of the MBEs identified by the procuring agency during the goal setting process and listed in the procurement as available to perform the Identified Items of Work. It also may include additional MBEs identified by the bidder/offeror as available to perform the Identified Items of Work, such as MBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms, this term refers to all of the MBE Firms (if State-funded) the bidder/offeror identified as available to perform the Identified Items of Work and should include all appropriately certified firms that are reasonably identifiable.

**Identified Items of Work** – “Identified Items of Work” means the bid items identified by the procuring agency during the goal setting process and listed in the procurement as possible items of work for performance by MBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved. If the procurement does not include a list of Identified Items of Work, this term refers to all of the items of work the bidder/offeror identified as possible items of work for performance by MBE Firms and should include all reasonably identifiable work opportunities.

**MBE Firms** – “MBE Firms” refers to a firm certified by the Maryland Department of Transportation (“MDOT”) under COMAR 21.11.03. Only MDOT-certified MBE Firms can participate in the State's MBE Program.

## **II. Types of Actions Agency will Consider**

The bidder/offeror is responsible for making relevant portions of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate MBE participation. The following is a list of types of actions the procuring agency will consider as part of the bidder's/offeror's Good Faith Efforts when the bidder/offeror fails to meet the MBE Goal(s). This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

### **A. Identify Bid Items as Work for MBE Firms**

#### **1. Identified Items of Work in Procurements**

(a) Certain procurements will include a list of bid items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the bidder/offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.

#### **2. Identified Items of Work by Bidders/Offerors**

(a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/offeror of the responsibility to make Good Faith Efforts.

### **B. Identify MBE Firms to Solicit**

#### **1. MBE Firms Identified in Procurements**

(a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the bidder/offeror shall make all reasonable efforts to solicit those MBE firms.

(b) Bidders/offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.

#### **2. MBE Firms Identified by Bidders/Offerors**

(a) When the procurement does not include a list of Identified MBE Firms, bidders/offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.

(b) Any MBE Firms identified as available by the bidder/offeror should be certified to perform the Identified Items of Work.



### **C. Solicit MBEs**

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The bidder/offeror should:

(a) provide the written solicitation at least 10 days prior to bid opening to allow sufficient time for the MBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; and

(c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)

2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the bidder/offeror provides written solicitations.

3. "Electronic Means" includes, for example, information provided *via* a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible to the interested MBE.

4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:

(a) by telephone using the contact information in the MBE Directory, unless the bidder/offeror has a valid basis for using different contact information; or

(b) in writing *via* a method that differs from the method used for the initial written solicitation.

5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:

(a) attending any pre-bid meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and

(b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

### **D. Negotiate With Interested MBE Firms**

Bidders/Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:

(a) the names, addresses, and telephone numbers of MBE Firms that were considered;

(b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and

(c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration.

3. The fact that there may be some additional costs involved in finding and using MBE Firms is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract MBE goal(s), as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE Firm's quote is excessive or unreasonable include, without limitation, the following:

(a) the dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;

(b) the percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;

(c) the percentage that the MBE subcontractor's quote represents of the overall contract amount;

(d) the number of MBE firms that the bidder/offeror solicited for that portion of the work;

(e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and

(f) the number of quotes received by the bidder/offeror for that portion of the work.

4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.

5. The bidder/offeror may not use its price for self-performing work as a basis for rejecting a MBE Firm's quote as excessive or unreasonable.

6. The "average of the other subcontractors' quotes received" by the bidder/offeror refers to the average of the quotes received from all subcontractors. Bidder/offeror should attempt to receive quotes from at least three subcontractors, including one quote from a MBE and one quote from a Non-MBE.

7. A bidder/offeror shall not reject a MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the bidder/offeror concludes is not acceptable, the bidder/offeror must provide a written detailed statement listing the reasons for this conclusion. The bidder/offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.

(b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the efforts to meet the project goal.

## **E. Assisting Interested MBE Firms**

When appropriate under the circumstances, the decision-maker will consider whether the bidder/offeror:

1. made reasonable efforts to assist interested MBE Firms in obtaining the bonding, lines of credit, or insurance required by the procuring agency or the bidder/offeror; and
2. made reasonable efforts to assist interested MBE Firms in obtaining necessary equipment, supplies, materials, or related assistance or services.

## **III. Other Considerations**

In making a determination of Good Faith Efforts the decision-maker may consider engineering estimates, catalogue prices, general market availability and availability of certified MBE Firms in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified MBE and Non-MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors.

The decision-maker may take into account whether a bidder/offeror decided to self-perform subcontract work with its own forces, especially where the self-performed work is Identified Items of Work in the procurement. The decision-maker also may take into account the performance of other bidders/offerors in meeting the contract. For example, when the apparent successful bidder/offeror fails to meet the contract goal, but others meet it, this reasonably raises the question of whether, with additional reasonable efforts, the apparent successful bidder/offeror could have met the goal. If the apparent successful bidder/offeror fails to meet the goal, but meets or exceeds the average MBE participation obtained by other bidders/offerors, this, when viewed in conjunction with other factors, could be evidence of the apparent successful bidder/offeror having made Good Faith Efforts.

## **IV. Documenting Good Faith Efforts**

At a minimum, a bidder/offeror seeking a waiver of the MBE Goal(s) or a portion thereof must provide written documentation of its Good Faith Efforts, in accordance with COMAR 21.11.03.11, within 10 business days after receiving notice that it is the apparent awardee. The written documentation shall include the following:

### **A. Items of Work (Complete Good Faith Efforts Documentation Attachment H-1C, Part 1)**

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE Firms in order to increase the likelihood of achieving the stated MBE Goal(s).

### **B. Outreach/Solicitation/Negotiation**

1. The record of the bidder's/offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement – Attachment H-2).**

2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Attachment H-1C- Part 2, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

(b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

**C. Rejected MBE Firms (Complete Good Faith Efforts Attachment H-1C, Part 3)**

1. For each MBE Firm that the bidder/offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.

2. For each certified MBE Firm that the bidder/offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the bidder's/offeror's conclusion, including the quotes received from all MBE and Non-MBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by a MBE Unavailability Certificate (see Exhibit A to this Part 1) signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

**D. Other Documentation**

1. Submit any other documentation requested by the Procurement Officer to ascertain the bidder's/offeror's Good Faith Efforts.

2. Submit any other documentation the bidder/offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

**Exhibit A**

**MBE Subcontractor Unavailability Certificate**

1. It is hereby certified that the firm of \_\_\_\_\_  
(Name of Minority firm)  
located at \_\_\_\_\_  
(Number) (Street)  
\_\_\_\_\_  
(City) (State) (Zip)

was offered an opportunity to bid on Solicitation No. \_\_\_\_\_  
in \_\_\_\_\_ County by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the  
work/service or unable to prepare a bid for this project for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Minority Firm's MBE Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
MDOT Certification #

\_\_\_\_\_  
Telephone #

.....

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a bid, or did not respond to a request for a price proposal and has not completed the above portion of this submittal.

\_\_\_\_\_  
Signature of Prime Contractor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**MBE ATTACHMENT H-1C**

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

PAGE \_\_\_\_ OF \_\_\_\_

Prime Contractor	Project Description	Solicitation Number

**PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST.**

I affirm that I have reviewed Attachment H-1B, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this Attachment H-1C Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

# GOOD FAITH EFFORTS DOCUMENTATION

## TO SUPPORT WAIVER REQUEST

### PART 1 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO MBE FIRMS

PAGE \_\_\_\_ OF \_\_\_\_

Prime Contractor	Project Description	Solicitation Number

Identify those items of work that the bidder/offeror made available to MBE Firms. This includes, where appropriate, those items the bidder/offeror identified and determined to subdivide into economically feasible units to facilitate the MBE participation. For each item listed, show the anticipated percentage of the total contract amount. It is the bidder's/offeror's responsibility to demonstrate that sufficient work to meet the goal was made available to MBE Firms, and the total percentage of the items of work identified for MBE participation equals or exceeds the percentage MBE goal set for the procurement. Note: If the procurement includes a list of bid items identified during the goal setting process as possible items of work for performance by MBE Firms, the bidder/offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the bidder/offeror selects additional items of work to make available to MBE Firms, those additional items should also be included below.

Identified Items of Work	Was this work listed in the procurement?	Does bidder/offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why?
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION  
TO SUPPORT WAIVER REQUEST  
PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS**

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form.

This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment H-1B). If the bidder/offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification <hr/>		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification <hr/>		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call:  Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE  <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.



# GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

## PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

PAGE \_\_ OF \_\_

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 2 indicates that a MBE quote was rejected because the bidder/offeror is using a Non-MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

Describe Identified Items of Work Not Being Performed by MBE (Include spec/section number from bid)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non- MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non- MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

## **MBE Attachment H - 2**

### **OUTREACH EFFORTS COMPLIANCE STATEMENT**

Complete and submit this form within 10 working days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the bid/proposal submitted in response to Solicitation No. \_\_\_\_\_, I state the following:

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

---

---

---

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

3. Bidder/Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

---

---

---

---

**4. Please Check One:**

- ☐ This project does not involve bonding requirements.
- ☐ Bidder/Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS): \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**5. Please Check One:**

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature of Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Date

**MBE Attachment H-3A**  
**MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT H-1A) WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name) committing to participation by the MBE firm \_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$ \_\_\_\_\_ which equals to \_\_\_\_\_ % of the Total Contract Amount for performing the following products/services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) 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/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/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/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/Proposal.

PRIME CONTRACTOR	SUBCONTRACTOR
Signature of Representative: _____	Signature of Representative: _____
Printed Name and Title: _____ _____	Printed Name and Title: _____ _____
Firm's Name: _____	Firm's Name: _____
Federal Identification Number: _____	Federal Identification Number: _____
Address: _____ _____	Address: _____ _____
Telephone: _____	Telephone: _____
Date: _____	Date: _____

**MBE Attachment H-3B**  
**MBE PRIME - PROJECT PARTICIPATION CERTIFICATION**

**PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT H-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$\_\_\_\_\_ which equals to \_\_\_\_\_% of the Total Contract Amount for performing the following products/services for the Contract:

<b>NAICS CODE</b>	<b>WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE). FOR CONSTRUCTION PROJECTS, GENERAL CONDITIONS MUST BE LISTED SEPARATELY.</b>	<b>DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES</b>	<b>VALUE OF THE WORK</b>

**MBE PRIME CONTRACTOR**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

\_\_\_\_\_

Firm's Name: \_\_\_\_\_

Federal Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Date: \_\_\_\_\_

# MBE Attachment H-4A

## Minority Business Enterprise Participation **Prime Contractor Paid/Unpaid MBE Invoice Report**

Report #: _____	Contract #: _____
Reporting Period (Month/Year): _____	Contracting Unit: _____
<b>Prime Contractor: Report is due to the MBE Liaison by the 10<sup>th</sup> of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract Amount: _____
	MBE Subcontract Amt: _____
	Project Begin Date: _____
	Project End Date: _____
	Services Provided: _____

Prime Contractor:		Contact Person:																																					
Address:																																							
City:		State:	ZIP:																																				
Phone:	Fax:	E-mail:																																					
MBE Subcontractor Name:		Contact Person:																																					
Phone:	Fax:																																						
Subcontractor Services Provided:																																							
<b>List all payments made to MBE subcontractor named above during this reporting period:</b> <table border="1"> <thead> <tr> <th></th> <th><u>Invoice#</u></th> <th><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>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Paid: \$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Paid: \$</b>		_____	<b>List dates and amounts of any outstanding invoices:</b> <table border="1"> <thead> <tr> <th></th> <th><u>Invoice #</u></th> <th><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>4.</td><td></td><td></td></tr> <tr> <td colspan="2"><b>Total Dollars Unpaid:\$</b></td> <td>_____</td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			<b>Total Dollars Unpaid:\$</b>		_____
	<u>Invoice#</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
4.																																							
<b>Total Dollars Paid: \$</b>		_____																																					
	<u>Invoice #</u>	<u>Amount</u>																																					
1.																																							
2.																																							
3.																																							
4.																																							
<b>Total Dollars Unpaid:\$</b>		_____																																					

- If more than one MBE subcontractor is used for this contract, you must use separate H-4A forms for each subcontractor.
- Information regarding payments that the MBE prime will use for purposes of meeting the MBE participation goals must be reported separately in Attachment H-4B
- **Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 (Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Kathy Bordenski  
 University of Maryland, Baltimore  
 Strategic Sourcing and Acquisition Services  
 220 Arch Street, Rm. 02-100  
 Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: [kbordenski@umaryland.edu](mailto:kbordenski@umaryland.edu)

This form must be completed  
monthly by all MBE  
subcontractors.

Sample MBE ATTACHMENT H-5

Minority Business Enterprise Participation  
Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____	Contract #
Reporting Period (Month/Year): _____	Contracting Unit:
<b>Report is due by the 10<sup>th</sup> of the month following the month the services were performed.</b>	MBE Subcontract Amount:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:		
MDOT Certification #:		
Contact Person:		E-mail:
Address:		
City:	State:	ZIP:
Phone:	Fax:	
<b>Subcontractor Services Provided:</b>		
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>		<b>List dates and amounts of any unpaid invoices over 30 days old.</b>
<u>Invoice Amt</u>	<u>Date</u>	<u>Invoice Amt</u>
1.		1.
2.		2.
3.		3.
<b>Total Dollars Paid: \$</b> _____		<b>Total Dollars Unpaid: \$</b> _____
Prime Contractor:		Contact Person:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Kathy Bordenski  
University of Maryland, Baltimore  
Strategic Sourcing and Acquisition Services  
220 Arch Street, Rm. 02-100  
Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: [kbordenski@umaryland.edu](mailto:kbordenski@umaryland.edu)

**MBE Attachment H-4B**

**Minority Business Enterprise Participation  
MBE Prime Contractor Report**

MBE Prime Contractor: Certification Number: Report #: _____ Reporting Period (Month/Year): _____ <b>MBE Prime Contractor: Report is due to the MBE Liaison by the <u>10th</u> of the month following the month the services were provided.</b> <b>Note: Please number reports in sequence</b>	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ Total Value of the Work to the Self-Performed for purposes of Meeting the MBE participation goal/subgoals: _____ Project Begin Date: _____ Project End Date: _____
--	--

Contact Person: _____		
Address: _____		
City: _____	State: _____	ZIP: _____
Phone: _____	Fax: _____	E-mail: _____

Invoice Number	Value of the Work	NAICS Code	Description of the Work

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Kathy Bordenski University of Maryland, Baltimore Strategic Sourcing and Acquisition Services 220 Arch Street, Rm. 02-100 Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: <a href="mailto:kbordenski@umaryland.edu">kbordenski@umaryland.edu</a>
---

MBE ATTACHMENT H-5

Minority Business Enterprise Participation  
**Subcontractor Paid/Unpaid MBE Invoice Report**

Report#: _____	Contract #
Reporting Period (Month/Year): _____	Contracting Unit:
<b>Report is due by the 10th of the month following the month the services were performed.</b>	MBE Subcontract Amount:
	Project Begin Date:
	Project End Date:
	Services Provided:

MBE Subcontractor Name:		
MDOT Certification #:		
Contact Person:	E-mail:	
Address:		
City:	State:	ZIP:
Phone:	Fax:	
<b>Subcontractor Services Provided:</b>		
<b>List all payments received from Prime Contractor during reporting period indicated above.</b>		
<b><u>Invoice Amt</u></b>	<b><u>Date</u></b>	
1.		
2.		
3.		
<b>Total Dollars Paid: \$ _____</b>		
<b>List dates and amounts of any unpaid invoices over 30 days old.</b>		
<b><u>Invoice Amt</u></b>	<b><u>Date</u></b>	
1.		
2.		
3.		
<b>Total Dollars Unpaid: \$ _____</b>		
Prime Contractor: _____ Contact Person: _____		

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Required)

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Kathy Bordenski  
University of Maryland, Baltimore  
Strategic Sourcing and Acquisition Services  
220 Arch Street, Rm. 02-100  
Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: [kbordenski@umaryland.edu](mailto:kbordenski@umaryland.edu)



## **MBE Attachment H-6**

### **Liquidated Damages Provisions for Construction Contracts Containing MBE Participation Goals**

This contract requires the contractor to make good faith efforts to comply with the Minority Business Enterprise (“MBE”) Program and contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not make good faith efforts to comply with the requirements of the MBE Program and MBE contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon a determination by the State that the Contractor failed to make good faith efforts to comply with one or more of the specified MBE Program requirements or contract provisions, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

- a. Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): **\$30.59** per day until the monthly report is submitted as required.
- b. Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$ **107.07** per MBE subcontractor.
- c. Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.
- d. Failure to meet the Contractor’s total MBE participation goal and subgoal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

Notwithstanding the use of liquidated damages, the State reserves the right to terminate the contract and exercise all other rights and remedies provided in the contract or by law.”