



UNIVERSITY *of* MARYLAND BALTIMORE

**REQUEST FOR PROPOSAL
FOR
CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR
SOM-HSF III 5th & 6th Floor Tenant Space Buildouts
AT
UNIVERSITY OF MARYLAND, BALTIMORE
RFP NUMBER: 23-326 MC
Issue Date: December 22, 2023**

Procurement/Issuing Office:

**University of Maryland, Baltimore
Construction & Facilities Strategic Acquisitions
Saratoga Building
220 Arch Street, Room 02-100
Baltimore, MD 21201-1531**

Project Management:

**UMB Office for Facilities and Operations
Design & Construction
University of Maryland, Baltimore
620 West Lexington Street, Office Level 06
Baltimore, Maryland 21201-1531**

ACCESS:

Anyone requiring special assistance in obtaining a copy of the solicitation, in attending a preproposal conference or in delivering a proposal are requested to contact the Point of Contact within the Issuing Office at least 48 hours in advance. (See Attachment J Item #7)

NOTE:

**All Addenda to this procurement will be posted on the UMB-CFSA website at:
<https://www.umaryland.edu/procurement/ebid-board/>**

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DOCUMENTS PACKAGED SEPARATELY:

- Current Edition of University of Maryland, Baltimore Procedure Manual for Architectural/ Engineering Services, available at [UMB Design A/E Procedure Manual - Current Edition - Design and Construction \(umaryland.edu\)](https://umaryland.edu/umb-design-a-e-procedure-manual-current-edition-design-and-construction)
- Current Edition of University of Maryland, Baltimore Architectural and Engineering Design Standards, available at [UMB A/E Design Standards Manual - Current Edition - Design and Construction \(umaryland.edu\)](https://umaryland.edu/umb-a-e-design-standards-manual-current-edition-design-and-construction)
- Any Addenda, which may be issued prior to the Proposal Due Date.

SECTION 1 SOLICITATION SCHEDULE

All times indicated below are based on the Eastern Time zone.

<u>Issue Date:</u>	December 22, 2023
Pre-Proposal Conference Date:	Thursday, January 4, 2024, at 11:00 a.m. Refer to Attachment J “Pre-Proposal Conference”
Pre-Proposal Conference Location:	University of Maryland, Baltimore 220 Arch Street, Ground Level Conference Room, GR-1001 Baltimore MD 21201
Deadline for questions: (See Attachment J, Item 7)	January 5, 2024, by 2:00 p.m.
Phase 1 Technical Proposal Due Date:	January 12, 2024 on or before 2:00 p.m.
Submit Phase 1 Technical Proposal: (See further instructions detailed in Section 2, Item 2.1.11 and required contents detailed in Section 4, Article 1)	proc-oncallbids@umaryland.edu The subject line of your email: 12/22/23 RFP 23-326 MC [Your Company Name] File to be labeled: “Phase 1 23-326 SOM-HSF III 5 th & 6 th Floor Tenant Space Buildout – Your Company Name”
Anticipated Date of Notification following the Phase 1 Technical Evaluation regarding shortlist:	January 26, 2024
Phase 2 Technical Proposal Due Date:	February 8, 2024 The subject line of your email: 12/22/23 RFP 23-326 MC [Your Company Name] File to be labeled: “Phase 2 Technical 23-326 SOM-HSF III 5 th & 6 th Floor Tenant Space Buildout – Your Company Name”
Oral Interview Sessions for Shortlisted Firms:	These are optional and may be held at the University’s sole discretion.

Wednesday, February 14, 2023, and
Thursday, February 15, 2023

Anticipated Date of Notification following the Phase 2 Technical Evaluation regarding shortlist: February 20, 2024

Price Proposal Due February 8, 2024, at 2:00 p.m.
(only shortlisted Proposers after Phase 2 Technical will have their price proposals opened) (Instructions regarding Price Proposal submittal will be issued via Addendum to the shortlisted firms.)

File to be labeled: “Phase 2-Cost Proposal 23-326 SOM-HSF III 5th & 6th Floor Tenant Space Buildout – Your Company Name”

Anticipated Date of Notification for Selected Contractor/Contract Award: March 1, 2024

Contract Approved by Board of Public Works: By Wednesday, April 3, 2024 (Projected)

END OF SECTION 1: SOLICITATION SCHEDULE

SECTION 2 GENERAL INFORMATION

Summary:

- 2.1.1 Solicitation Purpose: The purpose of the Request for Proposal (RFP or Solicitation) is for the University of Maryland, Baltimore (UMB) to procure Construction Management at Risk Services (CMAR) for design, procurement, and construction phases of the School of Medicine HSF III 5th & 6th Floor Tenant Space Buildouts at the University of Maryland, Baltimore's School of Medicine.
- 2.1.2 Contract Management: UMB's Construction and Facilities Strategic Acquisitions (UMB CFSA) will manage the resulting contract and UMB's Office for Facilities and Maintenance (UMB-FO) will manage the project.
- 2.1.3 University System of Maryland: The University System of Maryland (USM) is the state's public higher education system. USM's 12 institutions, 3 regional higher education centers, and system office work closely together to leverage their collective expertise and resources, share best practices, increase the system's effectiveness and efficiency, and advance USM's mission to improve the quality of life in Maryland. For information regarding the other USM institutions, see www.USMD.edu and <https://www.usmd.edu/institutions/>
- 2.1.4 Response to this RFP will consist of:
- A. Phase 1: Open to any firm, Joint Venture or other form of collaboration who wish to participate.
 - B. Phase 2 Technical Proposal and Oral Interviews: Only those firms shortlisted following Phase I evaluations will be invited to submit.
 - C. Price Proposal Phase (by shortlisted firms only)
 - D. See Section 4 Articles 1-5 for further details regarding the proposal requirements and procurement phases.

- 2.1.5 MBE Participation goal and subgoals: see Attachment J, Item 25 and Attachment H.
- 2.1.6 Contract Award: Upon completion of the procurement, a UMB non-exclusive contract (See Attachment B for the Standard Agreement) will be issued to and executed by the successful firm. Upon receipt of applicable approvals, the Contract will be fully executed by UMB.
- 2.1.7 UMB anticipates the recommendation of the award to external approving bodies and the Contract to be in place with the successful Proposer per the Solicitation Schedule.
- 2.1.8 Solicitation Terms and Conditions: In addition to Section 4 Procurement Phases and Evaluation Processes, refer to Attachment J for the governing terms and conditions of this Solicitation.
- 2.1.9 In accordance with Attachment J, the Issuing Office shall be the **sole** point of contact with the University for purposes of questions from potential Proposers as well as the preparation and submittal of proposals in response to this solicitation. (see the Solicitation Attachment J Item #7 for Issuing Office contact information.)
- 2.1.10 Licenses and Qualifications:
- A. Proposers must be licensed as required by the Section 17-601 et seq of the Business Regulation Article of the Annotated Code of Maryland and shall submit proof of current licensing with their proposal.
 - B. The University reserves the right to require that the Construction Manager 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. (See Section 3 of this RFP for further information/details.)
- 2.1.11 **Phase 1 Technical Proposal Closing Date/Due Date and Time:**
- A. The Phase 1 submission is to be provided to the Issuing Office in accordance with this paragraph, the Solicitation Schedule, Section 4, and Attachment J.
Proposals are to be submitted electronically attached to an email Delivered to: proc-oncallbids@umaryland.edu .
The subject line of your email: 12/22/23 RFP 23-326 MC [Your Company Name]. The University prefers electronic PDF format that is organized with bookmarks.
File to be labeled: “Phase 1 23-326 MC- SOM-HSF III 5th & 6th Floor Tenant Space Buildouts – Your Company Name”
There shall not be any ‘acceptance terms and conditions’ included in the proposal submission.

- B. Refer to the Solicitation Schedule and Section 4 of the RFP for information regarding subsequent submittals during the procurement process.

Note: No pricing is to be provided in the Phase 1 or Phase 2 Technical Proposal submittal. This may be requested only of the shortlisted Proposer(s) after completion of Phase 1 Technical Evaluation and may only be opened of those proposers who have been shortlisted after Phase 2 Technical Evaluation and Oral Interviews.

END OF SECTION 2, GENERAL INFORMATION

SECTION 3, ARTICLE 1: General Provisions

3.1.12 Institutional Profile of University of Maryland, Baltimore:

The University of Maryland, Baltimore (“UMB” or “the University”) is in the City of Baltimore and is the State of Maryland’s principal professional education and medical center focused on the health and condition of our society. The campus is comprised of the University of Maryland Schools of Dentistry, Law, Medicine, Nursing, Pharmacy, Social Work, the Graduate School, the Thurgood Marshall Law Library, and the Health Sciences and Human Services Library. The campus also encompasses the closely related but independent UMB BioPark, University of Maryland Medical Center (UMMC), including the Shock Trauma and Cancer Centers, the Maryland Institute for Emergency Medical Services Systems, the Institute for Human Virology, and the regional Veterans Administration Medical Center. The seventy-five-acre campus is comprised of 65 acres occupied by the University of Maryland, Baltimore and 14 acres occupied by the related institutions. The campus is a densely developed urban setting of approximately 23 city blocks at the western edge of Baltimore’s central business district. A daily campus population of over 25,000 persons – including enrollment of more than 6,800 students engaged in professional education, research, health care and outreach services that improve the lives of not only Maryland’s citizens but the world’s population.

3.1.13 Relationship of University and Construction Manager

The Construction Manager (CM) accepts a relationship of trust and confidence between themselves and the University. The Construction Manager agrees to furnish their best skill and their best judgment and to cooperate with the Architects and Design Engineers in furthering the interests of the University and the project. The Construction Manager shall furnish efficient engineering completeness of design and constructability reviews, business administration, field supervision and shall use his best efforts to perform the work in the best and most expeditious, economical manner consistent with the interests of the University, and in strict conformity with the contract documents, including reasonable implications therein.

3.1.14 Project Team:

The University, the Architect, the Design Engineers and any other project consultants and the Construction Manager (CM) shall be called the "Project Team". It is our intent that the "Project Team" shall work from the beginning of this project through construction completion and that the A/E shall provide leadership to the Project Team during the design phase and the CM shall provide leadership to the Project Team during the construction phase.

The University shall designate a UMB-FO Project Manager who shall be the University contact point during the Design and Construction Phases. This representative shall be the primary channel of communication to the University and shall act as the University's liaison with the Project Team.

The University shall be the principal reviewer and decision-making authority within the Project Team. In the event of any disagreement or dispute between any members of the Project Team regarding the project, the University shall be the final decision-making authority.

The University is committed to a "Partnering" approach to the successful design and construction of its projects. The University defines partnering as collaboration among professionals (University, CM, A/E, and Trade Contractors) to maximize the success of a project while understanding and respecting the responsibilities and expertise of each team member. In light of this approach, the University has established on this project an allowance to be included in the CM's contract (see Section 3 Article 2, Item 3.2.6.A. for details).

3.1.15 Insurance Coverage Requirements: See Contract General Conditions in Attachment I (Section 00700)

3.1.16 Contractor Reporting of Suspected Child Abuse and 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:

<http://www.umaryland.edu/oac/report-a-concern/report-suspected-child-abuse-or-neglect/>

The Policy and Procedures are incorporated herein. The University 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 the University, termination is necessary to protect the safety and welfare of children who come into contact with the University community.

END OF SECTION 3, ARTICLE 1: GENERAL PROVISIONS

SECTION 3, ARTICLE 2: Summary of CM Services

3.2.1 Project Overview:

1. This project includes the complete fit out of the fifth and sixth floors of Health Sciences Facility III (HSF III) totaling approximately 64,500 square feet of space for three research entities; the University of Maryland Greenebaum Comprehensive Cancer Center (UMGCC), The Kahlert Institute for Addiction Medicine, and the University of Maryland Medicine Institute for Neuroscience Discovery (UM-MIND). The fifth floor consists of approximately 34,500 sf of space dedicated to laboratory research and supporting administrative functions for the UMGCC and Kahlert Institute while the sixth floor consists of approximately 30,000 square feet of space dedicated to laboratory research and supporting administrative functions for UM-MIND. Each floor will be built to suit the spatial needs of the research entities while generally conforming to the standardized plan arrangement and laboratory/laboratory support/office ratios of the existing HSF III building.

In addition, other objectives that must be addressed by this project include but are not limited to include:

- The building will remain occupied and must maintain uninterrupted functionality throughout the duration of this project.
- All systems must be designed to ensure continuous operation without any disruption.
- Coordination shall include multiple UMB stakeholders.

3.2.2 Project Development/Scope:

- A. **Project Delivery Method:** The University will employ the Construction Management at Risk/CM with GMP (CM at Risk) contract method.
- B. The design for the project construction (exclusive of the hazardous material abatement) is to be prepared by an Architect/Engineer under contract with the University.
- C. Under the RFP, the University intends to employ a Construction Management (CM) firm to aid the University in the management of the design and construction processes to perform the following (see Article 3 of this Section 3 for further descriptions). The CM will be providing:
 - (1) **Pre-Construction CM Services** as a reimbursable to be billed against a University established allowance of **\$100,000**. Anticipated pre-construction services may include but not be limited to the following:
 - Attendance at Design Meetings (selective)
 - Constructability/Biddability Review
 - Limited Cost Analysis
 - Procurement and Construction Schedule

- Site Logistics & Constraints planning
- Analysis of alternative schedule for acceleration (this may include pre-purchase of long lead items)
- Bidding and GMP Preparation

(2) **Construction CM Services** with general conditions services being provided on an allowance basis.

D. **Project Construction Budget:** The Project Construction Budget (or Design-to-Dollar (DTD) amount) are those funds available for the construction of the Project inclusive of all CM construction costs (i.e., CM construction fee, staff reimbursables, general conditions and CM/GMP contingency) exclusive of the University's contingency and the A/E fees. **The DTD amount for this project is Twenty-Five Million Dollars (\$25,000,000).** The A/E is obligated to design the Project within this specified amount, and the CM is obligated to keep GMP costs within this specified amount based on the project program.

Please note: This project will be a prevailing wage rate job. Prevailing wage rates will be provided to the successful firm at the appropriate time prior to the bidding of the trade work. The CM will also be required to comply with apprenticeship requirements for public works contracts.

E. **Project Scope:** The Project consists of the following key elements:

The design and the construction of the Facility conforming to all requirements specified in this solicitation, the 23-326 HSF III 5th & 6th Floor Tenant Space Buildout drawings and specifications, and in accordance with the Current Edition of University of Maryland, Baltimore Architectural and Engineering Design Standards, Current Edition of [UMB – Urban Design Guidelines](#), and the Current Edition of [University of Maryland, Baltimore Procedure Manual for Architectural/ Engineering Services](#).

This project will include both demolition of existing and installation of new interior partitions, doors, glazing, finishes (floors, walls, ceilings), casework, fixtures, accessories and mechanical distribution systems, plumbing, electrical distribution systems, AV and IT distribution, and security integration.

F. **Project Schedule:** The project construction is to provide for Substantial Completion within the identified time frame for the project.

The **Pre-Construction CM Services** time frame is as follows:

- Misc. Pre-construction Services CM Award through 100% CD Issuance (anticipated April 3 – June 14, 2024)
- Bidding/GMP Prep (8 weeks)
- Submit draft GMP to UMB Design & Construction – estimated August 9th

- Submit GMP to CFSA – no later than August 20th
- Board of Public Works approval – anticipated October 2, 2024

The **Construction CM Services** time frame is:

- within fifty-two (52) weeks from Construction Notice to Proceed to Substantial Completion.

The contractual Project Schedule, ending at Substantial Completion, will be reestablished based on the Construction Notice to Proceed date and Construction duration stated here. The schedule being provided is preliminary and the CM should not expect each individual line-item date to be met; the University and AE are currently working from this schedule. The specific line-item dates are subject to change and the only dates the CM should expect to remain in place are the month in which the design and construction start and the month substantial completion occurs.

The University desires to improve upon this schedule wherever possible within the limits of funding availability. This will be analyzed during Pre-Construction.

As previously indicated, the University has elected to use the Construction Management at Risk contract method for this project. The CM will, therefore, need to coordinate its efforts with the A/E of Record, Design Collective.

Based on this method, all CM costs during the construction phase (fee, staff reimbursables, general conditions non-personnel items and CM-GMP contingency) are **included** in the Project Construction Budget noted above.

See Section 3, Article 4 for the Construction Manager's obligations.

3.2.3 **Purpose and Definition of Construction Management with Guaranteed Maximum Price**

The Construction Management with Guaranteed Maximum Price (CM with GMP) method centers on utilization of a Construction Manager, who is a member of the Project Team with the University, Architect/Engineers and other consultants as the project may require.

During the Pre-Construction/Design Phase, the CM will utilize his skills and knowledge of construction to develop schedules, prepare construction cost models/estimates, conduct value engineering studies, study labor conditions, identify and address design completeness, constructability and biddability issues, and advise on the sequencing of construction work for and Guaranteed Maximum Price of the Project. CM Pre-Construction services will be billed at contractual hourly rates and reimbursed from the Pre-Construction allowance.

During the Construction Phase, the CM will provide services and manage the project (inclusive of the award and management of all trade contracts) in the areas of change order review, quality assurance/inspections, schedule maintenance, cost control, meetings, shop drawing review, processing/monitoring of RFIs and substitution requests and claims resolution and coordination/communication of the activities of the Team throughout the construction phase.

Please note that the CM cannot bid on any trade package; the CM can only perform work of a temporary nature, such as required by the General Conditions, on the project unless unique/special situations occur whereby the University elects to have the CM perform other work; if such a circumstance occurs a contract amendment to the CM would be issued to define this change and the conditions thereof.

The project will be an "open book" job whereby the University may attend any and all meetings, have access to any and all CM records on the project and whereby any and all cost savings revert to the University. The University will pay the CM for its fixed Construction Phase CM fee as well as approved, applicable reimbursable costs under the General Condition allowance (on site, staff reimbursable personnel and non-personnel items) and/or CM Contingency (per Section 3 Article 4, Item 3.4-A.5.2) for actual expenditures only without any CM mark-up of any type.

Construction Management Procedures, which are to be established by the CM during the design phase, will allow for the integration of all design and construction phase components of this project. The team approach shall, from project inception, strive for project delivery that is timely, cost effective and within required quality standards set by the University.

3.2.4 University of Maryland, Baltimore General Conditions

All work shall be performed and administered in accordance with the Contract, including but not limited to, the Attachment I UMB General Conditions (Section 00700). The University intends to create a "General Conditions" allowance based on the CM's quoted not-to-exceed costs for General Condition items (inclusive of on-site, field staff reimbursables) to cover reimbursable costs, which will be associated with construction of this facility. Items that UMB will expect to pay from the established allowances are described herein (see "**Section 3 Article 5**"). Allowance expenditures must be approved by UMB prior to the provision of said services.

3.2.5 Construction Management Fees:

A. **Pre-Construction (Design Phase) CM fees** will be handled **outside of the GMP as a reimbursable**.

*Note: Since this allowance is set up by the University, it will be the University's responsibility to replenish this if necessary; please note, however, that no costs are to be expended from the allowance without the **prior written approval** of the

University; if the CM expends such monies without the University's approval, he does so at his own risk.

B. Construction Phase CM fees, the project's "General Conditions" allowance and the CM-GMP Contingency are to be included in the applicable GMP.

- (1) **CM Fee:** The CM fee shall be an all-inclusive lump sum management fee which will include all CM home office costs inclusive of officers and home office and local office support staff not noted in on-site field staff (Section 3 Article 5) as well as all CM overhead costs and profit.

The only CM costs which are **not** to be included in the CM fee are trade contracts, General Conditions (as noted in Section 3 Article 5), and CM-GMP contingency.

Please note: There will **not be any adjustment made to the CM fee** on this project unless determined otherwise by the University under paragraph 3.4-B.10.

- (2) **General Conditions:** An allowance for General Conditions will be established by the CM (and approved by the University in its review and approval of each GMP) in each GMP for General Conditions items per Article 3 and Article 5 of this Scope of Work.

Please note: The **CM is not to expect that any change order will allow for an increase in General Conditions costs**. In addition, General Conditions costs related to any change orders/amendments to the CM contract will be reviewed on an individual, change order basis; a determination will be made as to the need for requested General Conditions increases related to the change order.

- (3) **CM Contingency:** To be used by the CM in accordance with Section 3 Article 4, Item 3.4-A.5.2.

- (4) Payments of the CM Fee, General Conditions' reimbursable costs, and CM Contingency due the CM will be authorized/ distributed pursuant to **Article 3** of this Scope of Work and to the Attachment I Standard Conditions (Section 00700), as amended.

END OF SECTION 3, ARTICLE 2: SUMMARY CM SERVICES

SECTION 3, ARTICLE 3: UNIVERSITY'S ROLE

- 3.3.1 **Information Requirements:** The University shall provide and furnish information regarding its requirements for the Project as applicable and as needed during all phases of the project.
- 3.3.2 **Design Services:** An Architect/Engineer (A/E) will be retained under contract with the University for design of the project construction and the preparation of design documents for the project (exclusive of the hazardous material abatement).
- 3.3.3 **Designated Representative:** The University shall designate a University Project Manager who shall be the University contact point during Pre-Construction and Construction Phases. This representative shall be the primary channel of communication to the University and shall act as the University's liaison with the CM.
- 3.3.4 **Decision Making Authority:** The University shall be the principal reviewer and decision-making authority within the Project Team. In the event of any disagreement or dispute between any members of the Project Team regarding the project, the University shall be the final decision-making authority.
- 3.3.5 **Review and Approve Payments to Construction Manager in accordance with the following:**
- A. **Pre-Construction CM Services:**
- (1) Payments shall be made on the evaluation of work accomplishment.
 - (2) Such payment requests are to be submitted on University approved forms.
 - (3) Application for payment shall be submitted on/or about the 25th day of each month, but not less than thirty (30) days after commencement of services.
 - (4) The CM will be paid for 100% of the approved monthly, Construction Manager's fee earned.
- B. **Construction Phase CM Services**
- (1) Payments of the Construction CM Fee shall be made on the evaluation of work accomplishment. The Construction Manager will be paid for 100% of the approved monthly, Construction Manager's fee earned.
 - (2) Application for payment shall be submitted on/or about the 25th day of each month, but not less than (30) days after commencement of service.
 - (3) Trade-Contracts, Equipment Rentals, and Material Payment
 - (a) No mark-up for overhead or profit will be charged by the Construction Manager for Trade or Sub-Contracts, Equipment purchases and Material Payments.
 - (b) Progress payments to trade or subcontractors shall be administered in accordance with the Standard Conditions; that is, 95% of the Subcontract, Equipment Rentals and Material Payment invoices will be paid with 5% being withheld to assure faithful performance of the contract. (See

Attachment I UMB General Terms and Conditions, Section 00700, paragraph 8.04 regarding retainage.)

(4) Reimbursables under General Conditions Allowance

The CM will be reimbursed for actual costs only as no mark-up is allowed by the CM. Competitive pricing shall be solicited whenever practical. Expenditures from this allowance can only be made with the approval of the University prior to the provision of said services, which shall not be unreasonably withheld. The CM will be required to provide a "General Conditions" billing back-up in a UMB approved format that is derived from the CM's computer based project accounting/tracking system. Tools, equipment, and other durable items purchased under this allowance become property of the University to be turned over to the University or disposed of at the University's discretion at the end of the project.

Costs for on-site field staff will be paid on a reimbursable basis based on the quoted, hourly billing rates or less, which are to include all costs as noted below through this General Conditions allowance**. Field personnel costs shall be billed at Direct Personnel Expenses with no employee overhead mark-up. Direct Personnel Expenses are raw employee costs (direct salary) plus actual burden costs which include but are not limited to bonus, FICA, SUTA, FUTA, 401K, cell phones, field personnel pagers, two-way radios, auto allowance, housing allowance, computers and computer support costs (including hardware, portable computing devices, software, technical support, etc.), vacation leave, sick leave, holidays, jury duty leave and bereavement leave. The on-site field staff are **limited to the positions that are identified in the cost proposal and are staff working on-site**. The following positions must be Full-time: (i) Field Superintendent(s) (ii) Project Manager. Assistant Project Manager, Assistant Superintendent, Project Engineer may or may not be assigned as full or part time positions as determined by the CM. **All CM positions which are not on-site (including Project Executive) must be included in the CM Construction Phase fee. Positions for which prevailing wage rates apply (i.e., Laborer, Carpenter, etc.) shall be included in the CM's non-personnel general conditions.**

***Notes:**

- The Project Manager is to be a salaried position; that is the University will reimburse a maximum of forty (40) hours per week for this position; therefore, the quoted billing rate should be based on this maximum number of hours allowed per week.
- In the case of the Test Engineer and Commissioning Support Engineer, it is acceptable to the University that these roles be handled by other positions within the CM team except the Project Manager and Field Superintendent if a Proposer elects to do so; that is, the roles of Test Engineer and Commissioning Support Engineer **cannot** be performed by the Project Manager or Field Superintendent but can be performed by any of the other CM positions. Should this be the case, the Proposer is to so

note this on the Price Proposal form in the space provided for the hourly billing rates for these positions (i.e., N/A see Project Engineer, etc.).

- A dedicated Close-Out Engineer is not required for this project. This role can be handled by a person who is involved in the construction portion of the contract if the CM elects to do so.
- The CM must provide a detailed worksheet of labor rates and positions for Non-Personnel General Conditions labor rates, CM's monthly payment applications must include a detailed job cost labor reports substantiating actual costs.

(5) Use of CM Contingency in accordance with Section 3 Article 4, Item 3.4-A.10.

Allowance expenditures shall be approved by UMB prior to the provision of said services.

Application for payment shall be submitted on/or about the 25th day of each month, but not less than (30) days after commencement of service.

Payment of approved reimbursable items will be made on a monthly basis with no retainage applicable.

3.3.6 Payment of University Obligations

Payments to the Construction Manager pursuant to this Contract shall be made no later than thirty (30) days after the University's receipt of a proper invoice from the Construction Manager. Charges for the payment of invoices, other than as prescribed by Title 15, Subtitle 1 of the State Finance and Procurement Article of the Annotated Code of Maryland or by the Public Service Commission or Maryland with respect to regulated public utilities, as applicable are prohibited.

END OF SECTION 3, ARTICLE 3: UNIVERSITY'S ROLE

SECTION 3, ARTICLE 4: CONSTRUCTION MANAGER'S OBLIGATIONS

The Construction Manager's services shall consist of the two (2) main parts described as follows:

Part A: To provide the limited Pre-Construction Services requested by the University as a reimbursable expenditure against the Pre-Construction Allowance.

Part B: To provide Construction Phase CM services as required to complete construction of the HSF3 5th & 6th Floor Fit-Out and to maintain the established GMP for the Project.

3.4-A Part A: To provide preconstruction services inclusive of an acceptable Guaranteed Maximum Price (GMP) for the project. The specific Pre-Construction tasks will be identified by the university based on need and will be billed as a reimbursable. The descriptions outlined in Items 3.4-A.1 – 3.4-A.7 are provided for informational purposes only to demonstrate the university's definition of each effort and general expectations. Items 3.4-A.8 – 3.4-A.11 pertaining to the bidding and GMP process will apply.

3.4-1.1. Project Review

3.4-1.1.1 The Construction Manager shall meet with the University, Architect, Design Engineers and other design team members to fully understand the Program, the design documents, the project scope and all other pertinent aspects of the project such that the CM's estimates, reports and related deliverables reflect a complete project. The CM's staff is expected to be fully familiar with the Program documents as well as the University's Design Standards.

3.4-1.1.2 The CM shall become an integral part of the Project Team that will coordinate the development and progress of the design and construction processes.

3.4-1.1.3 The CM shall develop project procedures, in cooperation with UMB that will be used as a guide for the management and coordination of this project throughout the life of the project.

3.4-1.1.4 Design meetings will be held at a maximum of every two (2) weeks. These meetings are to be attended by the CM's Project Manager and periodically by the CM Project Executive to ensure that the prime contact person (CM Project

Manager) and a back-up person are up-to-date at all times. In addition, the CM is expected to have its Field Superintendent and Estimator(s) in attendance at select meetings based on the agenda items.

- 3.4-1.1.5** There will be other special work sessions related to specific issues that are identified during the design phase, meetings with the Fire Marshall, Design Submittal Review meetings, and internal work sessions with the A/E to which the CM's Project Manager is expected to be in attendance. The intensity of such meetings will be higher in the earlier phases of the design. All proposing CM firms are to anticipate meetings every ten (10) days during the design phase.
- 3.4-1.1.6** The Construction Manager's personnel are expected to review and be well versed in the Project Program and Design Standards; particularly, the CM Project Manager and Estimators.

Note: The CM is to have a representative at every meeting, presentation, etc. during the design phase; it is the University's expectation that this person is the CM Project Manager.

3.4-1.2. Consultation During Project Development

- 3.4-1.2.1** Construction Manager shall attend regularly scheduled meetings with the Architect and Design Engineer during the development of the design to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment. He shall provide recommendations on construction feasibility as well as completeness of design such that the CM's estimates, reports and related deliverables reflect a complete project.
- 3.4-1.2.2** CM Project Manager and, as appropriate, the CM Project Executive, Estimators and Field Superintendent to attend the Design Progress meetings during the development of the design to advise them on matters relating to site use, improvements, selection of materials, building methods, construction details, building systems and equipment. The CM shall provide recommendations on construction feasibility as well as completeness of design such that the CM's estimates, reports and related deliverables reflect a complete project.

3.4-1.3. Value Engineering

- 3.4-1.3.1** The Construction Manager shall, after a complete review of the Project Program and understanding of the intent of the University and the A/E, provide value engineering services and offer cost savings suggestions and best value recommendations to the University. All recommendations must be fully reviewed with the University and approved prior to implementation. The University views value engineering as an ongoing process. The CM is expected, therefore, to be pro-active and participate on an ongoing basis relative to VE ideas.
- 3.4-1.3.2** Value engineering efforts shall result in a design that is most effective in first costs as well as long term operational costs relative to issues of energy use and facility maintainability. Value engineering studies shall include Life cycle cost analysis as may be required to achieve an appropriate balance between costs, aesthetics and function.

- 3.4-1.3.3** Value engineering efforts shall also take into consideration applicable constructability and biddability issues.
- 3.4-1.3.4** The CM shall notify, in writing, the University upon observing any features in the design that appear to be ambiguous, confusing, conflicting, or erroneous.
- 3.4-1.3.5** All value engineering studies must be provided on a timely basis within the design schedule.
- 3.4-1.3.6** Value engineering studies shall be continuous as the design is being developed.
- 3.4-1.3.7** There shall be a major value engineering study at 100% schematic design and 100% design development (utilizing the design development documents) and 50% CDs which shall include, but not be limited to, the items noted below, conducted and/or provided by the CM firm. Although the major VE session is expected at 100% DD, it is not intended to be the only VE discussion; rather it is anticipated that most of the potential VE savings be identified prior to 100% DD documents.
1. Develop value engineering concepts for consideration at the session noted in Item “b” below (it is anticipated that the A/E will be concurrently conducting a similar activity);
 2. Brainstorming session(s) with design team;
 3. Written cost studies shall be produced and submitted to the University within two (2) weeks of the final brainstorming session;
 4. Written pro/con evaluation of the cost studies shall be provided to the University within two (2) weeks after submission of the cost studies;
 5. Formal presentation of the study to be conducted by the CM firm; and,
 6. Formal submission of the value engineering study document inclusive of a summary of value engineering items, applicable cost savings, selected items and their corresponding cost savings.
- 3.4-1.3.8** The CM shall also conduct value engineering studies during the remainder of the Design Development Phase and the Construction Document Phase to evaluate specific items as requested by the University and as otherwise needed to keep the project within budget.
- 3.4-1.3.9** The CM takes the lead on this VE effort inclusive of compiling all VE ideas from all Project Team members (A/E, CM and University), determining the applicable dollar value of each and conducting the VE session with the Project Team at which time the team makes its recommendations to the University. When the CM documents the VE ideas, the CM is to show how the dollar values were derived for each VE item.
- 3.4-1.3.10** The Construction Manager is to review the University’s standard VE format with the A/E and University at the onset of design.
- 3.4-1.3.11** The Construction Manager is to anticipate the need for VE as part of the design schedule; that is, at the commencement of each phase and the determination of

the due dates for the design submittal and associated cost estimate and reconciliation, the schedule is to include VE meetings as follows:

1. VE meeting of the Project Team to generate and document ideas (allowing sufficient time, at least 1 week, between the cost estimate reconciliation and this meeting for parties to develop ideas).
2. The CM is responsible for establishing dollar amounts for each VE idea with back-up provided to substantiate how the VE savings was determined.
3. VE meeting to review the VE log and determine the Project Team's recommendations (accepted, pending-1, pending-2, reject). Note: The total possible dollar savings of VE items must exceed the total amount of the project deficit as not all VE ideas will be acceptable to the University.
4. Final VE meeting at which time decisions are made with the A/E, CM, UMB-FO and the University's end user(s), as appropriate. At the time of the 100% CD estimate, these are to be absorbed, moved into the trade activity line items
5. The agenda for VE sessions is to be prepared by the CM. Since the Architect is present for all VE, this agenda usually covers mechanical and electrical disciplines first so that the engineers can leave after this discussion and the session can continue.

Note: As noted above, value engineering relates to the achievement of an appropriate balance between costs, aesthetics and function. Based on this, value engineering should be conducted at each design submittal regardless of whether the project costs are within the "design-to-dollar" amount; that is, the Project Team needs to confirm that the University is getting the best "value."

3.4-1.4. Schedule

3.4-1.4.1 The CM shall utilize and maintain a University approved computer-based software scheduling system, which will allow the CM to provide appropriately detailed design and construction phase CPM schedules. The CM may also be asked to develop schedules related to construction sequencing options. Schedule submissions are to include a copy in native format (example: Primavera 6) and show project float.

3.4-1.4.2 Scheduling software shall allow for integration of all aspects of the design/construction processes and provide for coordination of all work to be performed. The scheduling software shall be capable of producing and coordinating logic developed network diagrams, Pert charts and Gantt chart format reports.

3.4-1.4.3 The project schedule shall be sufficiently detailed to allow for a realistic projection of design and construction activity sequences and durations. Updated schedules will be required with each major design document submission and with major value engineering decisions; these schedules are due to the University no later than five (5) business days from each design submission or value engineering

decision.

- 3.4-1.4.4 The CM shall within fifteen (15) days of selection and written notice to proceed, provide the University with the format for the CPM schedule for the design and construction phases of the project. This schedule will be reviewed for compliance with overall project completion requirements relative to the University's occupancy needs.
- 3.4-1.4.5 This CPM schedule shall include a projection of all design and construction phase activities to include CM staff loading throughout the design/construction phases of the project. It is intended that this CPM schedule will be utilized throughout the design and construction of this project.
- 3.4-1.4.6 The CM is to establish a detailed, CPM schedule for use during the pre-construction/design phase with the concurrence of the University and the A/E. The CM is responsible to monitor this schedule during the pre-construction/design phase, ensure that this schedule is maintained and advise the University of any deficiencies in adhering to this schedule by any party.
- 3.4-1.4.7 The CM may use Third Party Scheduling Consultants only with the review and approval of the University.
- 3.4-1.4.8 The CM is to invite the University Project Manager to all scheduling update working sessions.
- 3.4-1.4.9 The University will not consider a request to revise partial or contract completion dates or design and construction phase activities as outlined above without submission of a change as specified in Section 3.06 "Changes in the Work" of the Attachment I Standard Conditions (Section 00700), including timeliness, and without documentation from the project schedule, including updates, supporting the need for a revision. The University will evaluate the information submitted and determine the time extension due, if any. The University will not grant a time extension based on pleas that the contract specified insufficient time for the completion of the project.
- 3.4-1.5. **Constructability Review:**
 - 3.4-1.5.1 CM is to review the design throughout the pre-construction/design phase as to completeness of design, constructability and biddability issues. On each issue, the CM is to do the following on a timely basis within the design schedule: (1) Description of completeness of design, constructability and or biddability issue with background information; (2) in-depth study/research; and, (3) written report inclusive of CM's recommendation for addressing and justification therein. Such reviews/studies are also to be conducted as requested by the University. The CM is expected to view the design from the completeness and constructability perspective throughout the design phases inclusive of construction phasing and/or sequencing options, if any.
 - 3.4-1.5.2 A completeness of design, constructability review of the design documents maximizes the ease and efficiency with which a builder can bring together labor, equipment, and materials to complete the project/program within the University's requirements. Completeness of design and constructability reviews help the team confirm the design intent, verify that the documents follow regulations and University requirements, and resolve system integration,

materials, equipment, scheduling, trade coordination, and construction issues early, therefore avoiding rework and improving quality. An independent team led by the construction manager should preferably perform this review, not the design team.

- 3.4-1.5.3** A biddability review analyzes the bid documents to decide if the project or program could be bid in the marketplace. The biddability review aims to determine if the design specifications and duration are accurate, complete, and realistic to meet the University's requirements. The construction manager should lead a biddability review with help from an independent cost estimator and scheduler.

Note: The University expects the CM to do a completeness of design, constructability and biddability review at each design submittal (i.e., 100% SD, 100% DD, etc.) with a written report.

3.4-1.6. Construction Cost Model/Estimates

- 3.4-1.6.1** The CM shall develop a project budget/cost model (independent from the A/E), which will require updating at multiple intervals during design phase for the project. The base cost model format shall be developed and presented to the University within thirty (30) days after the CM's Pre-Construction Notice to Proceed is issued and will require updating as described herein. Due to the changing economic climate, all cost models are to be construction based not data based; that is, the CM is to develop its estimates with its in-house capabilities and test its estimates from pricing of trade work directly from the market place rather than based on data retained in the CM's files.

1. A full scale update of the cost model is to be provided within ten (10) working days (unless an alternate duration is agreed upon by the project team) after the 100% submission of the Design Development Documents for approval.
2. A full scale update of the cost model is to be provided within ten (10) working days (unless an alternate is agreed upon by the project team) after the 50% submission of the Construction Document documents for approval.

Note: Where required cost models exploring several options shall be provided during the concept phase.

- 3.4-1.6.2** Each cost model must contain a statement of the total amount determined under that construction cost estimate to be the total hard construction costs for the Facility in accordance with the Program ("Probable Construction Costs").

- 3.4-1.6.3** The Project Construction Budget is as stated in Section 3 Article 2 Item 3.2.2.D.

- 3.4-1.6.4** In the event that the Probable Construction Costs exceed the Project Construction Budget the University reserves the right to direct the CM to (and the CM shall) work in conjunction with the Architect/Engineer to redesign the Facility as necessary to maintain the Project Program and meet the Project Construction Budget without additional compensation to the CM.

- 3.4-1.6.5** If the Probable Construction Costs (as submitted at 50% Construction Documents) exceeds the funds appropriated by the Legislature or allocated by the

University or the University System of Maryland for construction of the Facility, the University reserves the right to direct the CM to (and the CM shall):

3.4-1.6.5.1. After consultation with the University, shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the necessary reduction in cost and shall repeat as necessary.

3.4-1.6.5.2. Develop and provide to the University a Probable Construction Costs in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.

3.4-1.6.5.3. Analyze the Architect/Engineer originally submitted and as altered and redrafted construction documents and make recommendations to the University as to ways and methods to reduce the costs of constructing the project to a sum which does not exceed said appropriations.

Notwithstanding anything in the RFP to the contrary, the CM shall perform the work set forth in this Section 3 Article 4 Item 3.4-A.6.4 without additional compensation.

3.4-1.6.6 The Construction Manager's detailed cost models as required and Probable Construction Costs will be reviewed by the Architect and the University for reasonableness and compatibility with the Project Construction Budget. Meetings and negotiations between University, Architect and the Construction Manager will be held to resolve questions and differences that may occur within the Project Construction Budget and the Construction Manager's cost model. If indicated by the Project Construction Budget limitations or other circumstances, the Construction Manager shall work with the University and Architect to reach a mutually acceptable Probable Construction Cost.

3.4-1.6.7 The cost model format must be coordinated between the CM and the A/E to ensure compatibility and be approved by the University. The CM is required to reconcile its estimate with the A/E's estimate at 100% DD and 50% CD and subsequently with the University.

3.4-1.6.8 The CM is also required to provide cost estimates on an ad hoc basis in the early design phases to respond to reviews of different design options as well as cost comparison of different systems (such as the structural system).

3.4-1.6.9 Notes on the Cost Estimate:

1. The Table of contents for the cost estimate should include the following:
 - Summary sheet of the (1) total costs per trade with the cost per gross square foot indicated for each trade, (2) escalation, (3) design/detail contingency and (4) CM total costs. Note: If there is a hazardous material abatement allowance, it is not included in the cost estimate as it is not part of the

“Design-to-dollar” amount.

- Assumptions made in the cost estimate.
 - Detailed back-up information for each trade inclusive of material and labor take-offs.
2. Prior to each cost estimate, the following factors must be determined:
- Escalation: Percentage to be carried for escalation (with consideration to the escalation rate used by the Department of Budget & Management). At the time of the 50% CD estimate, these are to be absorbed, moved into the trade activity line items; and,
 - Design/detail contingency: Percentage to be carried for design details that are not yet documented and are difficult to anticipate. The percentage of the design/detail contingency is lowered as the design progresses. The University usually finds that 10% is carried at 100% DD and 5% at 50% CD. These percentages are usually carried unless the status of the project design warrants a different percentage.
 - The CM quoted costs (i.e., fee, reimbursables, and contingency) are fixed and, therefore, should be carried on the cost estimate “below the line” meaning that these costs are NOT subject to escalation and/or design/detail contingency.
 - Once the due date for a cost estimate is established, the Construction Manager is to work with the University’s Project Manager to schedule the Cost Estimate Reconciliation meeting and confirm in writing with all parties (A/E, CM, UMB-FO including the design review team). This meeting is usually scheduled 2-3 days after the due date for the cost estimate. As with VE, the agenda for this reconciliation meeting needs to be established with usually engineers first (mechanical, electrical, structural and civil) as the architect, CM and University Project Manager will be attending the entire meeting.

3.4-A.7 Coordination of Contract Documents

3.4-A.7.1 The Construction Manager shall review the drawings and specifications as they are being prepared, identifying incomplete or missing information and recommending alternative solutions whenever design details affect costs, construction feasibility or schedules. The Construction Manager shall notify the Architect and the University in writing upon observing any features in the plans or specifications, which appear to be ambiguous, confusing, conflicting or erroneous. Such ambiguous, confusing, conflicting and/or erroneous features discovered in the plans or specifications by the CM during the review process shall be understood to be corrected and any associated costs shall be included in the CM's Guaranteed Maximum Price (GMP). The University expects the

Construction Manager to submit written comments at each design submittal (as the University does).

3.4-A.7.2 A/E Team's Responsibilities for Coordination:

3.4-A.7.2.1 The Architect is ultimately responsible for design and coordinating the documents of all the Architect's consultants is a "critical task". The point of interface between two or more disciplines is the source of many errors and omissions. The Architect should develop a careful systematic approach in order to ensure a "complete and fully coordinated set of construction documents". The Architect needs to review the documents to make certain that all items shown on the drawings are specified and that the engineering systems will fit in the physical areas designed for them. Details, schedules elevations and sections must agree with each other.

3.4-A.7.2.2 Consolidating the drawings from the other disciplines must happen with enough time left for coordination review.

3.4-A.7.2.3 During the construction phase, the Architect review shop drawings to ensure that submittals are in conformance with the design concept of the project and with information provided in the Contract Documents.

3.4-A.7.2.4 The Architect has no legal or contractual obligation to coordinate between shop drawings or to alert the Contractor of any incompatibility between different submittals; rather, the Contractor has this responsibility.

3.4-A.7.3 The Prime Contractor's Responsibility for Coordination:

3.4-A.7.3.1 The purpose of shop drawing review by the Contractor is to coordinate the trades and verify that the project can be built as designed. The Contractor is responsible for the means and methods, sequence and procedures of construction and verification of field dimensions. The Contractor is responsible for safety. The Contractor's review of shop drawings requires the Contractor to check the detailed dimensions of the submittal against other shop drawings and plans covering the same physical scope encompassed by the submittal. In this way the Contractor coordinates the various parts of the puzzle and can require any corrective action before the brick and mortar go up. It is the builder's responsibility to ensure that the process of construction is feasible and safe.

3.4-A.7.3.2 The Contractor must review and stamp each shop drawing to show that the Contractor has reviewed the shop drawing in compliance with the Contractor's responsibilities under the Contract Documents. These responsibilities include safety, installation requirements and a review and comparison and coordination with other shop drawings (presumably those which impact on the areas of the work encompassed by the shop drawing under consideration). By approving and submitting shop drawings and samples, the Contractor represents that he has verified all "field construction criteria".

3.4-A.7.4 Coordination Drawings/BIM Information Modeling:

3.4-A.7.4.1 The coordinated set of design drawings is in many ways diagrammatic. Coordination Drawings are composite drawings produced by the Contractor, of equipment and systems furnished usually (but not necessarily) by different trades, such as mechanical, electrical and lighting, plumbing, fire-protection, conveyors, pneumatic tubes, acoustical ceilings, millwork and the like, intended to be installed in tight spaces

such as ceilings, shafts, etc. They flesh out the design by showing all the components designed and specified by the Architect and proposed by the Contractor, arranged together in such a manner as to accommodate the sequence they will be installed in, the means, methods, techniques and procedures, with due consideration given to issues of safety, field dimensions and other field criteria.

- 3.4-A.7.4.2** Coordination Drawings are a requirement of the Contract Documents; their purpose being to demonstrate that the Contractor has in fact coordinated the trades; that the Contractor has verified all field construction criteria including dimensions, verified the installation sequence, means, methods, techniques, ascertained safety and that in light of all of this, the project can be built as designed.
- 3.4-A.7.4.3** In addition, they help resolve the issues unveiled by detailed Subcontractor participation, or created by acceptance of alternative equipment units. The alternative equipment may have different spatial and service access requirements. Submittal of packaged manufacturer's lines represented by suppliers is commonplace and creates the market logic for some of these substitutions.
- 3.4-A.7.4.4** Coordination Drawings are not a design tool for the Architect to use in completing the design. The A/E shall provide the Prime Contractor and its trade contractors with the design BIM/CAD disks to use as base drawings for the Coordination Drawings and construction model. The Prime Contractor and its trade contractor shall sign disclaimers if requested by the A/E.
- 3.4-A.7.4.5** After the coordination drawing process is delineated in the project schedule, a "preconstruction meeting" shall be held by the Prime Contractor and include the Owner, Design Engineers and the subcontractors involved.
- 3.4-A.7.4.6** At this meeting, the Prime Contractor shall do the following:
- Reiterate the purpose of the coordination drawings,
 - describe the responsibility of each of the parties, and
 - define the design professionals' role in assisting with coordination effort.
- 3.4-A.7.4.7** A description of the end product should be put together, possibly a sample from another project. If the Prime Contractor is not assuming the drafting responsibility, it may be delegated to one of the trades. Alternatively, it could be a distributed responsibility, in which case the Prime Contractor should identify the roles responsibilities and protocols of modeling. The liability of a trade not adequately participating in the process must be identified and stated by the Prime Contractor.
- 3.4-A.7.4.8** The Prime Contractor's coordination drawings are reviewed by the Architect for conformance with the design intent and acknowledgement of changes thereto.
- 3.4-A.7.4.9** Designers shall attend coordination meetings, when requested by the Prime Contractor, to help resolve specific problems that surface, usually in the form of spatial conflicts. Resolution of problems should be a team effort. The Architect and Engineers participate in order to ensure the outcome complies with the design intent.
- 3.4-A.7.4.10** RFI's arising from coordination meetings should only deal with information missing from the Contract Documents necessary to complete the coordination process.

3.4-A.8 Construction Guaranteed Maximum Price (GMP)

3.4-A.8.1 At the point of 100% completion of the Construction Documents for the project, the **CM** will develop and provide to the University a GMP that will include all construction costs, and all other projected costs inclusive of the CM's Construction Phase fee, General Conditions allowance, and CM Contingency but excluding the University/Owner's Construction Contingency. The GMP shall display each proposed trade contract amount; the CM's fixed fee; and all project related costs, i.e. bonds, personnel payroll benefits, etc. Note: The billing rates for the on-site personnel shall be as quoted by the CM in his Price Proposal or less.

3.4-A.8.1.2 The GMP must not exceed the Project Construction Budget for the Project noted above in Section 3 Article 2 Item 3.2.2.D.

3.4-A.8.1.3 The Construction Manager is to provide the GMP to the University within 6-8 weeks of issuance of the 100% Construction Documents.

3.4-A.8.1.4 Prior to the start of GMP bidding, the Construction Manager will review the 100% CD Estimate and reconcile that estimate with the expected budget for each GMP trade package and any expected allowances. The intent of this reconciliation is not to provide a new marketplace estimate, but to remove any contingencies or escalation being carried and make any trade package or allowance revisions/realignments. The University expects the CM to provide this GMP Budget Estimate as part of Pre-Construction Services and this service is included in the Price Proposal as an additional line item.

3.4-A.8.2 The Construction Manager will utilize the 100% Construction documents* as prepared by the Architect and Engineers to invite and receive competitive bids on all trade packages and/or materials as a basis for each GMP submission. This would include work bid as early packages. The Construction Manager will develop scopes of work based on the 100% Construction Documents; in addition, each scope of work shall include but not be limited to, anticipated working hours to address the University's concerns with noise and vibration, coordination between or among trades, outages, temporary facilities, (if required), temporary heat and electric (if required), hoisting, etc.

*Please note: The Construction Manager is required to provide coordinated drawings and/or fully coordinated BIM for all trade work if not required in the 100% Construction Documents for the construction of that phase of the Project. All Proposers are advised to assume that the 100% CDs will not include this requirement; however, the University notes that this effort will be handled primarily by the CM in the Construction Phase with the Coordinated Drawing Engineer under CM Staff Reimbursable Costs.

Please note: The CM is responsible for bidding all trade work. The CM shall advertise the trade work to a broad spectrum of potential sources using, for example, its own network, local newspapers, trade associations and publications, local chambers of commerce and other outlets to promote interest in competing for the trade packages. Any procedures that unfairly restrict competition for the

work may be rejected by the University. The CM is also responsible for competitively bidding any necessary hazardous material abatement trade work (abatement firms and industrial hygiene monitoring services) and anticipated GMP alternative construction work in accordance with the RFP.

Please note: The CM will be required to obtain a schedule/worksheet of labor rates from each trade contractor recommended for award in the GMP, which shall be included with each GMP submission. The labor rates are to include all applicable on site staff rates for the project as defined by the scope of work at the time of the GMP, and be in compliance with Prevailing Wage requirements.

3.4-A.8.3 The Construction Manager is to conduct a qualification process of all Trade Contractors to ensure that all bidding have the necessary expertise. The CM shall submit a copy of its Pre-qualification Form to the University for an informal review.

3.4-A.8.4 The CM shall submit the list of prequalified trade bidders to the University for an informal review.

3.4-A.8.5 The Construction Manager is to conduct the following for all Trade Contracts: Pre-Bid meetings, Bid Opening sessions and Post-Bid meetings, and the University (UMB-FO, UMB CFSA, Coppin State University and other University representatives as necessary) is to be in attendance for all of these. The University reserves the right, in an advisory capacity, to raise questions to the CM at any of these meetings. It is anticipated that a Pre-Bid meeting will be held for each trade package unless otherwise agreed to by the UMB CFSA Office. For scope review meetings, the A/E is to have the appropriate design team member in attendance for the major trades (i.e., mechanical, electrical, fire protection, structural, site work/civil, finishes, etc.).

3.4-A.8.6 The Construction Manager may reject all bids and repeat the bidding for the Trade work or re-package the Trade work activity. If the University rejects a Trade Contractor recommended by the Construction Manager in accordance with Attachment I UMB's General Conditions (Section 00700), the Construction Manager shall recommend an acceptable substitute at no additional cost to the University.

3.4-A.8.7 In the event that the total projected hard construction costs for a phase exceed the Project Construction Budget, the University reserves the right to direct the CM to (and the CM shall) work in conjunction with the Architect/ Engineer to redesign the Facility as necessary to maintain the Project Program and meet the Project Construction Budget.

3.4-A.8.7.1 If the GMP (as originally submitted or adjusted) for the Project exceeds the funds appropriated by the Legislature or allocated by the University of Maryland, Baltimore or the University of Maryland System for construction of the project, the University reserves the right to direct the CM to (and the CM shall):

- a. After consultation with the University of Maryland, Baltimore, shall coordinate and cooperate with the Project Team to alter and redraft Construction Documents as necessary to accomplish the necessary reduction in cost and shall repeat as necessary.
 - b. Develop and provide to the University a GMP in connection with the redrafted and altered Construction Documents to accomplish the necessary reductions in cost.
 - c. Analyze the Architect/Engineer originally submitted and as altered and redrafted construction documents and make recommendations to the University as to ways and methods to reduce the costs of constructing the project to a sum which does not exceed said appropriations.
- 3.4-A.8.7.2** Notwithstanding anything in the RFP to the contrary, the CM shall perform the work set forth in this Section 3 without additional compensation.
- 3.4-A.8.7.3** It is understood that the University has the right to reject any GMP as originally submitted or adjusted and that the Contract consequently will terminate according to its terms and that the Board of Public Works has the right to withhold, in its sole discretion, approval of the amendment of the Contract to reflect any GMP, in which event the Contract will terminate according to its terms.
- 3.4-A.8.8** The Construction Manager's detailed construction cost estimates and GMP will be reviewed by the Architect and the University for reasonableness and compatibility with the Project Construction Budget. Meetings and negotiations between University, Architect and the Construction Manager will be held to resolve questions and differences that may occur within the Project Construction Budget and the Construction Manager's construction cost estimate and corresponding GMP. If indicated by the Project Construction Budget limitations or other circumstances, the Construction Manager shall work with the University and Architect to reach a mutually acceptable GMP (at which time the Construction Manager is required to provide a bid bond per Attachment J of this RFP).
- 3.4-A.8.9** Upon acceptance by the University and approval by the Board of Public Works (BPW), if applicable, of any amendment to the Contract to reflect any GMP, the Construction Manager's GMP as approved shall become a part of the University-Construction Manager Contract. The Construction Manager shall provide the University with a Standard Performance and Standard Labor and Material Payment Bond for 100% of each GMP as set forth in the Standard Conditions.
- 3.4-A.8.10** Early Packages – Early packages may be submitted for long lead items, demolition, and/or work necessary to maintain the project schedule. Early packages shall be complete for the intended scope of work, including work that could reasonably be inferred from the contract documents. Reasonable allowances may be included for work difficult to quantify or details not yet identified at the interface with future packages.

3.4-A.8.11 University Allowances are allowances that protect the University from unforeseen conditions. With the approval of the University, University allowances may be held by the trade contractors or the CM. The University is responsible for replenishing expended University Allowances if required. Unused University Allowances revert to the University.

3.4-A.8.12 CM Allowances are allowances (subject to University approval) for items in the scope of work (or reasonably inferred from the Contract Documents) that are difficult to quantify. Such allowances must be reasonable, relatively minor and well defined. Allowances may only be used for their intended purpose. The CM is responsible for replenishing expended CM Allowances if required. Unused CM Allowances revert to the University.

3.4-A.8.13 Trade Allowances are allowances included in the subcontractors bid on bid day for items in the scope of work (or reasonably inferred from the Contract Documents) that are difficult to quantify. Such allowances must be reasonable, relatively minor and well defined. Allowances may only be used for the intended purposes. The CM and/or subcontractor are responsible for replenishing expended Trade Allowances if required. Unused Trade Allowances revert to the University.

3.4-A.8.14 The CM shall provide a summary spreadsheet of all the CM, University and Trade Allowances as a part of the GMP. Trade allowances shall also be included on the final bid summary sheet for each trade. A Summary Report shall be provided to the University monthly with the invoice indicating all actual and projected expenditures for all allowances and CM contingency.

3.4-A.9 **GMP Savings:** All savings under the GMP revert to the University. Such savings are based on the total for the GMP not on a line-by-line basis.

3.4-A.10 **Contingencies:**

3.4-A.10.1 **University/Owner's Contingency:** A University/Owner's Construction Contingency will be established. Expenditures against this contingency will be available to cover all costs resulting from the following with the University's written approval via a contract amendment issued by UMB's Office of Construction and Facilities Strategic Acquisitions.

Changes in scope initiated by the Owner's designated representative; and
Unforeseen field conditions.

3.4-A.10.2 **CM-GMP Contingency:** The GMP shall include a CM controlled construction contingency (CM-GMP Contingency) in an amount approved by the University, to protect the Construction Manager against the risks assumed in providing the GMP for the Project. The University and the CM acknowledge that the contingency is included to adjust the estimate for eventualities which have not been taken into precise account in the establishment of the GMP, including (1) scope gaps between trade contractors, (2) contract default by trade

contractors, (3) costs of corrective work not provided for elsewhere, and (4) expediting/ accelerating of the work to meet scheduled completion dates (if required).

3.4-A.10.3 The CM-GMP Contingency is not allocated to any particular item of the Cost of the Work, and is established for the CM's use as may be required for increases in costs incurred in the Work from unforeseeable causes or details not capable of reasonable anticipation at the time of the University's approval of the GMP. It is understood that the amount of the CM-GMP contingency is the maximum sum available to the CM to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount of the CM-GMP contingency will be borne by the CM.

3.4-A.10.4 The CM-GMP contingency may be applied to any items within the Cost of the Work without the necessity of a change order without constituting a change in the Work, and without resulting in any change in the GMP. The CM will notify the University of the CM's intent to apply any part of the CM-GMP contingency to any item within the Cost of the Work prior to any such application.

3.4-A.10.5 As the actual Cost of the Work is determined, change orders shall be issued, as appropriate, to transfer funds with the University's review and sign-off between the estimated Cost of the Work and the CM-GMP contingency components of the GMP without effecting a net change to the sum of the GMP.

3.4-A.10.6 The amount of the CM-GMP contingency is to be as quoted by the CM in its Price Proposal to the University. The University retains the right to specifically request revisions to the amount of the CM-GMP contingency prior to the University's acceptance and approval of the GMP. Notwithstanding anything in the RFP to the contrary, the CM-GMP contingency is not to exceed this quoted dollar amount.

3.4-A.11 Non-Acceptance of the GMP and Termination of University-Construction Manager Contract

3.4-A.11.1 The University, at its sole discretion, may decline to accept the Construction Manager's GMP for any phase of the project and thereupon without penalty, the Contract shall terminate according to its terms at the end of the Pre-Construction phase. In addition, if the Board of Public Works fails to approve the amendment of the Contract to reflect any GMP, if applicable, the Contract shall terminate according to its terms at the end of the current phase.

3.4-A.11.2 In any event, such termination shall likewise terminate all further services and obligations of the Construction Manager. The Construction Manager shall accept amount(s) given in price proposal Part "A" as full and complete reimbursement of all costs and services performed by the Construction Manager for pre-construction, and shall only be entitled to amounts set forth under or related to Part "B" of this RFP to the extent to which the CM is under contract for the construction and has incurred such costs. Thereafter, the University shall have the right to continue its activities to place the project under construction

with no obligation or restriction regarding the Construction Manager and with full ownership and use of any data and information developed in Part "A" activities.

3.4-A.11.3 Termination under this section is in addition to the termination provisions set forth elsewhere in the Contract including, but not limited to, the Standard Conditions.

3.4-A.12 Ownership of Documents

3.4-A.12.1 All data, information, computer models, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the CM or in the CM's possession or control relating to the Project are the properties of the University.

END OF SECTION 3, ARTICLE 4, PART A

3.4-B. Part B: To provide Construction Phase CM services as required to complete construction of the Project and to maintain the established GMP of the Project.

3.4-B.1. Consultation During Continuing Project Development

Upon acceptance of the GMP, the Construction Manager shall continue to advise and assist the University and Architect during the continuing Design Activities as described in Section 3, Article 4, Part A.

3.4-B.2. Project Construction Costs

3.4-B.2.1 The Construction Manager recognizes that the University will have a limit on the project construction cost. The University's Project Construction Cost limit is as stated in Section 3 Article 2 Item 3.2.2.D. This amount is referred to in this RFP as the Project Construction Budget and is the budgetary allocation for all costs included within the GMP as set forth.

3.4-B.2.2 Upon completion of work, any and all non-expended funds remaining in any GMP revert to the University.

3.4-B.3. Project Schedule:

3.4-B.3.1 The CM shall provide construction phase a CPM schedule through the use of a University approved computer-based software scheduling system. Scheduling software shall allow for integration of all aspects of the project and provide for coordination of all work to be performed. The scheduling software used by the CM shall be capable of producing and coordinating logic developed network diagrams, Pert charts and Gantt chart format reports.

3.4-B.3.2 After acceptance of each GMP and issuance of a construction contract amendment to the CM for the Construction of the Phase of the Project and

- within fifteen (15) days of written Construction Notice To Proceed (NTP), the Construction Manager shall submit a preliminary critical path method (CPM) schedule consistent with the time frames submitted during the design phase.
- 3.4-B.3.3** The Construction Manager shall develop the complete and final CPM schedule in the form of a CPM network arrow diagram (Pert) using the Construction Manager's logic and time estimates for each segment of the work and shall be cost loaded, the sum of which totals the GMP exclusive of a CM-GMP contingency, and manpower loaded to complete the work within the scheduled time frames. The arrow network diagram will be drawn in a level of detail suitable for display of salient features of the work, including but not limited to the placing of orders for materials, submission of shop drawings for approval, approval of shop drawings by the Architect and the University, delivery of material, and all work activities inclusive of punch list agreed to by the University. Each work activity shall be assigned a time estimate by the Construction Manager. One day shall be the smallest time unit used. Data shall also be provided in Gantt form.
- 3.4-B.3.4** Upon completion of the Pert and Gantt diagrams, the Construction Manager shall have computer input data prepared, and a computer run made to generate a printout for the project based on the information supplied. In the event the completion date indicated by the schedule exceeds the contractual date, the logic and time estimates used to develop the plan will be reviewed, changes made in the logic and time estimates, and another computer run made to generate a new schedule. This procedure shall be repeated, if necessary, to provide a plan and schedule to meet University requirements.
- 3.4-B.3.5** Within thirty (30) days of each Construction NTP, the final CPM schedule shall be submitted to the University for review and approval. This working plan shall show job identification, job duration, manpower loading, cost loading, calendar dates for start and finish of each job, and jobs critical to the completion of the project on schedule. When approved by the University, they shall become the working plan and schedule for the project and such information shall be provided to the Contractor for distribution to the Project Team inclusive of all trade contractors.
- 3.4-B.3.6** The Construction Manager shall review the plan and schedule each month. An updated project schedule shall be furnished showing actual completed work at the end of each month in respect to the entire project. The form used shall be approved by the University and shall be submitted with the monthly invoice.
- 3.4-B.3.7** The University will continue to occupy the building during construction.
- 3.4-B.3.8** The Construction Manager shall provide regular monitoring of the schedule as construction progresses, identify potential variances between scheduled and desired completion dates, review schedule for work not started or incomplete and take the action necessary to meet the required completion date.
- 3.4-B.3.9** It is the CM's responsibility to meet the required construction completion date as noted above in 3.2.2.F. If the CM finds that action must be taken in order to meet this contractual responsibility, all costs associated with such action are the CM's responsibility within the GMP unless a delay is attributable to the University.
3. If the CM finds that the schedule has been impacted by an action or inaction on

the part of the University, the CM must review the situation with the University and obtain a change order amendment for such work prior to taking any action which has a cost impact; all change order work shall be governed by Section 3.06 of the Attachment I Standard Conditions (Section 00700), including 3.06.E regarding timeliness, as supplemented by the provisions of this Section 3. Notwithstanding anything in that Section 3.06, the provisions thereof shall apply only to work to be performed in the Construction Phase.

3.4-B.4. Trade Contracts

3.4-B.4.1 After acceptance of the GMP and issuance of the Construction Contract Amendment to the CM for the Construction Phase, the Construction Manager shall place through his office contracts* or purchase orders to the successful Trade Contractors or Suppliers. (The term Trade Contractors if used in this Contract means sub-contractors and the term Sub-Contractors as used in the Contract shall include Trade Contractors.)

3.4-B.4.2 The CM will require the Trade Contractors to provide the applicable contract documents inclusive of insurance certificates, performance and payment bonds, MBE participation schedules, and verification of MBE participation (by submission of letters of intent, copies of purchase orders, etc.).

3.4-B.4.3 All contract documents between the CM and the Trade Contractors are to be made available for review by the University as requested.

3.4-B.5. Project Control

3.4-B.5.1 Project Staffing

3.4-B.5.1.1. The Construction Manager's on-site representatives shall manage the work of the Sub-Contractors and coordinate the work with the activities and responsibilities of the University, Architect and Construction Manager to complete the Project in accordance with the University's objectives of cost, time and quality.

3.4-B.5.1.2. The Construction Manager shall maintain a competent and adequate full-time staff approved by the University at the Project site to coordinate and provide adequate direction of the work and to monitor progress of the Sub-Contractors on the Project at all times.

3.4-B.5.1.3. It is understood that the designated and approved on-site resident CM representatives will remain on the job and in responsible charge as long as those persons remain employed by the CM, unless the University has reason to agree otherwise during the course of the project and a contract amendment is issued accordingly by the UMB Department of Construction and Facilities Strategic Acquisitions.

3.4-B.5.2 On-site Coordination/Management

3.4-B.5.2.1. The Construction Manager shall establish on-site organization and lines of authority in order to carry out the overall plans of the Project Team.

3.4-B.5.2.2. The Construction Manager shall conduct orientation sessions for its on-site field staff and Trade Contractor's staff, as applicable, as to the Project Procedures as developed during the Design Phase as noted in Section 3, Article 4, Item 3.4-

A.1.3 as well as site requirements per the Contract Documents. University representatives may attend such sessions.

3.4-B.5.2.3. The Construction Manager will provide for all coordination with the on-site Sub-Contractors the necessary On-Site Services for the construction activities and on-site requirements of the Construction Manager, University and Architect. The CM is not required to provide offices for the Architect or the University within its field offices.

3.4-B.5.2.4. The Construction Manager shall require all Trade Contractors to submit a Trade Contractor's Daily Report which is to include, but not be limited to, a summary of work performed, information required, status of change order T&M work, materials received, and safety incidents.

3.4-B.5.2.5. The Construction Manager shall accept delivery and arrange for storage, protection and security for any University purchased materials, systems and equipment, which are a part of the work until such items, are turned over to the respective trade Contractors.

3.4-B.5.3 Meetings

3.4-B.5.3.1. The Construction Manager shall schedule and conduct regular bi-weekly progress meetings, and as directed by the University, at which Trade Contractors, University, Architect, and other designated representatives, and the Construction Manager can discuss jointly such matters as progress, scheduling, and construction-related problems.

The Construction Manager shall take and distribute complete minutes of meetings to all attendees and others as directed by the University within three (3) days of such meetings. Representatives of the University may attend meetings and shall receive all notices and minutes of meetings. [See details throughout Section 3, Article 4, Part B as to topics to be included in Progress meetings.]

3.4-B.5.3.2. The Construction Manager shall also conduct Owner's meetings on a minimum of monthly or as requested by the University.

1. The Owner meetings are to be attended by representatives of the University [including, but not limited to, UMB's Office of Facilities Management, UMB's Office of Construction and Facilities Strategic Acquisitions; the Construction Manager and the Architect/Engineer to discuss overall project matters and project procedures to insure that all parties are meeting their obligations to ensure a successful project].

2. The Construction Manager shall take and distribute complete minutes of Owner's meetings to all attendees and others as directed by the University within three (3) days of such meetings.

3.4-B.5.4 Requests for Information (RFIs)

3.4-B.5.4.1. The CM will be responsible for developing and implementing a RFI form for use on the project. The RFI process will be handled through the eBuilder system.

3.4-B.5.4.2. The CM will be responsible for logging and reviewing all RFIs prior to submission to the University and the Architect. The CM is to ensure that the

RFIs submitted are appropriate and not frivolous.

- 3.4-B.5.4.3. The Construction Manager shall be responsible for tracking and monitoring all RFIs throughout the Construction Phase until all RFIs are processed by the A/E and the University.
- 3.4-B.5.4.4. The Construction Manager shall include RFIs as an agenda topic at all Owner meetings and advise the University immediately of any delays in the RFI process.
- 3.4-B.5.4.5. The Construction Manager shall develop a RFI aging report, which is to be submitted to the University's Project Manager at each bi-weekly progress meeting.

3.4-B.5.5 Substitution Requests

- 3.4-B.5.5.1. The CM will be responsible for logging all substitution requests.
 - 3.4-B.5.5.2. The CM will be responsible for reviewing all substitution requests to ensure that they are complete; and, if not, return them to the Trade Contractor for proper submission.
 - 3.4-B.5.5.3. The CM will be responsible to review all Substitution Requests with the University prior to submission to the Architect.
 - 3.4-B.5.5.4. The Construction Manager shall be responsible for tracking and monitoring all Substitution Requests throughout the Construction Phase until all Substitution Requests are processed by the A/E and the University.
 - 3.4-B.5.5.5. The Construction Manager shall include Substitution Requests, if any, on the agenda topic at the Owner's meetings and advise the University immediately of any delays in the Substitution Request process.
- 3.4-B.5.6 **Project Photographs:** The UMB Standard General Conditions require the CM to submit Progress photographs monthly in sufficient detail to properly record the work. Once a month is the minimum and as may be required to document special conditions as well as disputed items. The CM is responsible for uploading monthly photos into eBuilder.

3.4-B.6. Cost Control

- 3.4-B.6.1 The Construction Manager shall develop and maintain an effective system of Project cost control. He shall refine and update the approved GMP, incorporate University approved changes as they occur, and develop reports and forecasts as needed, or as directed by the University. He shall identify variances between actual and estimated costs and advise University whenever projected cost exceeds allowances or estimates.
- 3.4-B.6.2 The Construction Manager shall check and supervise all material deliveries, equipment and labor entering the work site. He shall maintain cost accounting records on authorized work performed under unit costs, actual costs for labor and material, or other bases requiring accounting records, and afford the University access to these records and preserve them for a period of three (3) years after final payment. The University reserves the right to audit their records during that period.

3.4-B.7. Quality Assurance/Inspection

- 3.4-B.7.1** The Construction Manager shall inspect the Work of the Sub-Contractors to guard the University against defects and deficiencies in the Work and shall coordinate this activity with the on-site duties of the Architect. He shall advise the Architect of any apparent variation and deviation from the intent of the Contract Documents and shall take the necessary action to correct such variations and deviations within the terms of the contract documents. The CM shall provide one (1) set of all inspection reports (in binder form) to the UMB Project Manager with the monthly report. The CM shall maintain an Out of Compliance Log showing status of all deficient tests and inspections. An update of this log shall be included with the monthly status report.
- 3.4-B.7.2** The Construction Manager shall provide for and administer all third-party inspection and testing as specified in the Construction Documents under the identified General Conditions allowance for the Project. Refer to Section 3 Article 5 for amount.
- 3.4-B.7.3** The University shall, in all cases, make final interpretation of the Contract Documents and rule on compliance of the Work. This provision specifically supersedes anything to the contrary in the Standard General Conditions of Construction Management with GMP Contract.
- 3.4-B.7.4** Quality Assurance/Inspections is an area of utmost importance to the University. Although it is the contractual obligation of both the Architect/Engineer and the Construction Manager to guard the University against defects and deficiencies in the Work, it is expected that the University will participate in this process.
- 3.4-B.7.5** It is anticipated that personnel from UMB's Facilities Management will attend inspections and testings. It is the responsibility of the Construction Manager to advise the University's Project Manager of scheduled testings and inspections with appropriate advance notice.
- 3.4-B.7.6** In addition, the Construction Manager is to include on the agenda of all bi-weekly progress meetings a review of upcoming inspections and tests and attach a list of these with the minutes of such meetings.

3.4-B.8. Commissioning

3.4-B.8.1 Commissioning for this project will be completed by the university.

3.4-B.8.2 Commissioning for this project will include, but not be limited to, the following systems:

3.4-B.8.2.1. All HVAC systems;

3.4-B.8.2.2. Fire Alarm and Life Safety Systems; and,

3.4-B.8.2.3. Electrical Systems including lighting control, normal and emergency power distribution.

3.4-B.8.3 The CM will support the University Commissioning Agent's services as required with his on-site staff in the roles of Test Engineer and/or Project Engineers.

3.4-B.9. Project Safety

3.4-B.9.1 The CM shall develop and implement a project safety program in accordance with the UMB Standard General Condition for Construction and applicable regulations.

3.4-B.9.2 The CM shall report, to the University, as part of each monthly report any safety

violations and actions taken to protect the safety of persons and property engaged in the work.

3.4-B.10. Change in Scope and Change in GMP

- 3.4-B.10.1** The University unilaterally at any time by written order (via a contract amendment) may make changes within the general scope of the work to be performed under the Contract.
- 3.4-B.10.1.1.** Changes in the scope of work to be performed during the Construction Phase shall be governed by Section 3.06 of the Standard Conditions, including 3.06.E regarding timeliness, as supplemented by the provisions of this Section 3. Notwithstanding anything in that Section 3.06, the provisions thereof shall apply only to work to be performed in the Construction Phase.
- 3.4-B.10.1.2.** The Construction Manager shall notify the University in writing with detailed cost supportive data (and copy to Architect) if any apparent change in scope or design will require a change in the GMP.
- 3.4-B.10.1.3.** It is understood and agreed that refinement and detailing may be accomplished from time to time with respect to the drawings and specifications. No adjustment in the Guaranteed Maximum Price or the Scheduled Completion Date shall be made unless such refinement or detailing results in changes in the scope and/or design of the Project, as determined by the University. Nothing herein shall be construed to preclude the University from ordering minor changes in the Work not involving increases in cost,
- 3.4-B.10.1.4.** No change order expenditures can be made against this contract without written approval by the University's designated representative via the issuance of a contract amendment to the CM's contract by UMB's Office of Construction and Facilities Strategic Acquisitions. Should a substantial scope change occur, the University may consider an equitable adjustment to the CM fee (up to but not exceeding the percentage of which the original CM fee is based on the Project Construction Costs), if appropriate, dependent on the scope of the change and the time frame therein. Such consideration is the sole determination of the University.
- 3.4-B.10.1.5.** As set forth in Section 3.06 of the Standard Conditions, including 3.06.E regarding timeliness, an equitable adjustment will be made in the CM fee, if appropriate, dependent on the scope of the change and the time frame therein.
- 3.4-B.10.1.6.** Revisions to the Project Construction Budget/DTD made by the University in order to accommodate the work of the Project(s) shall not result in an increase to the CM's fees or General Conditions unless the building's gross square footage is significantly increased or the Project's program is substantially altered, resulting in an increased level of effort for the CM. Increase to the CM's fees or General Conditions due to a change in the Project Construction Cost Limit will not be considered by the University unless the CM can demonstrate that the change results in an increased level of effort.
- 3.4-B.10.1.7.** If the Project Construction Budget/DTD indicated in the RFP is significantly different from the reconciled Schematic Design Phase GMP estimate and the University decides to proceed with the project as designed., the University may allow a fee adjustment proportional to the original CM's Construction Services Fee on the amount exceeding if the conditions listed below are met:

- The CM must demonstrate that a comprehensive and accurate Value Engineering effort was provided, inclusive of a reasonable plan to get the building to the Project Construction Cost Limit established in the RFP.
- The University will not consider any CM Construction Services Fee increases associated with a higher GMP if the estimates provided by the CM are inaccurate regardless of the reason for the inaccuracy.
- The University will not consider any CM Construction Services Fee increases associated with a higher GMP if the review of the bidding process does not demonstrate the CM has provided due diligence getting competitive trade contractor pricing.

3.4-B.10.1.8. The University will not consider a request to revise partial or contract completion dates without submission of a change as specified in Section 3.06 “Changes in the Work” of the Attachment I Standard Conditions (Section 00700), including timeliness, and without documentation from the project schedule, including updates, supporting the need for a revision. The University will evaluate the information submitted and determine the time extension due, if any. The University will not grant a time extension based on pleas that the contract specified insufficient time for the completion of the project.

3.4-B.10.1.9. The University and Architect will review the Construction Manager's analysis and cost data and advise the Construction Manager of their findings. The University and Construction Manager shall reach mutual agreement on the nature of the subject change and upon the University's direction eliminate the circumstances of the change or negotiate a mutually agreed cost change to be made to the GMP. The Construction Manager shall notify the Architect and the University of such changes before trade bids for the work associated are requested.

3.4-B.10.1.10. Changes to the GMP will only be made as a result of documented and University approved decisions with the issuance by UMB's Office of Construction and Facilities Strategic Acquisitions of a contract amendment to the CM's contract.

3.4-B.10.2 The Construction Manager shall develop and implement a system for review, negotiation, and processing of proposed Change Orders. He shall, with complete supporting data, recommend necessary or desirable changes to the University and the Architect for approval. At the University's discretion, in the CM's review of change order proposals in excess of \$50,000, the CM's supporting documentation shall include the CM's written estimate for such additional work.

3.4-B.10.3 There will be no CM mark-up for any change order work. Rather, change order proposals will consist of actual costs only; that is, trade contractors' change order proposals and General Conditions items, if applicable, only.

3.4-B.11. Shop Drawing Review/Processing

- 3.4-B.11.1** The CM will be responsible for logging all shop drawings/submittal prior to submission to the University and the Architect. The CM is to ensure that shop drawing/submittals packages are submitted in an appropriate manner and, if not, return them to the Trade Contractor for proper submission.
- 3.4-B.11.2** The Construction Manager shall develop and implement a system for review, acceptance or rejection, and processing of all shop drawings/submittals. He shall review this system with the University and obtain the University's approval prior to implementation.
- 3.4-B.11.3** The Construction Manager shall be responsible for tracking and monitoring all shop drawings/submittals throughout the Construction Phase until all shop drawings/submittals have been approved by the A/E and the University [minimal time frame for this review is three (3) weeks.]
- 3.4-B.11.4** The Construction Manager shall include shop drawings as an agenda topic on all Owner meetings and advise the University immediately of any delays in the shop drawing/submittal process.
- 3.4-B.11.5** The Construction Manager shall develop a shop drawing/ submittal aging report, which is to be submitted to the University's Project Manager at each bi-weekly progress meeting.
- 3.4-B.11.6** The Construction Manager shall provide coordinated BIM as indicated in Section 3, Article 4, Item 3.4-A.7.4.

3.4-B.12. Project Site Documents

3.4-B.12.1 The Construction Manager shall maintain at the Project site, on a current basis, records of all necessary contracts, shop drawings, samples, purchases, materials, equipment, maintenance and operating manuals and instructions, and any other documents and revisions thereto which arise out of the contract or the Work.

3.4-B.13. Claims Avoidance/Resolution

- 3.4-B.13.1** The Construction Manager is to advise the University, as necessary, on construction issues so as to avoid disputes. Such advice is to be provided on a timely basis.
- 3.4-B.13.2** If claims/disputes arise, the Construction Manager will provide the University with assistance as requested including, but not limited to, cost assessments, documentation review, and contract review and make recommendations accordingly.

3.4-B.14. Contract Close Out

- 3.4-B.14.1** The Construction Manager will not be required to bring on a Project Close Out Engineer for this project. These tasks may be completed by project staff.
- 3.4-B.14.2** The Construction Manager is responsible for compliance with all Contract Close Out items per the Contract Documents. He shall obtain data from Trade Contractors and maintain a current set of record drawings, specifications and operating manuals.
- 3.4-B.14.3** With mechanical and electrical equipment, the Construction Manager is to obtain the Operating & Maintenance (O&M) manuals at least four (4) months

prior to the demonstration for such equipment. These O&M manuals are to be sent to the University Project Manager who is to forward one (1) set to University's Office of Facilities Management for review prior to the equipment demonstration.

3.4-B.14.4 The Construction Manager is to work closely with the University Construction and Facilities Strategic Acquisitions office as to the procedures and schedule for Contract Close Out and the contractual obligations therein.

3.4-B.14.5 At the substantial completion of the Project, and before final payment, the CM shall deliver all such records to the University along with a complete set of as-built drawings for approval by the Architect, in a format agreed by the CM and the Architect.

3.4-B.15. Reports

3.4-B.15.1 The Construction Manager shall provide to the University on a monthly basis (every 30 days beginning 30 days from the issuance of the Notice to Proceed for the Construction Phase) or at the University's request, a written report inclusive of the items noted below.

3.4-B.15.2 Within ten (10) days of issuance of the Construction Phase Notice to Proceed, the CM is to submit to the University the report formats for each of these and prior to implementation the CM must obtain the University's approval of these formats.

3.4-B.15.3 The monthly report by the CM is to include the items noted below.

- a. Project Status: Overall summary of the project status to date for the Project inclusive of information on the Trade Contractors' Work and the percentage of completion for the Project.
- b. Schedule: Project schedule with a summary statement as to the status of construction for the Project (progress against baseline or baseline as amended by contract amendment).
- a. Cost Status: Overall summary of the financial status of the project with the cost control report included.
- c. Change Order: A summary statement as to the status of change orders for the Project inclusive of potential change orders, approved change order and rejected/voided change orders as well as change order, which require the University's immediate attention.
- d. Shop Drawings/Submittals: A summary statement as to the status of shop drawings/submittals for the Project inclusive of items requiring the University and/or the Architect's immediate attention.
- e. Quality Assurance/Inspections: A summary statement as to the status of quality control/inspections for the Project including, but not limited to, number and type of inspections made, overall project quality to date, and recommendations.

3.4-B.16. Date of Completion

3.4-B.16.1 The Work and services under this Contract shall be scheduled for the time period necessary to permit completion and successful final inspection

(occupancy) following the Construction Notice to Proceed for the project. Refer to Section 3 Article 2 for Project Schedule for the required schedule of the Substantial Completion Milestone(s). Time is of the essence.

3.4-B.17. Separate Contracts

3.4-B.17.1 Without invalidating the relationships with the Construction Manager, the University reserves the right to let other contracts in connection with the project, the work under which shall proceed simultaneously with the execution of the Construction Manager's work. The Construction Manager shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and the Construction Manager shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the Construction Manager from carrying out his work according to the plans and specifications, the Construction Manager shall immediately notify the Architect and the University upon discovering such conditions.

END OF SECTION 3, ARTICLE 4, PART B

END OF SECTION 3, ARTICLE 4

SECTION 3, ARTICLE 5: GENERAL CONDITIONS LISTING

General Condition items are to be handled by the CM on a reimbursable basis per the General Conditions Allowance and are to include but are not necessarily limited to:

3.5.1 CM STAFF REIMBURSABLE COSTS

Field staffing needs shall be provided by the CM on a reimbursable basis per the RFP documents and the CM's Staff Reimbursable breakdown provided in the CM's Price Proposal and is limited to the specific staff positions listed therein. Allowable costs will be at the quoted hourly billing rate, or less, per the CM's contract.

NOTE: Field support staff necessary to perform General Conditions work (laborers, craftsmen) shall be included under non-personnel General Conditions below.

3.5.2 NON-PERSONNEL GENERAL CONDITIONS

Non-Personnel General Conditions shall be provided by the CM on a reimbursable basis per the RFP documents and the CM's non-personnel General Conditions Breakdown provided in the CM's price proposal. These General Conditions items should be competitively bid, where applicable, to ensure reasonable pricing.

- A. MOBILIZATION: Move on site and establish appropriate field offices.
- B. TEMPORARY FACILITIES
 - (1) **Site Field Office**
 - (a) The University will provide the Contractor with space for a field office within the building (likely the existing conference room on the Sixth floor). It will be the Contractor's responsibility to restore the space to its original condition at the completion of the project. This may include, but not be limited to, the replacement of all carpet and paint.
 - (b) Provide Field office furniture.
 - (c) Provide Field office telephones. (if required)
 - (d) Sanitary facilities in the finished areas of the Fifth or Sixth floor will be available for contractor use. Owner reserves the right to cancel access and require CM to provide exterior facilities if upkeep of the building toilet rooms is not acceptable.
 - (2) **Site temporary heat and electric**, if applicable, is to be part of the Mechanical and Electrical Contractors, or the appropriate trade contractor respectively.
- C. TOOLS/EQUIPMENT
 - (1) Provide small power/hand tools and equipment as may be required by the CM'S field staff only (Under \$1,000 to purchase new).
 - (2) Establish and maintain an appropriate shipping/receiving system.
 - (3) Provide miscellaneous materials.
- D. PLANS/SURVEY'S/PERMITS/TESTING
 - (1) Provide reproduction of Construction Documents during construction phase.

- (2) Provide surveyors services (Site surveys, Layout, etc.), if required.
- (3) Acquire required permits (if applicable)
- (4) It is anticipated that the university will provide all inspection/testing services and a Third-Party will not be required on this project.

E. SAFETY/CLEAN-UP

- (1) Establish and maintain an on-site safety program throughout construction phases.
- (2) Install and maintain temporary facilities as required: safety barricades, partitions, ladders, stairs, site fencing, signage, and traffic control devices.
- (3) Provide daily site clean-up, trash collection and removal.
- (4) Provide and maintain site security throughout project construction phases.

F. GENERAL

- (1) Provide temporary Weather and Dust protection (That which must practically remain outside of sub-contracts) as may be required during construction phases.
 - (2) Provide progress photos throughout project construction phases; Once a month is the minimum and as may be required to document special conditions as well as disputed items. Also, photograph all disputed items. Refer to Section 3 Article 4 Part B, Item 3.4-B.5.6 of the RFP for further details. Refer to item 7.08 in the General Standard Conditions for format.
 - (3) Provide appropriate office type equipment (copying machine, fax machine, etc.) for field office use.
 - (4) Provide field support staff necessary to perform General Conditions work (i.e. laborers, craftsmen, etc.). These labor costs shall be charged under the non-personnel General Conditions.
- (5) Identification Badges required by the University.

G. INSURANCE/BOND

- (1) Provide 100% Performance & Payment Bonds
- (2) Provide CM liability insurance in accordance with Attachment I Standard Conditions (Section 00700).
- (3) Provide a builders risk insurance policy in the amount of the GMP in accordance with Attachment I Standard Conditions (Section 00700).

H. CLOSE-OUT/DE-MOBILIZATION

- (1) Provide final site/facility clean-up.
- (2) Provide as-built set drawings to the University for use by the A/E in record drawing preparation, in a format agreed by the CM and the Architect.
- (3) Turn over one copy of project files and records for University archives.

Allowance expenditures must be approved by UMB prior to the provision of said services. The CM will be required to provide a "General Conditions" billing back-up in a UMB approved format that is derived from the CM's computer based project accounting/tracking system.

END OF SECTION 3, ARTICLE 5: GENERAL CONDITIONS LISTING

END OF SECTION 3: SCOPE OF SERVICE

SECTION 4 PROCUREMENT PHASES AND EVALUATION PROCESS

ARTICLE 1: PHASE 1 TECHNICAL PROPOSAL REQUIREMENTS

Technical Proposal:

The Technical Proposal, including any clarifications, amendments, modifications, etc. to the Technical Proposal will be considered by the University as an Offer from the Proposing Firm.

Construction Manager at Risk (CMAR) will submit a Technical Proposal in an A3 format. Submit a single sided A3 for each section, except as noted. Required information is listed below.

The University is using the A3 (11x17) format for succinct decision making and project updates. The document allows faster input and feedback. Respondents have discretion to organize the information in the best manner to demonstrate their qualifications, provided it responds to all data requested.

There are not specific limitations on font size and layout. Respondents should bear in mind that the University expects an efficient presentation of the required information that respects the time of Respondent team and the University evaluation team.

For more information on the A3 approach, see the following resource:

<https://www.enr.com/blogs/22-marketropolis/post/47409-will-lean-thinking-revolutionize-the-proposal-process>

Refer to the Solicitation Schedule for the **due date and time for questions** regarding this phase of the procurement. Questions are to be provided in writing solely to the Issuing Office. The Issuing Office shall be the sole point of contact with the University for the purpose of the preparation and submittal of Technical Proposals in response to this solicitation.

The Technical Proposal submitted in response to this Solicitation must demonstrate that the CMAR has sufficient expertise and experience as well as an understanding of the contract scope and objectives. It is the CMAR's responsibility to tailor its response to demonstrate this specifically for the University rather than providing a 'cookie cutter/template' response.

4.1.1 GENERAL INFORMATION: (Provide on ONE A3)

I. Contact Information

- a. Firm Name and Address (if multiple offices, list office that will develop the project)
- b. CM Team Organizational and Reporting Structure including the positions of the Key Personnel proposed for this Contract and Other Key People

- c. Is the firm a minority-owned or other disadvantaged business? (If yes, please specify, and include Maryland Department of Transportation certification number.)
- d. Point of contact for communications related to this solicitation. (Include Name, Title, phone, and email).

II. Firm Background

Provide a brief overview of your firm.

III. Project Construction Schedule and Budget: In order to be considered responsive, all firms must either agree with or take exception to the Project Costs and Schedule, per Section 3 Article 2.

The University considers the project to be feasible at the Project Construction Budget and the Project Time Frames and may disallow any change to them. Firms wishing to argue for higher Project Construction Budget or adjusted Project Time Frames must do so convincingly and provide sufficient evidence to support their argument and include such documentation in the technical proposal envelope; if a proposer does not provide this in his technical proposal, it is understood that he accepts the Project Construction Budget and Project Time Frames.

The University will make the final determination. In the event the Project Construction Budget and/or Project Time Frames are adjusted, all firms will be notified. In the event the Project Construction Budget and Project Time Frames are not adjusted, all firms arguing for a higher Project Construction Budget and/or adjusted Project Time Frames will be asked to indicate whether they wish to withdraw. Firms will neither be rewarded nor penalized in any way for initially arguing with or accepting the Project Construction Budget and Project Time Frames noted in this RFP.

By submitting a Price proposal, the proposer agrees that the construction of the project (i) shall not exceed the amount of the Project Construction Budget and (ii) can be designed and constructed within the Project Time Frames.

IV. Experience Adding Value as CM with Limited Preconstruction Services:

The University is interested in hearing how you will bring value to our project team as a CM being engaged late in the design process.

4.1.2 PROJECT TEAM: Complete on a single-sided A3 except as noted.

- I. Provide an organizational chart showing all Key Personnel and other proposed staffing.

- II. Provide the basis for selection for the team and demonstrate working relationships amongst team members. The university prefers Key Personnel proposed for this Contract have worked together on similar successfully completed projects similar to the University's project are preferred.
- III. Submit Resumes for Key Personnel (**each may have a separate single 8x11 sheet**)
These people must be direct and current employees of the Proposing Firm. Submit resumes for each key team member noted, who are to be assigned to this project if awarded. (see definitions below for these positions and qualification for details):
- CM Project Executive (Px)
 - CM Project Manager (PM)
 - CM Field Superintendent (FS)

Definitions and Qualification Requirements for Key Personnel:

CM Project Executive (PX): Senior level position from Construction Manager (such as Vice President) who will oversee the project from an executive level and to whom the CM Project Manager directly reports.

CM Project Manager (PM): Person from Construction Manager who will be involved on a continual basis from commencement of the contract until construction completion. This person will be responsible for the overall management of the CM team and the completion of the project. **The Project Manager must be full time during the construction phase.**

CM Field Superintendent: Person from the Construction Manager who must be on site 100% once construction commences and will be responsible for the direct supervision of the trade contractors, daily coordination of the work on site to maintain the schedule, on site management such as material deliveries, outages, etc.

Required Information on Resumes:

- a. Educational background
- b. Work experience with prior employers: durations (by dates) of employment and position(s) held.
- c. Relevant/Similar project experience: Specific project experience similar to the University's project (preferably the projects listed in 4.1.3 below) and the role in pre-construction and construction that this person played in each selected project. Projects where the role is the same as to be assigned on this project are preferred. Provide a description of the types of Pre-Construction and Construction Services performed by this individual.
- d. Achievements/Other Notations

- e. References: The University is interested in speaking to a Project Owner or A/E regarding the person's performance on a particular project. Please ensure that the information is accurate and that the reference named can speak to the individual's performance in the role to be assigned on this project.

Each key team member noted above will be evaluated based on their background and experience in a similar role with projects which are relevant and similar in size, function and complexity to the University's project (refer to Project Criteria in item 4.1.3).

4.1.3 FIRM RELEVANT EXPERIENCE/FIRM REFERENCES: (each project on separate A3)

Submit four (4) projects which best demonstrate that your firm and proposed team are highly qualified to perform as the Construction Manager at Risk on this project.

Each project submission shall include the following:

- Project Name and Location.
- Project Owner, Contact Person, Email Address and Telephone Number.
- Construction Start and Substantial Completion Date.
- Construction Cost
- Project Delivery Method (i.e., Design Bid Build (GC), Construction Management (CM) or Design Build (DB))
- Project Gross Square Footage.
- Project Net Square Footage.
- Similarities of the submitted project to the University's project**.
- Brief Description.
- Names of Proposed Key Personnel to be assigned to this project (per item B above) who were involved in the project and the assigned role for each key people.
- Project Setting (i.e., university, urban setting, open or constrained site, occupied building renovation/addition, etc.).

Please note that project construction costs are NOT to include FFE (furnishings, fixtures and equipment) costs.

** The criteria used in the evaluation of similarities include, but is not limited to, the following:

- Medical research facilities.
- Occupied facilities.
- Construction Management at Risk project delivery.
- Difficult logistics such as those typically found in an urban setting.

SECTION 4, ARTICLE 2: PHASE 2 TECHNICAL PROPOSAL AND ORAL INTERVIEWS

4.2.1 Proposers that are short-listed by the University after the evaluation of Phase 1 Technical Proposals will be provided with specific requirements for the Phase 2 Technical Submission at that time. This submission will include, but may not be limited to, the following:

1. Provide a project plan, which should align with the University's requirements. Please include the following in a single A3
 - a. Confirm proposed project team and roles.
 - b. Project approach to renovations in an occupied research building.
 - c. Site safety/logistics considerations.
 - d. Certification by an authorized representative of the firm that the information provided is to the best of their knowledge complete and accurate.
2. Schedule and Cost assessment (Single A3)
 - a. Schedule, including procurement.
 - b. Assessment of the project budget. (We are NOT asking for detailed cost estimate at this point, but
 - c. Cost management techniques.
3. After review of the information provided, identify the key issues for a successful project. Provide examples where you have successfully addressed these issues in other projects. (Single A3)
4. How your team will advance UMB Core Values, including working with external partners and MBE participation goals. (Single A3)
5. Cost Proposal: The University will not review cost information until after the technical proposal review is complete, but the cost proposal will be considered when selecting the firm. Please provide all cost information in a separate Microsoft Excel-Compatible file in the format provided.
3. Provide a cost proposal with the following costs which are to be provided in accordance with this RFP, including terms and scope of services. For this proposal, presume total project costs and schedule provided in this RFP. If the team believes a different approach is warranted, please clearly label as an alternative.
6. Required certifications.
 - a. **BID/PROPOSAL AFFIDAVIT:** Complete and submit form (found in Attachment A). State and USM Procurement Regulations require that each proposal submitted by a firm include a signed Proposal Affidavit.
 - b. **ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA FORM:** If any addenda to the solicitation documents are issued prior to the due date and time for Technical Proposal, this form (found in Attachment A) is to be completed, signed, and included in the Technical Proposal.
 - c. **MBE ATTACHMENT H-1A PART 2, MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT:** This form (found in Attachment A) MUST be submitted with the Technical Proposal. If it is not, the Procurement Officer **shall** classify the Proposal as not susceptible of the award. **BY LAW, THIS IS NON-CURABLE.**

4.2.2 Oral Interviews:

RFP #23-326 MC

SOM-HSF III 5th & 6th Floor Tenant Space Buildouts

At the sole discretion of the University, Proposers that are short-listed as a result of the evaluation of the Technical Proposals may be required to submit additional materials for evaluation by the Qualification Committee. Should the University elect to require such a submittal, only those Contractor firms who are shortlisted based on the Phase 1 Technical evaluation will be requested to submit.

A. **Oral Interviews:** Only those Proposers who are shortlisted as a result of the Phase 1 Technical Evaluation will be requested to attend an Oral Interview at the University.

The Oral Interview forum will be informal as the University is not interested in marketing presentations; rather, we are requesting a round table discussion with the shortlisted firms.

The University also reserves the right to visit Proposer's place of business during the evaluation process.

(1) **Appointments:** The date and time of the Oral Interview will be set by the University upon completion of the Technical evaluation, however, this session(s) is (are) anticipated to be held on the date(s) stated in Section 1 of this RFP. Accordingly, proposers are advised to set these dates aside in their entirety on the appropriate people's calendars to avoid any conflicts, as they are not expected to change. The actual time on this date will be verified with the applicable proposers at the time it is requested. At the time the Oral Presentations are scheduled, the University will confirm in writing with each Proposer the specifics of these sessions inclusive of the topics, time periods, and requested CM personnel.

(2) **Proposer Attendees:** Each shortlisted proposer will be required to have the following key personnel attend:

- CM Project Executive (Px)
- CM Project Manager (PM)
- CM Field Superintendent (FS)

B. **The Purposes Of The Oral Interview Are As Follows:**

(1) To allow the University to meet the Proposer's key personnel and provide them an opportunity to convey their background and expertise as it applies to the University's project,

(2) to provide an opportunity to clarify the CM scope of services for this Project; and to provide the CM team the opportunity to address their understanding of the pre-construction and construction services required for this project, and their expertise in providing the same; and

(3) to discuss selected categories of the Proposer's Technical Proposal.

C. Upon completion of the Oral Interviews, the University will conduct the Second Phase Technical Evaluation as described in Section 4, Article 3.

END OF SECTION 4, ARTICLE 2

SECTION 4, ARTICLE 3: Technical Evaluation

4.3.1 PHASE 1 TECHNICAL EVALUATION:

Intent:

The intent of the Portfolio Phase is to provide Firms an opportunity to present their team's experience in high quality and relevant CM services to meet the needs of the University for its specific project.

Shortlist:

A University Qualification Committee ("the Committee") will evaluate the Phase 1 Technical Proposals for firm background, key personnel qualifications and experience and firm relevant experience and references. The evaluation process will be facilitated by the University's Procurement Officer. As the procurement progresses, the Committee may seek input from other appropriate University staff and/or additional assistance from any other source at any time.

Technical criteria for evaluation include (listed in order of importance)

- Team Qualifications
- Firm's experience successfully completing similar projects
- Firm and Team's demonstrated experience Adding Value as CM with Limited Preconstruction Services

Based on the Committee's evaluation of the strengths, weaknesses, advantages, and deficiencies in the Phase 1 Technical Proposals, the Committee will rank the Phase 1 Technical Proposals and submit a short list of proposers for further consideration to the Procurement Officer. The Procurement Officer will review the recommended shortlist and will notify all proposers of the results of the evaluation.

4.3.2 PHASE 2 TECHNICAL EVALUATION:

Shortlist: An evaluation of the Phase 2 Technical Proposals will be conducted by the University's Qualification Committee. Technical criteria are listed in Section 4, Article 2 in order of importance. Firms will be ranked and shortlisted based on the evaluation. Only shortlisted firms will advance in the procurement process. The Procurement Officer will review these rankings and, upon approval, notify all proposing firms of the names of all proposers indicating those who have been short-listed.

END OF SECTION 4, ARTICLE 4: TECHNICAL EVALUATION

SECTION 4, ARTICLE 4: Price Proposal/Final Evaluation and Selection

Only those Proposers who remain shortlisted after the Second Phase Technical evaluation will have their Price Proposal opened. The **due date** for submission of the **Price Proposal** is to be set for shortlisted firms and is anticipated per the Section 1 Solicitation Schedule.

4.4.2 PRICE PROPOSAL SUBMITTAL

The Price Proposal Form is provided in Attachment G of the RFP.

The Price Proposal shall be filled out **completely inclusive of the attachments**. Any erasures and/or alterations to the Proposer's pricing shall be initialed in ink by the signer. Please note, however, that no changes, alterations, or additions to the Price Proposal Form are permitted.

The Price Proposal shall clearly indicate the maximum cost to the University for CM Pre-Construction and Construction Phase CM services as well as the not-to-exceed (NTE) CM Reimbursable Costs per the RFP. **Refer to Section 3 Scope of Work for details.**

Proposers will be requested to provide the following in their Price Proposal:

A. Transmittal Letter

Provide a transmittal letter signed by an authorized representative of the Proposer. The letter certifies that all information is complete and accurate. See Attachment J "Signing of Forms" regarding authorized signatures required.

B. CM Cost Proposal:

- (1) **CM Pre-Construction Phase :** The University is assigning an allowance of \$100,000 for preconstruction services. for all costs associated with providing the CM services in the pre-construction phase for the Project and inclusive of the pre-construction allowances. (see Section 3 for details, and Section 3 Article 3 for allowance amounts); and,
- (2) **CM Construction Phase Fee.** Provide a fixed fee based on the construction estimate and schedule provided. This fee should cover costs of normal construction change orders.
 - (2.1) Also provide a Fee rate for application if there is a **material** change in scope.
 - (2.2.) The University will consider requests for fee adjustments if Schedule or phasing changes dictate a **material** change in staffing.

C. CM Reimbursable Costs to be quoted on a Not-to-Exceed Basis:

- (1) General Conditions Allowance Items:

- (a) **CM Staff Reimbursable Costs** only for on-site personnel during construction for the Project including costs for all applicable positions (see Section 3 Articles 4 and 5). In addition, Proposers are to complete the staff Reimbursables Cost Breakdown Form with its Price Proposal.

Please note: By submitting its price proposal, a Proposer is committing that the costs associated with these on-site staff positions for the GMP will not exceed the amount quoted in his Price Proposal if they are the awarded CM firm. **CM Hourly Billing Rates for the Project** based on Section 3 Articles 4 and 5 for the applicable on site positions during construction excluding those positions in which prevailing wage rates apply. These hourly bill rates will be the basis by which the awarded CM is reimbursed for these assigned positions. **The hours priced must, at a minimum, match the "Anticipated Number of Hours for On Site Personnel" provided for evaluation in the Technical Proposal.**

(b) **General Conditions Non-Personnel Items**

- (i) Rate for required insurance for the Project per Section 3 Article 5 inclusive of CM's General Liability Insurance, Builders' Risk Insurance and
- (ii) Rate for 100% Performance and Payment Bonds and
- (iii) Rate for cost of Subcontractor guarantee, if not requiring subcontractor payment/performance bonds. This is typically a form of subcontractor default insurance (SDI)
- (iv) to include the Third Party Testing & Inspection allowance. The Proposer is required to provide as part of The Price Proposal form a breakdown of costs these non-personnel items on the form provided.

Note: The Staff Reimbursable Breakdown and Non-personnel General Conditions Breakdown Attachments are for informational and price analyses purposes only and are not guarantees.

- (c) **CM-GMP Contingency:** Amount of this contingency to be quoted by the CM but must be a minimum of 2.00% of the Project Construction Budget. (see Section 3 for details on this contingency).

D. **CM Hourly Billing Rates for the Project** based on Section 3 Article 2, Item 3.2.6.B.(2) for the applicable on-site positions during construction excluding those positions in which prevailing wage rates apply. These hourly bill rates will be the basis by which the awarded CM is reimbursed for these positions. **Note: The hours priced must, at a minimum, match the "Matrix of Hours" provided for evaluation in the Technical Proposal.**

include billing rate for preconstruction services.

4.4.3 PRICE PROPOSAL EVALUTIONS:

A. Price Proposals will not be opened publicly.

- B. Price Proposals will be evaluated based on the total costs and price, excluding General Conditions estimate. The University will also evaluate the estimated hours along with rates.
- C. The University, in order to evaluate the accuracy and completeness of the certified cost or pricing data, shall have the right to examine and audit all of the Proposer's records, including computations and projections in connection with any pricing action relating to this proposal, contract, subcontract, or modification including certified cost or pricing data.
- D. The University may elect to request Best & Final Price Proposal(s).

4.4.4 FINAL PROPOSAL RATING:

- A. The final proposal rating will be based on all submissions from the Proposer.
- B. Technical merit will have a much greater weight than cost. The selection committee will not review cost information until after the technical proposal review is complete. If the top ranked technical firm is not the lowest cost, the University will make an assessment whether that Proposer brings enough value to justify the added cost.
- C. The Evaluation and Selection Committee will choose from among the highest rated proposals that proposal which will best serve the interests of the University, in accordance with State procurement regulations.
- D. Upon successful completion of evaluations, the University will proceed with the contract award. As stated in Attachment J, the University reserves the right to make an award with or without negotiations.

4.4.5 AWARD:

- A. The successful Contractor firm will be required to sign the University's contract (see Attachment B for the University's Standard Form of Construction Contract). If the selected Contractor is a joint venture firm, all joint venture parties will be held responsible for the contract obligations separately and severally.
 - (1) The University shall fully execute the contract for Preconstruction Services with the successful Contractor firm.

**END OF SECTION 4, ARTICLE 4:
PRICE PROPOSAL/FINAL EVALUATION AND SELECTION**

END OF SECTION 4: PROCUREMENT PHASES AND EVALUATION PROCESS

ATTACHMENT A

TECHNICAL PROPOSAL FORMS TO BE SUBMITTED WITH PHASE 2 TECHNICAL PROPOSAL SEE SEPARATE ATTACHMENT

The following forms must be included within the Phase 2 Technical Proposal. However, please refer to Section 4 for further required contents of the Technical Proposal. Completion of these forms is not the entire Proposal.

Bid/Proposal Affidavit

Acknowledgement of Receipt of Addenda (if applicable)

MBE Attachment H-1A Part 2, MBE Utilization and Fair Solicitation Affidavit

It is the Proposer's responsibility to thoroughly review the RFP documents, in particular Section 4, to ensure all required contents are submitted.

The forms required to be submitted in the Phase 2 Technical Proposal are provided as a separate WORD file.

ATTACHMENT B

Contract Forms

DUE UPON AWARD OF PRECONSTRUCTION SERVICES:

- **University's Construction Contract**
- **Contract Affidavit**
- **Contracting Affidavit, Apprenticeship Training Fund Verification**

DUE UPON AWARD OF GMP(S):

- **Performance and Payment Bonds (if price over \$100,000)**
- **MBE – Attachment H1A, Part 3 thru H-3B (as applicable)**
- **Subcontractor Affidavit, Apprenticeship Training Fund Verification**

STANDARD FORM OF CONSTRUCTION CONTRACT

CONTRACT # C-_____

This Standard Form of Construction Contract (SFCC) is made by and between the University of Maryland, Baltimore ("University") and _____ (Firm Legal Name), _____ (Address), _____ (City), _____ (State), _____ (Zipcode), FID # _____ ("Contractor") on the date signed by the University below.

WITNESSETH:

1. The University has issued a procurement solicitation in connection with a certain project known as _____ at _____.

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:
RFP # _____ Document dated ___/___/___;
RFP # _____ Addendum #1 dated ___/___/___;
_____'s (Firm Legal Name) Technical Proposal dated ___/___/___ including Key Personnel
(_____ - Project Executive, _____ - Project Manager, _____ - Field Superintendent, _____ - Project Estimator, _____ - BIM/VDC Manager, _____ - MEP Project Engineer) and MBE Commitment of ___% with MBE sub-goal commitments of ___% MBE participation from firms classified as _____-owned and ___% MBE participation from firms classified as _____-owned; and,
_____'s (Firm Legal Name) Price Proposal dated ___/___/___.
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 complete the initial pre-construction services not later than _____ (___) months, inclusive of _____ (___) for bidding, preparation, including BPW approval of the GMP. Subsequent amendments are to be issued in accordance with the RFP documents and as approved by the University, at which point the Contractor shall diligently prosecute the Work from and after the issuance of the Notice to Proceed and shall substantially complete the construction work not later than _____ (___) months.
4. Total monetary compensation to the Contractor under the Contract is _____ for the

initial contract in which the Contractor is to provide pre-construction services only for the project with subsequent amendments to be issued in accordance with the RFP documents and as approved by the University.

(Signatures on following page)

Page 1 of 2

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

Contractor

(Witness) By: _____ (Seal)

Print Name: _____

Title: _____

University of Maryland, Baltimore
University

(Witness) By: _____

Print Name: _____

Title: _____

BUDGETARY DATA:

Requisition No. _____

Fund: _____

Budget: _____

Approved by Board of Public Works:

Item No. _____ Date: _____

CONTRACT AFFIDAVIT

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT: The business named above is a (check applicable box):

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

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

Name and Department ID Number: _____

Address: _____

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

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$200,000, 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, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

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 Proposal, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
 - (c) Prohibit its employees from working under the influence of drugs or alcohol;
 - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
 - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
 - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
 - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;

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

(i) Abide by the terms of the statement; and

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

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

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

(i) Take appropriate personnel action against an employee, up to and including termination; or

(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

Date: _____

By: _____ (print name of Authorized Representative and Affiant)

_____ (signature of Authorized Representative and Affiant)

**CONTRACTOR AFFIDAVIT APPRENTICESHIP TRAINING FUND
VERIFICATION**

Submit this document to the Procurement Officer within 10 Working Days of Notification of Apparent Awardee.

In conjunction with the bid or offer submitted in response to the New School of Social Work Building University, Solicitation No. 20-399 CB, I affirm one of the following with regards to apprenticeship contributions:

- Participates in an apprenticeship training program for each covered craft in which I will employ persons for the covered project.
- Will make payments to the Fund.
- Will make payments in amounts determined under §17-605 of the State Finance and Procurement Annotate Code of Maryland, to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.

I understand that if I fail to return this 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.

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

Firm Name

Signature of Affiant

Address

Printed Name, Title

City, State, Zip

Phone

Fax

E-Mail

Date

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

Penal Sum of Bond (express in words and
figures)

Date of Contract _____,
20____

Description of Contract: Howard Hall Exhaust
System Replacement 23-XXX JMG

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 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 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 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 obligation 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 of power of attorney authorizing such action, and each such duly authorized representative to sign below and 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.

Individual Principal

In Presence of: _____
Witness (Name)
_____ as _____ (SEA
to L)

Co-Partnership Principal

In Presence of: _____
Witness: (Name of Co-Partnership)
_____ as _____ (SEA
to L)
Partner

_____ as _____ (SEA
to L)
Partner

_____ as _____ (SEA
to L)
Partner

Corporate Principal

Attest: _____
(Name of Corporation)
AFFIX
CORPORATE
SEAL
By:

_____ Corporate Secretary President

Attest: _____

Signature (Individual or Corporate Surety)
Bonding Agent's Name
_____ By:

_____ Agent's Address: _____ SEAL

_____ Title: _____

(Business Address of Surety)

Approved as to form and legal sufficiency
this

_____ day of _____ 20 __

—
Assistant Attorney General

PAYMENT BOND

Principal	Business Address of Principal
<hr/>	
Surety	Obligee
a corporation of the State of	STATE OF MARYLAND
<hr/>	
and authorized to do business in the State of Maryland	By and through the following Administration
<hr/>	
_____	Date of Contract _____,
Penal Sum of Bond (express in words and figures)	20_____
Description of Contract: Howard Hall Exhaust System Replacement 23-XXX JMG	Date Bond Executed _____,
	20_____
Contract Number: _____	
<hr/>	

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 address 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 subcontractors 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 hereby jointly and severally agree with the Obligee that every claimant as herein defined, who has not been 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 judgment 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 obligation 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 of power of attorney authorizing such action, and each such duly authorized representative to sign below and 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.

Individual Principal

In Presence of: _____
Witness (Name) _____
_____ as to _____ (SEAL)

Co-Partnership Principal

In Presence of: _____
Witness: (Name of Co-Partnership) _____
_____ as to _____ (SEAL)

Partner

_____ as to _____ (SEAL)

Partner

_____ as to _____ (SEAL)

Partner

Corporate Principal

(Name of Corporation)
Attest: AFFIX
CORPORATE
SEAL

Corporate Secretary By: _____
President

Attest: _____
Signature (Individual or Corporate Surety)
Bonding Agent's Name

_____ By: _____
Agent's Address: SEAL

_____ Title: _____

(Business Address of Surety)

Approved as to form and legal sufficiency this
_____ day of _____ 20 __

Assistant Attorney General

SUBCONTRACTOR AFFIDAVIT APPRENTICESHIP TRAINING FUND VERIFICATION

Submit this document to the Procurement Officer within 10 Working Days of Notification of Apparent Awardee.

In conjunction with the bid or offer submitted in response to the New School of Social Work Building

University, Solicitation No. 20-399 CB, I affirm one of the following with regards to apprenticeship contributions:

- Participates in an apprenticeship training program for each covered craft in which I will employ persons for the covered project.
- Will make payments to the Fund.
- Will make payments in amounts determined under §17-605 of the State Finance and Procurement Annotate Code of Maryland, to a registered apprenticeship program or to an organization that has registered apprenticeship programs for the purpose of supporting these programs.

I understand that if I fail to return this 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.

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

Firm Name

Signature of Affiant

Address

Printed Name, Title

City, State, Zip

Phone

Fax

E-Mail

Date

ATTACHMENT C
CAMPUS MAP

A Campus Map can be found on our website at: <https://www.umaryland.edu/maps/>

ATTACHMENT D

Shop Drawings/Submittal Flow Chart (to be provided to shortlisted firms)

ATTACHMENT E

(Intentionally Omitted)

ATTACHMENT F

Commissioning (to be furnished to shortlisted firms)

ATTACHMENT G
SAMPLE PRICING FORMS
(ALTERNATE TO BE ISSUED VIA ADDENDUM)
BID BOND

FID #: _____

COST PROPOSAL – DATE

DATE _____

Michelle Compton
Construction & Facilities Strategic Acquisitions
University of Maryland, Baltimore
Saratoga Street Offices, Room 02-100
220 Arch Street
Baltimore, MD 21201-1531

Dear Ms. Compton

The undersigned, hereby submits a price proposal for the construction management services for the **RFP FOR SOM-HSF III 5th & 6th Floor Tenant Space Buildouts** as set forth in the University of Maryland at Baltimore RFP #23-326 MC dated DATE and Addenda as follows:

- Addendum No. ____ Dated _____

Having received clarification on all matters upon which any doubt arose, the undersigned proposes to complete the work for the following guaranteed maximum price:

We understand that by submitting a proposal, we are agreeing that (i) the Project schedule will be met and (ii) the total hard construction cost for the Project, as set forth in the Contract shall not exceed the amount of the Project Construction Budget as noted above. We understand that any and all savings accrued during the Construction Phase of the Project are for the benefit of and shall revert to the University.

We understand that for any or no reason the University, at its sole discretion, can decline to accept the Construction Manager's GMP for a trade package or group of trade packages and can decline to amend the contract to reflect these items and the applicable Construction Phase CM fee and thereupon, without penalty, the Construction Manager's agreement will terminate automatically according to its terms. We further understand that the approval by the Board of Public Works and/or the University System of Maryland Board of Regents for the amendment(s) to the Contract, if applicable, may be withheld at its sole discretion. If such approval is withheld, the Contract will terminate automatically according to its terms.

We understand that Prevailing Wages (to be provided by the University prior to the bidding of trade packages by the CM) are to be paid during the construction phase and these wages will apply on entire Project. We understand that a Bid Bond is required with this Price Proposal. We understand that a 100% Performance & Payment Bond is required with the issuance of any Construction Contract Amendment to incorporate trade work into the CM Contract.

We also understand that the Bid/Proposal Affidavit, MBE Attachment H1-A, Part 2, proof of the Proposer's Contractor's license under Article 56, Section 180, Annotated Code of Maryland and our MBE participation commitment above the 30% requirement, if any, provided with our Technical Proposal remain in force under this Price Proposal phase.

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 RFP document.

Attachments: 23-326 MC Cost Proposal Excel Spreadsheet

(Signatures should be placed on following page.)

SAMPLE

The offeror represents, and it is a condition precedent to acceptance of this proposal, that the offeror has not been a party to any agreement 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 Co - Partnership)
ADDRESS _____

In Presence of Witness: _____ TELEPHONE NO. _____

as to BY _____
(Partner)
Printed Name: _____

as to BY _____
(Partner)
Printed Name: _____

as to BY _____
(Partner)
Printed Name: _____

C. CORPORATE PRINCIPAL

(Name of Corporation)

ADDRESS

TELEPHONE NO.

Attest:

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

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

BY:

Signature of Officer and Title

Printed Name

Title

Page 6 of 6

Cost Proposal

Firm Name	
Solicitation Number	23-326
Project Title	SOM - HSF III 5th & 6th Floor Tenant Space Buildout
Construction Estimate	\$25,000,000

	§4.4.1 RFP Reference			
Preconstruction Phase				
	B.2		\$100,000	Allowance defined by University
Construction Phase				
Construction Project Personnel	C.1.a			please complete Billing Rates tab as well. Break post substantial completion out separately below.
		Sub-total	\$ -	
Total Pre-Construction and Construction			\$ 100,000.00	
Post Construction Phase				
Post Substantial Completion Project Personnel	C.1.a			please complete Billing Rates tab as well. Include substantial completion in this line.
General Conditions for Project NTE Amount				Please give a reasonable amount of detail for what is known at this point of the project.
Payment/Performance Bonds of CM, expressed as a rate (%)	c.1.b(ii)		\$ -	
Additional cost of subcontractor guarantee, expressed as a rate (%):	c.1.b(iii)		\$ -	
Insurance, expressed as a rate (%)	c.1.b(i)		\$ -	
Fixed Fee, based on Construction Estimate	B.2			Fee is intended to apply to construction and normal changes.
Fee rate to be used for material change in scope, expressed as a rate (%):	B.2.1		\$ -	Will be used only if a material change in scope or conditions
CM-GMP Contingency	4.4.1 c 1 c			minimum of 2% of Project Construction Budget
Travel & Misc. Costs			\$ -	
Sub-total			\$ -	
Total Cost proposal			\$ 100,000.00	

BID BOND

BID BOND

Bond No. _____

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 Principal and the 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 (Identify project by number and brief description):

NOW, THEREFORE, if the Principal, upon acceptance by the State of its bid identified above, within the period specified therein for acceptance (ninety (90) 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 the difference not to exceed the penalty hereof between the amount specified in Principal's bid and such larger amount for which the State may in good faith contract with another party to perform the work covered by said 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 Surety being hereby waived; provided that such waiver of notice shall apply only with respect to extensions aggregating not more than ninety (90) calendar days in addition to the period originally allowed for acceptance of the bid.

Individual Principal

In Presence of:

Witness

_____ (Name)

_____ as to _____ (SEAL)

Partnership Principal

In Presence of:

Witness:

_____ (Name of Partnership)

_____ as to _____ (SEAL)

Partner

_____ as to _____ (SEAL)

Partner

_____ as to _____ (SEAL)

Partner

Corporate Principal

Attest: (Name of Corporation) _____
AFFIX

SEAL
By:

Secretary President

Attest:

Signature (Surety)

Bonding Agent's Name _____ By:

Agent's Address: _____ SEAL
Title: _____

(Business Address of Surety)

Approved as to form and legal sufficiency this
_____ day of _____ 20 __

Assistant Attorney General

ATTACHMENT H

Contents:

MBE H-1A PART 1 - Instructions	
MBE H-1A PART 2 - MBE Utilization and Fair Solicitation Affidavit	<u>To be included with Technical Submission</u>
MBE H-1A PART 3 - MBE Participation Schedule	To be included with GMP Submission(s)
MBE H-1A PART 4 - Signature Page	To be included with GMP Submission(s)
MBE H-1B – Waiver Guidance	N/A
MBE H-1C - Good Faith Efforts Documentation to Support Waiver Request	N/A
MBE H-2 - Outreach Efforts Compliance Statement	N/A
MBE H-3 - MBE Subcontractor/MBE Prime Project Participation Statement	(issued as a separate file to the selected firm, and to be included with GMP Submission(s))
MBE H-4 - Prime Contractor Paid/Unpaid Invoice Report / MBE Prime Contractor Report	(issued as a separate file upon award)
MBE H-5 – MBE Subcontractor Contractor Paid/Unpaid Invoice Report	(issued as a separate file upon award)
MBE H-6 - Liquidated Damages Provisions for Construction Contracts Containing MBE Participation Goals	

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 which must be submitted with the Technical Proposal & MBE Participation Schedule which must be submitted with the Fee Proposal by the selected firm. 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 unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.

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://marylandmdbe.mdbecert.com/> 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 1-B 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

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 Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): 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.

Example for illustrative purposes of applying

the 60% rule: Overall contract value:

\$2,000,000

Total value of supplies: \$100,000

Calculate Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%

Apply 60% Rule - Total percentage of Supplies/Products 5% x 60% = 3%

3% would be counted towards achieving the MBE Participation Goal and Subgoal, if any, for the MBE supplier in this example.

- **Manufacturer**: 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.
- **Broker**: 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 and other Services**: 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. Includes the participation of other MBE service providers in the proper NAICS code(s) 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 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):	_____	%
---	-------	---

PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

This MBE Utilization and Fair Solicitation Affidavit must be completed in its entirety and included with the Technical Proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the Technical 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. 23-XXX JMG 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 **30 percent** and all of the following subgoals:

8 percent for African American-owned MBE firms

11 percent for Women-owned MBE firms

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 and Part 4 Signature Page in order to be considered for award at the time of the GMP submission. I acknowledge that by checking this box intending to meet the stated goal and the stated subgoal(s) if any, I **must** complete Part 2 Signature Page in order to be considered for award.

OR

After making good faith outreach efforts prior to making this submission, I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** provide supporting documentation for this waiver request, and complete Part 2 Signature Page in order to be considered for award. 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 and Part 4 Signature Page 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 at the time of the GMP submission. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 2 Signature Page 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 (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 3B) – at the time of GMP submission only;
- (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 2 – MBE UTILIZATION AND FAIR SOLICITATION
AFFIDAVIT SIGNATURE PAGE

**To complete Affidavit committing to MBE(s) or requesting waiver,
Bidder/Offeror must sign below:**

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 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 TECHNICAL PROPOSAL

PART 3 - MBE PARTICIPATION SCHEDULE

(to be completed by the selected firm at the time of GMP submission)

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
	SOM-HSF III 5 th & 6 th Floor Tenant Space Buildouts	23-326 MC

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><input checked="" type="checkbox"/> If dually certified, check only one box.)</p> <p><input type="checkbox"/></p> <p><input type="checkbox"/> African American- <input type="checkbox"/> Owned Hispanic <input type="checkbox"/> American- Owned <input type="checkbox"/> Asian American- <input type="checkbox"/> Owned Women- <input type="checkbox"/> Owned <input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</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): _____% Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> 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>Supplier, wholesaler and/or regular dealer (count 60%) Manufacturer (count 100%) Broker (count reasonable fee/commission only) Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and</p>
--	--

install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers)_____%

B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).

Total percentage of Supplies/Products % x 60% = %

C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only)_____%

Description of the work to be performed with MBE prime's own forces:

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</p> <p><input type="checkbox"/> Hispanic Owned</p> <p><input type="checkbox"/> American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p>Other MBE Classification _____</p> <p>NAICS code: _____</p>	<p>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer <input type="checkbox"/> (count 60%) Manufacturer (count 100%) <input type="checkbox"/> Broker (count reasonable fee/commission only) Furnish and Install and other Services (count 100%)</p> <p>Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.</p> <p>A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_____ %</p> <p>B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products___% X 60% = ___%</p> <p>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only)_____ %</p> <p>Description of the work to be performed:</p> <p>_____</p> <p>_____</p>
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MBE Firm
Name: _____

MBE Certification Number: _____

- If dually certified, check only
 (one box.) African
 American-Owned
 Hispanic American-
Owned Asian
 American-Owned
 Women-Owned
 Other MBE Classification

NAICS code: _____

Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.

- Supplier, wholesaler and/or regular dealer
(count 60%) Manufacturer (count 100%)
Broker (count reasonable
fee/commission only) Furnish and
Install and other Services (count 100%)

Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.

A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%

B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).
Total percentage of Supplies/Products ___% X 60% = ___%

C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only)_____%

Description of the work to be performed:

MBE Firm Name: _____

MBE Certification Number: _____

(If dually certified, check only one box.)

African American-

Owned Hispanic

American- Owned

Asian American-

Owned Women-

Owned

Other MBE Classification

NAICS code: _____

Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.

Supplier, wholesaler and/or regular dealer

(count 60%) Manufacturer (count 100%)

Broker (count reasonable

fee/commission only) Furnish and

Install and other Services (count 100%)

Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.

D. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%

E. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).

Total percentage of Supplies/Products ___% X 60% = ___%

F. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only)_____%

Description of the work to be performed:

MBE Firm Name: _____

MBE Certification Number: _____

(If dually certified, check only one box.) African American-Owned
 Hispanic American-Owned
 Asian American-Owned
 Women-Owned
 Other MBE Classification _____

NAICS code: _____

Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.

Supplier, wholesaler and/or regular dealer (count 60%)
 Manufacturer (count 100%)
 Broker (count reasonable fee/commission only)
 Furnish and Install and other Services (count 100%)

Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE Firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.

D. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%

E. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).
 Total percentage of Supplies/Products___% X 60% = ___%

F. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only)_____%

Description of the work to be performed:

MBE Firm Name: _____

MBE Certification Number: _____

(If dually certified, check only one box.) African American-Owned
Hispanic American-Owned
Asian American-Owned
Women-Owned
Other MBE Classification

NAICS code: _____

Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.

Supplier, wholesaler and/or regular dealer (count 60%)
Manufacturer (count 100%)
Broker (count reasonable fee/commission only)
Furnish and Install and other Services (count 100%)

Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that for the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.

A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers and brokers)___%

B. Percentage of the total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products_____ % X 60% = ___%

C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only)_____%

Description of the work to be performed:

MBE Firm Name: _____

MBE Certification Number: _____

(If dually certified, check only one box.)

- African American-Owned
- Hispanic Owned
- American- Owned
- Asian American-Owned
- Women-Owned
- Other MBE Classification

NAICS code: _____

-
-
-
-
-

Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.

-
- Supplier, wholesaler and/or regular dealer (count 60%) Manufacturer (count 100%) Broker (count reasonable fee/commission only) Furnish and Install and other Services (count 100%)

Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work that the MBE firm named to the left will be performing to calculate the amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any.

A. Percentage of total contract amount where the MBE firm is being used for manufacturer, furnish and install, and/or services (excluding products/services from suppliers, wholesalers, regular dealers _____ and brokers)___%

B. Percentage of total contract amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).
 Total percentage of Supplies/Products ___% X 60% = ___%

C. Percentage amount of fee where the MBE firm is being used as broker _____%

Description of the work to be performed: _____

CONTINUE ON SEPARATE PAGE IF NEEDED

PART 4 – SIGNATURE PAGE

To complete Affidavit committing to MBE(s), Bidder/Offeror must sign below:

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 FEE PROPOSAL

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.”

ATTACHMENT I

University Standard General Conditions

**Section 00700: UMB Standard General Conditions for Construction Management with
GMP Contract Dated May 2022**



UNIVERSITY OF MARYLAND, BALTIMORE

CONSTRUCTION SERVICE CENTER
DEPARTMENT OF STRATEGIC SOURCING AND ACQUISITION SERVICES

**STANDARD GENERAL CONDITIONS
OF
CONSTRUCTION MANAGEMENT CONTRACT
WITH
GUARANTEED MAXIMUM PRICE**

"STANDARD GENERAL CONDITIONS"

SECTION 00700

Revised May 2022

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SECTION 1: DEFINITIONS AND RESPONSIBILITIES

1.01 Definitions

A. The following definitions shall apply to the entire Contract unless specifically noted.

“Addendum” – A revision or clarification to the original forms, conditions, Specifications and Drawings, made prior to execution of the Contract. Addenda are part of the Contract 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.

“Approved Equal” – A product, material, equipment or method that is determined by the Architect or Engineer to meet or exceed the specified requirements.

“Architect,” “Architect/Engineer” or “A/E” – A person registered in the State of Maryland to practice architecture and commissioned by the University to serve as architect on this project. Should no independent Architect have been appointed, then the Office of Facilities Management of the University of Maryland, Baltimore, is referred to by the term “Architect.” 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 a project is a 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 the project.

“As indicated,” “as shown,” “as specified” (or any correlative meaning) – Means as indicated, shown or specified in the Contract Documents.

“Chancellor” – The Chancellor of the University System of Maryland or designee.

“Change Order” – A written order signed by the responsible Procurement Officer, directing 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. Also, proposed alterations to the Contract involving modification to the time or price; these Change Orders may alter the Contract by addition, deletion or modification to the Work. A Change Order initiated by the Contractor, as provided in the General Conditions, is not binding unless signed by the responsible UMB Procurement Officer and issued as an Amendment to the Contract.

“Client University” – The constituent institution of the University System of Maryland which will manage and use the Project upon completion. This may be the University of Maryland, Baltimore, or another constituent institution of the University System of Maryland.

“Construction Manager” – See “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 the Contractor at the mutually established and accepted rate or price. The Contract shall include the RFP, the proposal, contract forms and bonds, these Standard General Conditions, and special conditions pertaining to work on the campus involved, specifications, addenda, supplemental specifications, all special provisions, all technical provisions, all plans and notices to proceed, any written change orders and Supplemental Agreements 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. (The documents comprising the Contract are sometimes referred to as the “Contract Documents.”)

“Contract Amendment” – As defined in Section 2.02A.

“Contract Time” and “Completion Date” – The Contract Time is the number of calendar days shown in the specifications indicating the time allowed for the completion of the Work. The Completion Date is the date all Work is due to be Substantially Complete. If a Completion Date is shown, instead of the number of calendar days, all Work shall be completed on or before that date, regardless of any statement of Contract Time.

“Contractor” – The Construction Manager as described in Section 00400. The Contractor shall indicate its Federal Tax Identification or Social Security Number following its name on the first page of the Contract. The Contractor is the organization or person having direct contractual relation with the University for the execution of the “Work.” If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

“Critical Path Method” or “CPM” - A scheduling/management tool showing a network of Work elements or activities for the Project.

“Day” – 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.

“EHS” – University of Maryland, Baltimore’s Office of Environmental Health and Safety

“Notice to Proceed” – A written notice from the Project Manager to the Contractor of the date on which it shall begin the prosecution of the Work. The Contract contemplates two Notices to Proceed, the “Pre-Construction Notice to Proceed” and the “Construction Notice to Proceed.”

“Or equal,” “similar to,” or similar expressions – Means “equality” or “acceptability,” as determined by the (1) Project Manager or Procurement Officer, and (2) Architect.

“Owner” – Refers to the University of Maryland, Baltimore or its Client University, or another constituent institution of the University System of Maryland.

“Payment Bond” – The security in the form approved by the Procurement Officer and executed by the Contractor and its surety, and paid for by the Contractor, as a guarantee that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the Work, as provided by law.

“Performance Bond” – The security in the form approved by the University and executed by the Contractor and its surety, and paid for by the Contractor, guaranteeing complete performance of the Contract.

“Plans” – The Drawings approved by the Project Manager as part of the Contract Documents, including those incorporated in the Contract Documents by reference.

“Procurement Officer” – The person designated by the University 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.

“Project” – The Project is the specified project identified in the solicitation documents. The Project is the total construction or design and construction of the Work under the Contract Documents. The Work, which may be the whole or a part of the Project, may include construction or design and construction by the University or by separate contractors, in addition to the Work under the Contract.

“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” – 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, an item must be, unless otherwise stated, rendered to such condition 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 means, 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.

“Schedule of Values” or “SOV” – As defined in Section 8.01.

“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” – The State of Maryland.

“Subcontractor” – A person or entity who has a direct contract with the Contractor to perform a portion of the Work. 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. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number, and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor. A Subcontractor may enter into subcontracts with Sub-subcontractors (with the University’s prior approval, if required by the Contract Documents).

“Sub-subcontractor” – A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number, and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

“Substantial Completion” – The date on which the Project is determined by the Project Manager to be complete and ready for its intended use and occupancy, as determined in accordance with Section 7.14.

“Supplemental Agreement” – A written agreement covering added or changed work which is beyond the scope of the Contract and the changes clause. A Supplemental Agreement becomes an Addendum and 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. Also, the entity issuing any Performance and Payment Bonds for the Work and Contract.

“University” – Refers to the University System of Maryland, a public corporation and an agency of the State of Maryland. In particular, the University refers to the University of Maryland, Baltimore, or its authorized representative, that issued bid information relative to the Project and that is responsible for administering the Contract.

“Work” – Furnishing of all labor, materials, equipment, services, utilities, and other incidentals necessary to the successful completion of the part of the Project that falls under the Contract, and the carrying out of all the duties and obligations imposed upon the Contractor 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 which it is intended, or if delivered or sent by registered mail to the last business address specified in the Contract Documents, or in a later notice of change of address, and, if no such notice address is specified, to the last known office address of the representative of the other party to whom notice is addressed.

B. Other Terms – Any capitalized term used in the General Condition which is defined in other Contract Documents, but not in these General Conditions, shall have the meaning set forth in the other Contract Documents.

1.02 University’s Responsibilities

A. The University shall furnish upon request base surveys describing the physical characteristics, legal limitations, and utility location for the site of the Project, and a legal description of the site. The Construction Manager shall be required to provide any and all subsequent surveys under the General Conditions allowance.

B. Information or services 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 and the University shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance of the Work or operation of the Contract.

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 its best skill and attention. The Contractor shall be solely 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 the acts and omissions of its employees, Subcontractors, Sub-subcontractors, and other persons or entities performing any of the Work under the Contract, and their agents and employees.

C. The actions of the Architect and any inspections, tests or approval of the Work are for the benefit of the University and shall not relieve the Contractor from its obligations to perform the Work in accordance with the Contract.

D. The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents, and shall not unreasonably encumber the site with any materials, equipment, or debris.

E. 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 in accordance with the Contract Documents. The Contractor shall not damage or endanger any portion of the Work or the work of the University or any separate contractors by cutting, patching, or otherwise altering any work or by excavation. The Contractor shall not cut or otherwise alter the work of the University and of such separate contractors. The Contractor shall not unreasonably withhold from the University or any separate contractor its consent to cutting or otherwise altering the Contractor's Work.

F. The Contractor shall perform all work in accordance with the lines, grades, typical cross sections, dimensions, and other data required by the Contract Documents or as modified by written orders and Change Orders, 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 and the Work in full compliance with the Contract Documents.

G. Indemnification:

(1) To the fullest extent permitted by law, the Contractor shall indemnify 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 attorneys' 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 agent or employees, provided such giving, or failure to give directions or instructions, is the primary cause of the injury or damage.

H. Record Logs

(1) The Contractor shall maintain and update at least weekly, logs/records, including the following:

- (a) Proposed change order Log
- (b) Submittal Log
- (c) Request for Information (RFI) Log, and,
- (d) Any other log/records requested by the Project Manager

(2) Logs shall be maintained in a format acceptable to the Project Manager and current (updated) copies shall be made available to the Procurement Officer upon request. Updated logs shall be furnished to the Project Manager prior to any scheduled progress meeting.

(3) Logs shall include key dates to enable analysis of compliance with required response times and to track, via aging reports, the status of outstanding items requiring attention.

SECTION 2: AWARD AND EXECUTION OF CONTRACT

2.01 Award of Contract

A. The University reserves the right to cancel the award of the Contract before the execution of the Contract by all parties without any liability on the University's or Client University's part.

B. When a Contract is jointly bid, all parties bidding together will be held jointly and severally responsible for the duties of the Contractor.

2.02 Execution of Contract and Amendment

A. After a Notice of Award has been issued and after the University has accepted the GMP, respectively, the University's Office of Strategic Sourcing and Acquisition Services shall forward the formal contract form or the formal contract amendment to reflect the GMP ("Contract Amendment"), as applicable. The University also shall forward other applicable and required contract forms (i.e., Contract Affidavit, Minority Business Participation Form, Performance and Payment bonds, etc.) to the Contractor for execution. The Contractor shall execute the Contract form or the Contract Amendment, as applicable, and other applicable forms, and return it to them, along with required certificate(s) of insurance, to the University's Office of Strategic Sourcing and Acquisition Services within ten (10) days after receipt of required forms from the University.

B. After receipt of the properly executed Contract form or the Contract Amendment, as applicable, and other applicable contract forms, the University's Office of Strategic Sourcing and Acquisition Services will execute the Contract or the Contract Amendment, as applicable, within sixty (60) days and forward the Contractor a copy. If the University fails to execute the Contract or the Contract Amendment, as applicable, within the sixty (60) day period, the Contractor will have, as its only remedies, 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 and the Contract Amendment shall not be in effect until and unless executed by all parties and approved by the Board of Public Works, if required.

2.03 Failure To Execute Contract

A. Failure of the Contractor to execute the Contract or a Contract Amendment and file acceptable bonds within the time provided in Section 2.02 and Section 2.04 shall be just cause for the payment of

liquidated damages guaranteed by the bid bond or other securities at an amount equal to the increased Contract price (including but not limited to GMP) paid by the University as a result of the failure of the Contractor to execute the Contract or a Contract Amendment.

B. 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):

A. The University shall provide to the Contractor for execution copies of the Performance and Payment Bond along with the formal Contract Amendment reflecting the GMP. 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 GMP.

C. The Contractor shall adjust the amount of the bonds from time to time to reflect any increase or decrease in the GMP 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 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 the University's Office of Strategic Sourcing and Acquisition and Supply 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:

(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 outdated.

(3) If the parties are negotiating 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 a 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 the Contractor 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 this Contract.

C. **Corporate 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 that 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 - The intent of the Contract 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, it 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 it 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 in Maryland 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.

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, 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 one (1) set of Drawings and one (1) set of specifications at 100% Construction 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 drawings and other documents related to the Work are the property of the University. They must not be used on other work and they shall be returned to the University upon completion of the Work.

(4) References - Singular or plural references shall mean one or more like terms of work as necessary to complete the Work, unless specifically directed otherwise.

(5) Errors - Typographical and spelling errors in the specifications will be interpreted by the A/E for their meaning and intent.

(6) Order or Precedence - The following order of precedence shall be used when there is a conflict in the Bidding or 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)
- (b) These General Conditions (Section 00700)
- (c) Specifications
- (d) 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

C. Dimensions – The Contractor shall carefully check all dimensions prior to execution of the particular 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 will 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, the obvious intent of the documents, or the obvious requirement dictated by conditions existing or being constructed, each 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 time or compensation will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment.

D. Whenever new work, building, addition, or portions thereof are not accurately located by plan dimensions, the Architect will supply exact positions prior to 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 trades. 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 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 detailed connections including refrigeration, elevators, dumbwaiters, laboratory equipment, ducts, etc.

E. Copies Required – Contractor shall supply two (2) copies for the Architect's file and two (2) copies for the University's Office of Facilities Management, in addition to such copies as the Contractor may desire for its own use.

F. Examination and Approval – The Architect will examine shop drawings with reasonable promptness, noting each desired correction and approving or rejecting it.

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 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 notified the Architect in writing to the contrary at the time of submission of drawings, the University and the Architect may and will assume that the drawings are in conformity with the 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 that contemplated in the Contract Documents.

J. University's and Architect's Notations

(1) If the Contractor determines that any rejection of the University's and Architect's notation on the shop drawings will 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 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 by Contractor for compensation in relation thereto.

(2) If the University's and Architect's notation or change involves less work than is covered by the Contract drawings, the Contractor shall notify the Project Manager, Procurement Officer, and the Architect, and shall allow the University an equitable credit resulting from the change in the Work.

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 B(6), in event of a conflict between these General Conditions and any other provision of the Contract Documents, these General Conditions shall prevail unless the other provision expressly provides to the contrary.

3.03 Differing Site Conditions

A. The Contractor shall promptly, and before such conditions are disturbed, notify the Project Manager 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 inherent in work of the character provided for in this Contract. The Project Manager shall promptly investigate the conditions, and report to the Procurement Officer. If the Procurement Officer 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, 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 Section shall be allowed unless the Contractor has given the notice required in Section 3.03 A; *provided, however*, that the time prescribed therefore may be extended by the Procurement Officer.

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. The Contractor acknowledges that it has investigated and satisfied itself as to the conditions affecting the Work, including but not limited 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 it has satisfied itself 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. Failure by the Contractor to acquaint itself with the available

information shall not relieve it from responsibility for estimating properly the difficulty or cost of successfully performing the Work. The University 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 taking all 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 it 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

A. The Procurement Officer 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;
- (4) Directing acceleration in the performance of the Work.

Change Orders under this Section 3.06A may be issued by the Procurement Officer without the Contractor's approval.

B. Any other written order or oral order (which terms as used in this Section 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 Section, 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 Section 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 Section 3.06 B shall be allowed for any costs incurred more than 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 reasonably 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 30 days after receipt of a written Change Order under Section 3.06 A or the furnishing of Contractor's written notice under Section 3.06 B, submit to the Procurement Officer a written notice setting forth the general nature and monetary extent of such claim. The Procurement Officer may extend the period for filing written notice. The statement of claim hereunder may be included in a notice given by Contractor under Section 3.06 B.

F. Regardless of any extension granted under Section 3.06 E, no claim by the Contractor for an equitable adjustment hereunder shall be allowed or asserted after final payment under the 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 \$2000.00 be approved without such itemization.

H. Each Subcontractor and Sub-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 Subcontractor and Sub-subcontractor shall be entitled to mark up by an amount not to exceed **10%** any invoice received from another Sub-subcontractor for work performed by the other Sub-subcontractor's forces. Contractor shall not be allowed any mark-up for work performed by any Subcontractor or Sub-subcontractor.

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.

3.08 Sustainability

The University is committed to sustainable development. If the Project is required to be certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program, the Contractor will provide all required documentation that methods and materials meet the specified performance and practices necessary for certification. If LEED certification is not required, the Contractor shall employ sustainable methods and materials to the greatest extent practical.

SECTION 4: CONTROL OF THE WORK

4.01 Authority of the Architect

Notwithstanding anything in this Contract to the contrary, this Section 4.01 applies solely to the construction phase of the Project.

A. Under the direction of the Project Manager, the Architect shall be the initial interpreter of any Drawings included among the Contract Documents. The Architect will furnish with reasonable promptness such clarifications as it may deem necessary for the proper execution of the Work, all such clarifications to be consistent with the intent of the Contract Documents. The Architect is the agent of the University only to the extent provided in the Contract Documents. When in special instances the Architect is authorized by the University so to act, the Architect 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 Project Manager 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 expense of the Contractor.

C. In the event the Project Manager 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 determine whether the work shall be accepted. In this event, the Procurement Officer will document the basis of acceptance by issuing a proposed Change Order providing 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

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 its own work to such other work, as may be directed by the Architect or Project Manager.

4.04 Control By The Contractor

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

B. The Contractor shall schedule and conduct regular progress meetings every other week, and as directed by the Project Manager, at which Subcontractors (and 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 of the notes or agreement with their content.

4.05 Cooperation With Utilities

A. It is understood and agreed that the Contractor has considered in its 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 the Contractor 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 of the adjacent property 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 lines, conduits, etc., being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the 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 are 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. Inspectors are not authorized to revoke, alter, or waive any requirements of the Contract; inspectors are not authorized to approve or accept any portion of the complete Project. An inspector has authority to call the attention of the Contractor to any failure of the work or materials to conform to the

Contract, and to reject materials or suspend work until any questions at issue can be referred to and decided by the Project Manager. Inspectors shall perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.

B. Inspectors shall in no case act as foremen or perform other duties for the Contractor, and shall not interfere with the management of the Work by the Contractor.

C. Any advice which an 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 requirements; however, if the inspector fails to report any deviation from the Contract requirements, the failure does not release the Contractor from fulfilling all terms of the Contract.

D. Where there is disagreement between the Contractor and the inspector, the inspector will immediately direct the Project Manager's and the Architect's attention to the issues of disagreement. 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. The inspector shall immediately leave the site of the work and 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 subject 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 Project Manager or Procurement Officer.

C. If the specifications, the Office of Facilities Management's instructions, laws, ordinances, or any public authority require any part of the 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, shall be removed and replaced by work and materials which conform to the Contract requirements or shall be otherwise remedied in an acceptable manner authorized by the Project Manager.

C. Upon failure on the part of the Contractor to comply promptly with any order of the University made under 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 of water. 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 costs of maintenance work during construction and before final acceptance shall be included in the base bid. The Contractor will not be paid any additional amount for maintenance 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 Section 4.09, the University may 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 may immediately proceed with adequate forces and equipment to maintain the Project, and the entire cost of this maintenance will be deducted from monies due the Contractor.

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. If monies due are insufficient to deduct all costs, the Contractor shall remain liable for the balance.

4.12 Authority Of Office Of Environmental Health And Safety

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" means 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.

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

The Contractor shall execute the Work 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. Any complaints to 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 is the sole judge of the tolerability of noise levels.

4.15 Parking

Parking of employees of the Contractor, Subcontractor(s), Sub-subcontractor(s), and others involved in the Work is the responsibility of the employer of the workmen. The University's Parking Office may be contacted as to public parking facilities on campus that may be available at the cost of the Contractor or other employer.

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 Project Manager and the Architect in writing of the sources from which the Contractor proposes to obtain all materials that require approval, testing, inspection, or certification prior to incorporation into the Work. This notice shall be given 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 Project Manager's or Architect's approval as to conformity with the specifications, quality, design, color, etc. No materials for which approval is necessary shall be used until written approval is given by the Project Manager and Architect. Approval of a Subcontractor, Sub-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. It 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 Section 5.03.

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 portion of the latest edition of the National Fire Protection Association Code are the applicable specifications.

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 its 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 6.06 and Section 6.07 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 its 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 it 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 day.

5.03 Substitutions

A. Should the Contractor desire to substitute another material for one or more specified by name it shall apply to the Project Manager, 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 effects 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 Project Manager, 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 under Section 5.04 is not a "Substitute."

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 Project Manager 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 jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Project Manager and the Architect timely notice of its readiness so that 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, and approval, and the Contractor shall give notice as provided in Section 5.06 A. 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 certificates of inspection, testing, or approval shall be secured by the Contractor and promptly delivered by the Contractor to the Project Manager 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 Contract will not be tax exempt.

5.09 Hazardous Materials

A. The use or handling of regulated materials, including asbestos, lead or PCBs, 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 the Project.

C. The Contractor must remove any and all materials covered under 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 existing buildings, but the Contractor is advised to remain alert to the possibility of encountering hazardous materials during 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.

SECTION 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, Subcontractors, Sub-subcontractors, or their employees and agents.

B. The Contractor must comply with the provisions of the Workmen's Compensation Act and with Federal, State, and City laws relating to hours of labor.

C. The provisions of this Contract shall be governed by the Laws of Maryland.

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, it 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 Section 6.02.C, and (ii) Cutting & Welding permit noted in Section 6.02.D.

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 permits.

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, at 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.

6.03 Patented Devices, Materials, And Processes

The Contractor shall pay for all royalties and license fees. It 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 it 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 Project Manager 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 University reserves the right to employ outside assistance or to use its own forces to provide the necessary corrective measures. All expenses incurred by the University 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 Project Manager that the governing Federal, State, and local air pollution criteria will be, and were, met. This evidence and related documents may be retained by the University 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 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, 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 the Contractor has not complied with applicable environmental laws and regulations.

6.05 Dewatering

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

6.06 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 6.06.A, the Contractor shall purchase and maintain under the General Conditions allowance for this Project (see Attachment C) insurance required by this Section 6.06.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 insureds.

(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;
- (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 Section 6.06 A shall be written for not less than the following limits of liability.

(1) Worker's Compensation Insurance – statutory requirements.

(2) Employer's liability insurance – \$1,000,000 each accidental injury or disease and \$5,000,000 aggregate.

(3) 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

(4) Business automobile liability – \$1,000,000 each person and \$2,000,000 for each accident, and property damage liability insurance, with a limit of not less than \$2,000,000 each accident.

(5) Umbrella liability – \$10,000,000 limit.

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 is within the coverage of the builder's risk policy.

C. 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. Deliver directly to the Procurement Officer as well as ssasinsurancecertificates@umaryland.edu. 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. The Contractor shall defend, indemnify and save harmless the State of Maryland, the University System of Maryland, the University of Maryland, Baltimore and the Client University and each of their officers, employees and agents, from any and all claims, liability, losses and causes of actions which may arise out of the performance by the Contractor, employees or agents, of the work covered by this Contract. All policies for liability protection, bodily injury or property damage must specifically name on its face, the State of Maryland, the University System of Maryland, the University of Maryland, Baltimore and the Client University as an additionally named insured as respects to operations under the contract and premises occupied by the Contractor provided, however, with respect to the Contractor's liability for bodily injury or property damage under items 6.06A and 6.06B, such insurance shall cover and not exclude Contractor's liability for injury to the property of the University System and to the persons or property of employees, students, faculty members, agents, officers, regents, invitees or guests of the University System.

D. Each insurance policy shall contain the following endorsements: "It is understood and agreed that the Insurance Company shall notify in writing Procurement Officer forty-five (45) days in advance of the

effective date of any reduction in or cancellation of this policy.” A certificate of each policy of insurance shall be furnished to the Procurement Officer. With the exception of Workmen’s Compensation, upon the request of the Procurement Officer a certified true copy of each policy of insurance, including the above endorsement manually countersigned by an authorized representative of the insurance company, shall be furnished to the Procurement Officer. A certificate of insurance for Workmen’s Compensation together with a properly executed endorsement for cancellation notice shall also be furnished. Following the notice of Contract award, the requested Certificates and Policies shall be delivered as directed by the Procurement Officer. Notices of policy changes shall be furnished to the Procurement Officer.” 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.

E. 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.

F. 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.

G. The Contractor shall adjust the amount of liability insurance from time to time to reflect any increase or decrease in the GMP 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 liability insurance cost. For any such decrease, the Contractor will credit the University the actual amount of the decreased liability insurance cost. The Contractor shall provide updated certificates that reflect the increase or decrease within ten (10) working days of the fully executed contract modification.

6.07 *Builder’s Risk Insurance*

A. From and after the execution by Contractor of the Contract amendment to reflect the GMP, the Contractor shall purchase and maintain under the General Conditions allowance for this Project (see Attachment C) builder’s risk insurance naming as additional insured the University of Maryland, Baltimore, Client University, the University System of Maryland, the State of Maryland, the Contractor, any Subcontractor or Sub-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 is 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. Deliver directly to the Procurement Officer as well as ssasinsurancecertificates@umaryland.edu. 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. Deliver directly to the Procurement Officer as well as ssasinsurancecertificates@umaryland.edu. 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.

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 GMP 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 such 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.

6.08 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.

6.09 Separate Contracts

A. The University reserves the right to let other contracts in connection with the Project. 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 its Work with the work of others.

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.

6.10 Payment Of Subcontractors and Sub-subcontractors

A. The final payment of the GMP, payment of any part of the retained percentage, and payment of the Contractor's Construction Fee shall not be due until the Contractor shall deliver to the Project Manager receipt for full payment to all Subcontractors, Sub-subcontractors, and any principal suppliers identified by the Project Manager.

B. If any Subcontractor, Sub-subcontractor, or principal supplier refuses to provide a receipt for payment, the Contractor may obtain final payment by providing the Procurement Officer with a bond satisfactory to the Procurement Officer for payment to that Subcontractor, Sub-subcontractor, or supplier as a condition of fulfilling any contractual obligation (including warranties) or losses resulting from the Subcontractor's, Sub-subcontractor's, or supplier's failure to fulfill such obligations. Under the bond the Contractor shall refund the University all monies paid to the Subcontractors, Sub-subcontractors, or suppliers or losses incurred, including all costs and reasonable attorneys' 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.

6.11 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 this 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 this 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 Section 6.11 B, 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 Subcontractor or Sub-subcontractor.

6.12 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 therefor, 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, or from showing that the work or materials do not in fact conform to the requirements of the Contract. 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 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.

6.13 Covenant Against Contingent Fees

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.

6.14 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.

6.15 Federal Participation

If the United States Government pays all or any portion of the cost of the 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.

6.16 Disputes

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 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 6.16.

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 its 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 provides 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 Contract 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.

6.17 Claims

A. If the Contractor claims that any instructions by Drawings or otherwise involve or may involve extra cost under this Contract, it shall give the Procurement Officer 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, or 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 costs 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 agree 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 Procurement Officer of the existence of the delay within five (5) days of the act or omission causing the delay.

G. No payment will be made by the University for increased payment or performance bond premiums as a result of any act or omission by the University which results in a claim.

6.18 Variations In Estimated Quantities

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.

6.19 Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article of the Annotated Code of Maryland, to the extent that COMAR regulations apply to this Contract, due to operation of law or the terms of the Contract, 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.

6.20 Financial Disclosure

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every 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.

6.21 Political Contribution Disclosure

The Contractor shall comply with, and require its officers, directors, 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.

6.22 Compliance With Law

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

6.23 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.

SECTION 7: PROSECUTION AND PROGRESS OF THE WORK

7.01 Notice To Proceed

A. After the Contract has been approved by the Board of Public Works and fully executed, the Project Manager will issue to the Contractor a “Pre-Construction Phase Notice to Proceed.” This notice will stipulate the date on or before which the Contractor is expected to begin the Work. The specified Contract time in connection with the Pre-Construction Phase shall begin on the day the Work actually starts or on the day stipulated in the Pre-Construction Phase Notice to Proceed. Any preliminary work started or materials ordered before receipt of the Pre-Construction Phase Notice to Proceed, shall be at risk of the Contractor.

B. After the Contract Amendment is approved by the Board of Public Works and executed the Project Manager will issue the “Construction Phase Notice to Proceed.” This notice will stipulate the date on or before which the Contractor is expected to begin the Construction Phase. The specified Contract time in connection with the Construction Phase shall begin on the day work (other than the construction stakeout and mobilization) actually starts or on the day stipulated in the “Construction Phase Notice to Proceed,” whichever is earlier. Any preliminary work started or materials ordered before receipt of the Construction Phase Notice to Proceed shall be at risk of the Contractor.

7.02 Project Signs

Notwithstanding anything in this Contract to the contrary, this section is applicable to the Construction Phase only.

A. General – For all University construction contracts over \$50,000, Contractor shall provide, erect, maintain, and remove upon final acceptance of the 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 a 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 residents along and/or adjacent to the Project site 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 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 its 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, and all trees surrounding the Project site which are liable to injury by the moving, storing, and working up of materials. The Contractor shall not use any 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 permitted to act, at its discretion, to prevent threatened loss or injury. If 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 a 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 purposes of the Project schedule are:

- (1) To assure adequate planning, scheduling and reporting during execution of the Contract;
- (2) To assure coordination of the Work of the Contractor and the various Subcontractors, Sub-subcontractors, and suppliers;
- (3) To assist the Contractor in monitoring the progress of the Work and evaluating proposed changes to the Contract and the Project schedule; and,
- (4) To assist the Contractor in the preparation and evaluation of the Subcontractors' and Sub-subcontractors' monthly progress payment requests.

B. When multiple Subcontractors and Sub-subcontractors are involved, the Contractor will incorporate the schedules of all Subcontractors and Sub-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, Subcontractors', and Sub-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 relating 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 a 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 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 Project Manager. 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 reviewed at 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 Project Manager 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. The time frame(s) for this Project are as described in Section 00400 Scope of Work and work shall commence as set forth in Section 7.01.

I. Materials Purchased Under Allowances – The Contractor with approval of the Project Manager will provide schedules for all materials to be purchased from specified allowances.

7.08 Progress Photographs

The Contractor shall submit photographs in digital format monthly to the Project Manager. Photographs shall be 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

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 the Procurement Officer determines to be appropriate for the convenience of the University.

B. If the performance of all or any part of the Work is suspended, delayed, or interrupted for an unreasonable period of time by an act of the Procurement Officer in the administration of the Contract, or by his failure to act within the time specified in the 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 the Contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption, and the Contract shall be modified in writing accordingly. However, no adjustment shall be made under this Section 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 or excluded under any other provision of the Contract.

C. No claim under this Section 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 University's Right To Terminate For Its Convenience

A. The performance of Work under the Contract may be terminated by the University in accordance with this Section 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 Subcontracts so terminated, in which case the University shall have the right, in its discretion, 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 of 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 the purposes of this Section;
- (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 Section 7.10 B(6); 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 its 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 its 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 the University shall thereupon pay to the Contractor the amount so determined.

D. Subject to the provisions of Section 7.10 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 Section, 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 Section 7.10 E 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 Section, 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 Section.

E. Notwithstanding anything in this Contract to the contrary, this Section shall apply to the Construction Phase of the Contract. Section 7.10 L shall apply to the Pre-Construction Phase of this Contract, notwithstanding anything in this Contract to the contrary. In the event of the failure of the Contractor and the Procurement Officer to agree, as provided in Section 7.10 D, upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this Section, the University shall pay the Contractor the amounts determined by the Procurement Officer as follows, but without duplication of any amounts agreed upon in accordance with Section 7.10 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 claims arising out of the termination of Work under Subcontracts or orders as provided in Section 7.10 B(5), exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by any Subcontractor or Sub-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 Subsection (a); and

(c) A sum, as profit on Subsection (a), 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 Section 7.10 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 Subsection (1) 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 Subsection (1), 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 Section 7.10 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 Section of this Contract entitled "Disputes," from any determination made by the Procurement Officer under Section 7.10 C, E, or I, except that if the Contractor has failed to submit its claim within the time provided in Section 7.10 C or I, and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Procurement Officer has made a determination of the amount due under Section 7.10 C, E, or I, 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 Section 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 Section, and not otherwise recovered by or credited to the University.

I. If the termination of the Contract hereunder is partial, the Contractor may file with the Procurement Officer a claim for 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 Section 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 Section, such excess shall be payable by the Contractor to the University upon demand together with interest computed at the rate provided in Section 11-107(a), Court and Judicial Proceedings Article, 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 Contractor's books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the work terminated hereunder, or to the extent approved by the Procurement Officer, photographs or other authentic reproductions thereof.

L. This Section 7.11 L shall apply solely in connection with the Pre-Construction Phase of the Contract, and in lieu of Section 7.11 E. In the event of the failure of the Contractor and the University to agree as provided in Section 7.10 D upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this Section 7.11, the University shall pay to the Contractor the amounts determined by the University as follows, but without duplication of any amounts agreed upon in accordance with Section 7.10 D:

(1) For completed supplies or services accepted by the University (or sold or acquired as provided in Section 7.10 B(7) and for which payment has not theretofore been made, a sum equivalent to one

aggregate price for the supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other changes;

(2) The total of:

(a) the cost incurred in the performance of the Work terminated including initial cost and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under Section 7.10 L(1);

(b) the cost of settling and paying claims arising out of the termination of work under Subcontracts or orders, as provided in Section 7.10 B(5), which are properly chargeable to the terminated portion of the contracts (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by Subcontractors, Sub-subcontractors, or vendors before the effective date of the Notice of Termination), which amount shall be included in the costs payable under Subsection (a); and,

(c) a sum, as profit on Subsection (a), determined by the University 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; and,

(3) The reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contracts and for the termination and settlement of Subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to this Contract.

The total sum to be paid to the Contractor under (1) and (2) of this Subsection shall not exceed the total contract price in connection with the Pre-Construction Phase 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, these shall be excluded from the amounts payable to the Contractor as provided in Section 7.10 L(1) and (2)(a). The fair value, as determined by the Procurement Officer, of property that is destroyed, lost, stolen or damaged so as to become undeliverable to the University or to a buyer pursuant to Section 7.10 B(7).

7.11 Termination For Default - Damages For Delay - Time Extensions

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 hereof or fails to complete the Work within the allotted time, the University may, by written notice to the Contractor, terminate its 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 it 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 therefor. Whether or not the Contractor's right to proceed with the Work is terminated, Contractor and its sureties shall be liable for any damage to the University resulting from Contractor's 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 (including any time required to procure a new contractor or contractors under University policy and State law) together with any increased costs occasioned for the University in completing the Work.

C. 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 Subcontractors, Sub-subcontractors, or suppliers arising from unforeseeable causes beyond the control if and without the fault or negligence of both the Contractor and the Subcontractors, Sub-subcontractors, or suppliers; and

(2) The Contractor, within ten (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” Section of this Contract.

D. If, after notice of termination of the Contractor’s right to proceed under the provisions of this Section, it is determined by the Procurement Officer for any reason that the Contractor was not in default under the provision of this Section, or that the delay was excusable under the provisions of this Section, 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 Section providing for termination for convenience of the University, 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 Section of this Contract entitled “Disputes.”

E. The rights and remedies of the University provided in this Section are in addition to any other rights and remedies provided by law or under this Contract.

F. As used in Section 7.11 C(1) and Section 7.11 I, the term “Subcontractors, Sub-subcontractors, or suppliers” means Subcontractors, Sub-subcontractors, or suppliers at any tier.

G. Notwithstanding anything in this Contract to the contrary, Sections 7.11 A-F shall apply only to the Construction Phase of this Contract.

H. In connection with the Pre-Construction Phase of this Contract, if the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the University may terminate this Contract upon written notice from the Procurement Officer to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the option of the University, become the University’s property. The University shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination less the amount of damages caused by the Contractor’s breach. If the damages are more than the compensation payable to the Contractor, the Contractor shall remain liable after termination and the University can affirmatively collect damages.

I. In connection with the Pre-Construction Phase of this Contract, the Contractor agrees to prosecute the Work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the Work.

J. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God; acts of a public enemy; acts of the State in either its sovereign or contractual capacity; acts of another contractor in the performances of a contract with the University; fires; floods; epidemics; quarantine; restrictions; strikes; freight embargoes; or delays of Subcontractors, Sub-subcontractors, or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the contractor or the Subcontractors, Sub-subcontractors, or suppliers.

7.12 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 its responsibilities under the Contract.

7.13 Failure To Complete On Time/Liquidated Damages

A. This Section 7.13 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 specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount of **\$5,000.00** 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.

C. The University shall have the right to deduct, retain offset and recoup out of the monies due to or becoming due to the Contractor the amount of damages. If the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the University for the difference.

7.14 Substantial Completion

A. When the Contractor reasonably believes the Work satisfies the requirements of 7.14B, 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 appears 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 work, 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.

7.15 Cleaning-Up

The Contractor shall at all times keep the construction area, including storage areas used by it, free from accumulation of waste materials or rubbish. Prior to completion of Work, the Contractor 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.

7.16 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 operate, with ordinary care and attention, in a satisfactory and efficient manner.

C. That the Contractor 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 set forth herein is in addition to any implicit or explicit guaranty provided by law, if any.

7.17 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 the Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer and Project Manager.

B. The Contractor agrees to insert the substance of this Section 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 or Sub-subcontractor shall immediately notify its next higher tier Subcontractor or Sub-subcontractor, or the Contractor, as the case may be, of all relevant information with respect to such dispute.

SECTION 8: PAYMENTS

8.01 Scope Of Payments Section

This Section 8.01 applies only to payments of the GMP received or to be received by the Contractor for payment to Subcontractors and Sub-subcontractors. This Section does not apply to the Contractor’s fees.

A. Payments are made on the valuation of work accomplished 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 Project Manager’s approval. The SOV must be approved by

the Project Manager 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 Project Manager 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) Amounts will be rounded off to the nearest whole dollar.
 - (c) Insurance (excluding Builder's Risk) cost will be divided into equal monthly installments based on the estimated construction schedule.
2. The minimum level of breakdown and order of the application for payment include, but are not limited to, the following:
 - (a) Bond costs and insurance 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) Construction Specifications Institute Master Format Divisions 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) Subcontractor or Sub-subcontractor 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 Section 8.01A(6).
- (6) The Project Manager 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 or equipment 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; such payment is conditioned upon submission by the Contractor of bills of sale or other procedures satisfactory to the Project Manager to establish the University's title to such materials or equipment or

otherwise protect the University's interest, including applicable insurance as noted above 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 divided to facilitate payments to Subcontractors and Sub-subcontractors. The form of this submission shall be as the Contractor and the Project Manager have agreed upon and shall be supported by such evidence of 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 no sooner than thirty (30) days after the "Work Initiation Conference" or after ten (10) days of job operation (job shut-down days excluded), whichever is later.

E. In applying for payments the Contractor shall submit a statement, based upon the schedule of values prepared under Section 8.01C, itemized in such form and supported by such evidence as the Project Manager may require, showing the Contractor's right to the payment claimed. Each invoice shall prominently display the Contractor's Federal Employers Tax Identification Number or (if no such number) the Contractor's social security number and any/all relevant BPW agenda item numbers and dates as well as University's project number. Payment will be for work in place by the 25th of the billing month; no projection to the month's end can be included.

(1) In applying for all payments, excluding the first payment and final payment, the Contractor shall submit in addition to the above a certificate that it has paid:

- (a) All labor to date;
- (b) All vendors and material suppliers in full for all items received; and
- (c) All Subcontractors and Sub-subcontractors in full, less retainage.

(2) In applying for the final payment, the Contractor shall submit in addition to the statement required in Section 8.01E(1), the following:

(a) Such evidence as the Project Manager 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 as called for by the Contract;

(d) All equipment manuals and parts lists.

8.02 Force Account Work

This Section 8.02 applies only to payments of the GMP received or to be received by the Contractor for payment to Subcontractors and Sub-subcontractors, and not to the Contractor's Fees.

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 on behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other

benefits, when such amounts are required by collective bargaining agreement or other employment contracts 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 the Contractor (exclusive of machinery rentals as set forth in the next Section).

(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 \$1000 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 paid for 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 account work, the Contractor and University shall determine an equitable percent to be applied.

(6) Subcontractors – The Contractor shall receive the actual cost of work performed by Subcontractors and Sub-subcontractors. Subcontractors’ and Sub-subcontractors costs are to be determined as in Subsections 8.02 A(1-5). An allowance will be made to the Contractor for a Subcontractor’s and Sub-subcontractor’s overhead and profit in an amount to be determined in accordance with Section 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 and Sub-subcontractor’s Overhead and Profit – The allowance to the Subcontractor and Sub-subcontractor’s for overhead and profit will be at the following scale:

<u>Value of Work</u>	<u>Combined Overhead and Profit</u>
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 and Sub-subcontractor as payment in full for the work done on a force account basis. At the end of each day, the Subcontractor’s and Sub-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 and Sub-subcontractors furnishes the Project Manager 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 Subsections (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 purchased for such work but are taken from the Subcontractor's or Sub-subcontractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Subcontractor or Sub-subcontractor which shall certify that such materials were taken from its stock, that the quantity claimed was actually used and that the price and transportation of the materials as claimed represent actual cost, not all discounts. Proof of the 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 its GMP the entire amount of the allowance. The expenditure of the allowance is at the Project Manager's direction. However, the allowance expenditure is limited to items properly inferable from the title of the allowance. Unexpended balances revert to the University. The cost of installation of materials purchased is not included in the allowance. The Contractor shall have installed (through Subcontractor or Sub-subcontractor) 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 in Section 8.01, the Project Manager 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. No certificate issued nor payment made to the Contractor nor partial or entire use or occupancy of the Premises by the University shall be an acceptance of any Work or materials not in accordance with the Contract.

C. Retainage cannot exceed 5% of the Contract amount.

D. (1) In addition to retainage, the University may withhold from payments otherwise due under the Contract an amount that the Project Manager reasonably believes is necessary to protect the University's interest.

(2) The Contractor may not retain from a payment due a Subcontractor or Sub-subcontractor a percentage of the payment greater than the percent for retainage retained by the University.

(3) A Subcontractor or Sub-subcontractor may not retain from a payment due a lower-tier Sub-subcontractor a percentage of the payment greater than the percent for retainage retained by the University.

(4) The Contractor and a Subcontractor or Sub-subcontractor are not, however, prohibited from withholding an amount in addition to retainage if the Contractor or Subcontractor or Sub-subcontractor determines that a Subcontractor or Sub-subcontractor's performance provides reasonable grounds for withholding the additional amount.

E. (1) A Contractor may elect to have retainage placed in an escrow account.

(2) An escrow agreement would be applicable if the escrow agreement is 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 from escrow as directed by the Project Manager.
- (6) At the time of final payment, the Project Manager 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 Procurement Officer deems it inexpedient to correct work injured or done in accordance with the Contract, an equitable deduction from the Contract price shall be made therefor.

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 Subcontractors or Sub-subcontractors for material or labor;
 - (4) A reasonable doubt that the Contract can be completed for the balance then unpaid;
 - (5) Damage to work of 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 to the University or the State or claimed 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 7.14;
 - (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 the amount withheld because of them.

8.07 Correction Of Work Before Final Payment

A. The Contractor shall promptly remove from the Premises all materials condemned by the Architect or the Project Manager as failing to conform to the Contract, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute its own work and the work of its Subcontractors and Sub-subcontractors 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 the Project Manager's 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 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

Contractor and the University each 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 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 related to this Contract.

B. The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the Subcontractor and Sub-subcontractors agree 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 and Sub-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 Section 8.10 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.

8.11 Multi-Year Contracts

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 Section 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

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

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 to 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 immediately be removed from the Project.
- 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 its employees to the limits provided by law, ordinance, permits, or directions of the Project Manager. Generally, the work area will be the same as the “Limit of Contract” line indicated in the Construction 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, 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 the 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 the 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 the finished result to be obtained. However, this is not to be interpreted as placing upon the University and the Architect any responsibility for the Work management, 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 9.01F shall be in addition to the scheduling provision set forth elsewhere in the Contract.
- (1) The Contractor shall schedule the Work 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. Project Manager and Superintendent – The Contractor shall keep on site at all times when any of the Work is being performed, a competent full time Superintendent and if required by the Contract Documents a competent full time Project Manager. Both shall be fluent in English. The Contractor shall also have on site full time as necessary assistants to the Superintendent and Project Manager. The Superintendent(s), Project Manager(s), and assistants are subject to the University’s approval, which shall not be unreasonably withheld. Contractor shall provide to the University’s Office of Facilities Management the names of each person Contractor intends to employ as Superintendent, Project Manager, or assistant, for the execution of this Contract with a statement of the proposed person’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 or Project Manager, 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 or Project Manager be complained of by the University’s Office of Facilities Management for cause, the Superintendent or Project Manager shall be removed from the work and as soon as practicable and a new Superintendent or Project Manager shall be 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’ and Sub-subcontractors’ employees and shall not employ or permit to remain on the Premises any unfit person. The Contractor 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 its 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 9.08. 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 this 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:

(1) Shall not discriminate in any manner against any employee or applicant for employment because of sex, race, age, color, creed, 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 each Subcontractor and Sub-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.

(2) 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.

(3) 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 becoming due as the Contract is performed.

(4) If a Subcontractor or Sub-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 or materials supplied.

(5) Any person, including an employee or 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 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.

D. The Contractor, Subcontractor(s), Sub-subcontractor(s), or their agents, 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.

E. 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.

F. The Contractor and all Subcontractors and Sub-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 addresses, of women and members of minority groups applying or referred for employment. The records shall indicate what disposition was made of each 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, Sub-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 and Sub-subcontractors engaged in the trades covered by the bid conditions.

G. 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 clause (a) in any subcontract for standard commercial supplies or raw materials; and, (c) to post and to cause Subcontractors and Sub-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 Procurement Officer and Project Manager in writing of the names of Subcontractors and Sub-subcontractors proposed for the principal parts of the Work and for such others as the Architect may direct. The Contractor and its Subcontractors shall not employ any Sub-subcontractor or person that the University objects to as incompetent, unfit, or irresponsible.

B. The Contractor agrees that it is as fully responsible to the University for the acts and omissions of its Subcontractors and Sub-subcontractors and of persons directly employed by them as it is for the acts and omissions of persons directly employed by the Contractor.

C. Nothing contained in the Contract Documents shall create any contractual relation between any Subcontractor and Sub-subcontractor, at any tier, and the University. Nothing in the Contract Documents is intended to make any Subcontractor or Sub-subcontractor a beneficiary of the Contract between the University and the Contractor.

9.04 Relation Of Contractor And Subcontractor and Sub-subcontractors

A. The Contractor agrees to bind every Subcontractor and Sub-subcontractor and will see that every Subcontractor and Sub-subcontractor agrees to be bound by the terms of the Contract and Contract Documents and each of these as far as applicable to its 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 contracts, applicable to the Work:

- (1) Subcontractor and Sub-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) Subcontractor and Sub-subcontractor agrees to submit to the Contractor applications for payment from the GMP in such reasonable time as to enable the Contractor to apply for payment under Section 8 of the General Conditions.

(3) Subcontractor and Sub-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.

C. The Contractor agrees to be bound to the Subcontractor and Sub-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 hereof affording remedies and redress to the Contractor from the University. The Contractor also agrees:

(1) To pay the Subcontractor and Sub-subcontractor, upon the presentation of certificates, if issued under the schedule of values prescribed in Section 8 of these General Conditions, the amount allowed to the Contractor on account of the Subcontractor's and Sub-subcontractor's work to the extent of the Subcontractor's and Sub-subcontractor's interest herein.

(2) To pay the Subcontractor and Sub-subcontractor, upon the presentation of certificates, so that at all times total payments shall be as large in proportion to the value of the Work done by the Subcontractor and Sub-subcontractor as the total amount certified to the Contractor is to the value of the Work done by the Contractor.

(3) To pay the Subcontractor and Sub-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 and Sub-subcontractor on demand for its 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 and Sub-subcontractor.

(5) To pay the Subcontractor and Sub-subcontractor a just share of any insurance money received by the Contractor.

(6) To make no demand against a Subcontractor and Sub-subcontractor 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 and Sub-subcontractor an opportunity to be present and to submit evidence in any matter involving its rights.

D. Contractor may not withhold from any Subcontractor, Sub-subcontractor, or supplier, wholly or in part, any payment otherwise due and owing to the Subcontractor, Sub-subcontractor, or or supplier for labor or material furnished for this Contract, on account of (1) any claim of the Contractor against the Subcontractor, Sub-subcontractor, or supplier or (2) any debt owed or claimed to be owed by the Subcontractor, Sub-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 the Subcontractor, Sub-subcontractor, or supplier which did not arise out of this Contract.

H. 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, Sub-subcontractor, or supplier, on account of the amount withheld by the University from the Contractor, only to the extent that the Subcontractor, Sub-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 those Subcontractor, Sub-subcontractor, or suppliers that caused or contributed to the delay; all other Subcontractor, Sub-subcontractor, or suppliers shall be paid promptly by the Contractor notwithstanding the University's withholding from the Contractor.

I. No claim for services rendered or materials furnished by the Contractor to the Subcontractor or Sub-subcontractor shall be valid unless written notice thereof is given by the Contractor to the Subcontractor or Sub-subcontractor during the first ten (10) days of the calendar month following that in which the claims originated.

J. The Contractor and the Subcontractor or Sub-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 or Sub-subcontractor.

9.05 Minority Business Participation

A. The Contractor shall structure its procedures for the performance of the Work required by this Contract to achieve the result that a minimum of thirty percent (30%), or other amount stipulated by the RFP, of the total contract award inclusive of all Contractor fees and the GMP is performed directly or indirectly by minority business enterprises (MBEs) as defined in Title 4, Subtitle 3, State Finance & Procurement Article, Annotated Code of Maryland. Such performance by MBEs shall be in accordance with this Section. The provisions of this Section are applicable to Contracts with a value of \$25,000 or more. The Contractor agrees to carry out the requirements of this Section consistent with efficient performance of the Work.

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 (MBE, Attachment A) with its technical proposal/offer.

(2) The Contractor must assure that MBEs shall have the maximum practical opportunity to compete for Subcontractor and Sub-subcontractor work under the Contract.

(3) The Contractor shall comply with all requirements set forth in Schedule MBE Minority Business Enterprise (included in RFP, Attachment H) 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 RFP, of the total dollar value of the Contract is performed by MBEs.

(5) The Contractor must submit an MBE Subcontractor and Sub-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 Contractor and each Subcontractor, Sub-subcontractor, or supplier or if the prime contract has been awarded, copies of the agreement or agreements; and,

(b) The amount and type of bonds required of MBE Subcontractor, Sub-subcontractor, 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 Subsection 5, the Contractor must submit a fully documented waiver request that complies with COMAR 21.11.03.11 using the Exception Form requested from the University.

(7) The Request for Exception will be reviewed by the University's Procurement Officer and decided by the Director of Strategic Sourcing and Acquisition Services.

(8) The Contractor shall cooperate with the University in any reviews of the Contractor's procedures and practices with respect to MBE's which the University may from time to time conduct.

(9) The Contractor shall notify the University prior to any modification to a Subcontract with an MBE that will reduce compensation or scope of work under the Subcontract.

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 MBE and other Subcontractors and Sub-subcontractor 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 Subcontractor, Sub-subcontractor, 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 MBEs 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 Procurement Officer determines that the Contractor is not in compliance with this Section, the Procurement Officer will notify the Contractor of those measures which cure default. If the

Contractor, Subcontractor, or Sub-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 or misleading information, or other misrepresentations, the matter will be referred to the Attorney General of the State for appropriate action.

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
www.maryland.mdot.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 increase the total Contract to more than \$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 its Subcontractors and Sub-subcontractor - 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, MD 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’ and Sub-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, Subcontractor, or Sub-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, Subcontractor, or Sub-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 Subcontractors’ or Sub-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 its own or a Subcontractor’s or Sub-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/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 B and the subcontractor shall use the affidavit prescribed in Attachment I 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 with a Sub-subcontractor entered into pursuant to this Contract, that the Contractor and any Subcontractor or Sub-subcontractor shall not require any laborer or mechanic 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 and Sub-subcontractor (at any tier) consent to inspection of work conditions at any time by the University and the State.

END OF SECTION 00700 – STANDARD GENERAL CONDITIONS

ATTACHMENT J
SOLICITATION TERMS AND CONDITIONS
RFP 23-326 MC
CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR
SOM-HSF III 5th & 6th Floor Tenant Space Buildouts

1. Submission Format

Submittal of the RFP proposal(s) should be prepared in a clear and concise manner and should be compiled in the order listed in Section 4 Articles for each submission with page numbers for ease of reference by the UMB CFSA Evaluation Committee. It is preferable that tabs separating each section/aspect of the response be utilized. The University prefers electronic PDF format that is organized with bookmarks. The contents of each submission must address the requested items in Section 4 Articles, and additionally must include the appropriate completed forms as indicated. Failure to include any of the items listed may result in the submission being found non-responsive and/or will affect the evaluation of your firm's submission.

By submitting electronically, the proposing firm is granting the UMB CFSA permission to provide the submission to appropriate internal USM staff for evaluation purposes.

2. Due Date and Time

Phase 1 Technical Proposal shall be submitted via email to the email address provided in the Solicitation schedule with the 'sent' email time log no later than the date and time indicated in the Solicitation Schedule.

Phase 2 Technical Proposal will only be requested from those proposers who are shortlisted following the Phase 1 Technical Proposal evaluation per the RFP. The due date for Phase 2 Technical Proposals shall be submitted via email to the address provided in the Solicitation schedule with the 'sent' email time log no longer than the date and time indicated in the Solicitation Schedule.

Price Proposals will be requested from those proposers who are shortlisted following the Phase 1 Technical Proposals, however, Price Proposals will only be opened by those firms who are shortlisted after the Phase 2 Technical Proposal evaluation per the RFP. The due date for Price Proposals shall be submitted via email to the address provided in the Solicitation schedule with the 'sent' email time log no longer than the date and time indicated in the Solicitation Schedule.

Proposers shall allow sufficient time in submitting responses to the RFP to ensure timely receipt by the Issuing Office via the email site (proc-oncallbids@umaryland.edu). **Due to file size constraints (25 MB), multiple files may need to be submitted by the Proposer.** Proposals or unsolicited amendments to proposals arriving after the due date and time will not be considered.

3. Late Proposals

Any proposal, request for modification, or request for withdrawal that is not received at the designated location, time, and date set forth in the Section 1 Solicitation Schedule will be deemed late and will not be considered. Delivery of the proposal to the specified location at the prescribed time and date is the sole responsibility of the proposer.

4. Multiple/Alternative Proposals

Proposers may not submit more than one (1) proposal, nor may proposers submit an alternate to this RFP.

5. Modifications and Withdrawals of Proposals

Withdrawal of, or modifications to, proposals are effective only if written notice is filed to the Issuing Office prior to the time proposals are due. A notice of withdrawal or modification to a proposal must be signed by an officer with the authority to commit the company.

Withdrawal or modifications to proposals received by the University after the time proposals are due may not be accepted.

6. Pre-Proposal Conference

A Pre-Proposal Conference will be held at the date, time, and location indicated on the Solicitation Schedule. Attendance is not mandatory, but it is strongly recommended as clarifications may be provided.

A walk through of the Project site will be conducted immediately following the Pre-Proposal Meeting. The meeting date shall be **01/04/2024 at 11:00 AM.**

7. Issuing Office

The Issuing Office shall be the sole point of contact with the University for purposes of the preparation and submittal of the RFP proposal. The Issuing Office is:

University of Maryland, Baltimore
Construction and Facilities Strategic Acquisitions
The Saratoga Building
220 Arch Street, Room 02-100
Baltimore, Maryland 21201-1531

All questions on this procurement are to be directed in writing via email to the following individual:

Points of Contact: Michelle Compton, mcompton@umaryland.edu

Submittal of the RFP proposal(s) is in accordance with "Submission Format" and "Due Date and Time" above.

8. Questions, Inquiries, Clarifications, and Addenda

Questions and inquiries shall be submitted to the Issuing Office in writing no later than the date and time indicated in the Section 1 Solicitation Schedule.

Should a Proposer find discrepancies in the RFP documents or be in doubt as to the meaning or intent of any part thereof the Proposer must, prior to the question deadline listed in the Section 1 Solicitation Schedule, request clarification in writing from the Issuing Office, who will issue a written Addendum to the Contract. Failure to request such clarification is a waiver to any claim by the Proposer for expense made necessary by reason of later interpretation of the RFP documents by the University. Requests shall include the RFP number and name.

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 University's bid board. The Proposer shall acknowledge the receipt of all addenda in the Acknowledgement of Receipt of Addenda Form.

9. Signing Of Forms

The Transmittal letter(s) must be signed by an individual who is authorized to bind his firm to all statements, including services and financials, contained in the Proposal.

The Fee Proposal, if submitted by an individual, shall be signed by the individual; if submitted by a partnership or joint venture, shall be signed by such member or members of the partnership or joint venture as have authority to bind the partnership or joint venture; if submitted by a corporation, 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.

10. Site Investigation

As provided in the Attachment I: UMB's General Terms and Conditions for Construction with GMP dated 5/3/2022 (Section 00700).

11. Right to Reject Proposals and Waive Irregularities

The University reserves the right to reject either all proposals after the opening of the proposals but before award, or any proposal, in whole or part, when it is in the best interest of the State of Maryland. For the same reason, the University reserves the right to waive any minor irregularity in a proposal.

12. Cancellation of the RFP

The University may cancel this RFP, in whole or in part, at any time before the opening of the proposals.

13. Proposal Acceptance

The University reserves the right to accept or reject any and all proposals, in whole or in part, received as a result of this RFP; to waive minor irregularities; or to negotiate with all responsible proposers, in any manner necessary, to serve the best interest of the University. Further, the University reserves the right to make a whole award, multiple awards, a partial award, or no award at all.

14. Confidential/Proprietary Information

Proposers should give specific attention to the identification of those portions of their proposals 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, General Provisions Article, Title 4 of the Annotated Code of Maryland. Proposals are not publicly opened. Proposers must clearly indicate each and every section that is deemed to be confidential, proprietary or a trade secret. It is not sufficient to preface the entire proposal with a proprietary statement.

15. Financial Disclosure by Persons Doing Business with the State

Proposers providing materials, equipment, supplies or services to the University must comply with Section 13-221 of the State Finance & Procurement Article of the Annotated Code of Maryland which requires that every business which enters into contracts, leases or other agreements with the University and receives in the aggregate \$200,000, or more, during a calendar year shall, within 30 days of the time when the \$200,000 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.

16. Arrearages

By submitting a response to this solicitation, a firm 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 in arrears during the term of the contract if selected for contract award.

17. Economy of Preparation and Incurred Expenses

Proposals should be prepared simply and economically, providing a straight forward, concise description of the proposer's offer to meet the requirements of the solicitation. The University will not be responsible for any costs incurred by any firm in preparation and submittal of a proposal.

18. Debriefing of Unsuccessful Proposers

A debriefing of an unsuccessful proposer shall be conducted upon written request submitted to the procurement officer within 10 days after the proposer knew or should have known its proposal was unsuccessful. The debriefing shall be limited to discussion of the unsuccessful proposer's proposal only and shall not include a discussion of a competing proposer's proposal. Debriefings shall be conducted at the earliest feasible time. A summarization of the procurement officer's rationale for the selection may be given.

19. Maryland Public Ethics Law

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 the Maryland Code, General Provisions Article, Title 5, Subtitle 5.

If the proposer has any questions concerning application of the State Ethics Law to the proposer's participation in this procurement, it is incumbent upon the proposer to seek advice from the State Ethics Commission: Executive Director, State Ethics Commission, 45 Calvert Street, 3rd Floor, Annapolis, Maryland 21401, 410-260-7770, 877-669-6085.

The procurement officer may refer any issue raised by a bid or proposal to the State Ethics Commission. The procurement officer may require the proposer 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.

20. Use of Affiliates to Avoid Taxation on Income from State Contracts

Contractor agrees that it will not reduce its income subject to tax by claiming a deduction for royalty or similar payments for trademarks, trade names, or intangible property that shift income from the contractor to an affiliated entity that does not file Maryland income tax returns. Contractor agrees that any affiliated entity receiving such payments is doing business in Maryland and is required to file Maryland income tax returns. Contractor agrees that during the course of this contract: (1) it shall not make any such royalty or similar payments to any affiliated company; but (2) 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 may claim a deduction against Maryland income tax for such payments only if the affiliated company receiving the royalty or similar payment files its Maryland income tax return 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.

21. Payments to Contractors by Electronic Funds Transfer

If the annual dollar value of this contract will exceed \$200,000.00, the Proposer 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 Proposer agrees to accept payments by EFT. The selected Proposer shall register using 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:

[https://marylandtaxes.gov/statepayroll/Static Files/Payroll Officers Vendor Deductions/2018%20GADX10Form20150615%20\(2\).pdf](https://marylandtaxes.gov/statepayroll/Static%20Files/Payroll%20Officers%20Vendor%20Deductions/2018%20GADX10Form20150615%20(2).pdf)

22. Minority Business Enterprise Notice & Requirements

Minority Business Enterprises are encouraged to respond to this solicitation. For more information on the State's MBE program or questions related to certification, please contact MDOT's Office of Minority Business Enterprise/Equal Opportunity, telephone 410-865-1269 or view the MDOT website <https://marylandmdbe.mdbecert.com/>.

1. Establishment of Goal and Subgoals.

An overall MBE subcontractor participation goal of 15% of the total contract dollar amount has been established for this procurement.

No subgoals have been established 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.

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
**(must submit with Technical Proposal) & MBE Participation Schedule
(must submit with GMP Submission(s))**

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

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 GMP 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.

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.
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.

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 <https://marylandmdbe.mdbecert.com/>, and select "Directory of Certified Firms". 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.**
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).

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**.
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. All of the referenced documents will be considered a part of the Bid/Proposal for order of precedence purposes (see Contract – Attachment I, Item 2.06).
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).
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 H-4A 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 4B 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.

12. With respect to Contract administration, the Contractor shall:

- (a) Submit by the 10th 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 10th of each month to 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 retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

23. Insurance Requirements

The selected Contractor shall defend, indemnify, and save harmless the State of Maryland, the University System of Maryland, the University of Maryland, Baltimore County and each of their officers, employees, and agents, from any and all claims, liability, losses and causes of actions which may arise out of the performance by the Contractor, employees or agents, of the services covered by the contract.

The selected Contractor shall secure, pay the premiums for, and keep in force until the expiration of the term of the contract, including renewals, adequate insurance as provided in Attachment I: UMB's General Terms and Conditions for Construction (Section 00700).

24. Bid and Payment and Performance Bonds

With submission of the Price Proposal in accordance with this RFP, all proposers are required to comply with the following proposal security:

1. If the Proposer's Technical Proposal is found responsive and is requested to submit a Price Proposal, and the total Price Proposal is \$100,000.00 or more, each Proposer shall furnish with his price proposal 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 price proposal (sum of the fees and reimbursables) and shall be in the form specified (see sample in Attachment G).
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 or 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 (MSBDFDA). MSBDFDA can directly issue bid, performance or payment bonds up to \$750,000. MSBDFDA may also guaranty up to 90% of a surety's losses as a result of a contractor's breach of contract.

MSBDFDA's exposure on any bond guaranteed may not, however, exceed \$900,000. Bonds issued directly by the program will remain in effect for the duration of the contract, and those surety bonds that are guaranteed by the program will remain in effect for the duration of the surety's exposure under the contract. To be eligible for bonding assistance, as business must first be denied bonding by at least one surety in both standard and specialty markets within 90 days of submitting a bonding application to MSBDFDA. The applicant must employ fewer than 500 full-time employees or have gross sales of less than \$50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75 percent of the work,

and the business or its principals must have a reputation of good moral character and financial responsibility.

Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of the state's tax base. Applicants are required to work through their respective bonding agents in apply for assistance under the program. 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: (410)767-6300

4. Should the Proposer 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 proposer to whom the award subsequently is made shall be paid to the University as liquidated damages.
5. The Proposer 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 Guaranteed Maximum Price (GMP) 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. Evaluation of a Request for Proposal takes a considerable length of time. Maryland State Law does not permit any information regarding the evaluation to be released prior to the award. The award date is the date of approval by the Board of Public Works.
7. Bid Bonds remain in effect a minimum of **one hundred and twenty (120)** days from the due date of the Price Proposals as all Price Proposals shall remain firm for one hundred twenty calendar days (refer to Item 30 below).
8. Should the Proposer 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 proposer to whom the award subsequently is made shall be paid to the University as liquidated damages.
9. Performance and Payment Bonds, each in the amount of one hundred percent (100%) of each contract amendment for construction work, must be furnished, including executed Change Orders, in the form specified (see forms in Attachment B). Please note that as part of the Technical Proposal, a Proposer must indicate its capability of obtaining the necessary bonds.

10. At the time of presentation of the Guaranteed Maximum Price (GMP), the Construction Manager will be required to comply with proposal security requirements and provide an additional bid bond or other acceptable security on the terms and conditions set forth above. Should the Contractor fail to execute the Contract Amendment(s) as required, then an amount equal to the difference between the accepted price and that of the person or entity who serves as Construction Manager subsequently shall be paid to the University as liquidated damages.

25. Joint Venture Proposers

If the Proposer is a joint venture firm, the Proposer 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 Phase 1 submission, the proposer must identify the percentage partnership for each joint venture party, the responsibilities of each joint venture party with respect to the scope of services/work inclusive of the requirements for each entity based on such services as described in this RFP document.

26. Procurement Regulations

This RFP and any resulting contract shall be governed by the USM Procurement Policies and Procedures and the State Finance and Procurement Article of the Annotated Code of Maryland and by State Procurement Regulations, Code of Maryland Regulations Title 21, as applicable.

27. eMaryland Marketplace Advantage

The successful bidder/offeror under this solicitation must be registered on eMaryland Marketplace Advantage prior to receiving a contract award. Contractors shall pay the fee, if any, in accordance with guidelines issued by the Maryland Department of General Services. These guidelines can be found on the eMaryland Marketplace Advantage website at <https://emma.maryland.gov/>.

28. Contract Documents

All of the materials listed in the RFP table of contents will be included in the Contract with the University awarded as a result of this solicitation. The Proposer by submitting its proposal agrees that if awarded the Contract that it, as Construction Manager, will be bound under the Contract to all the terms and conditions thereof.

29. Available Record Documents:

The University's Facilities Management, upon request, will make accessible to the Proposers 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.

Such documents must be used, or copied, at the UMB Office of Facilities Management. The Proposers shall assume the responsibility for cost of reproduction as well as replacing any damaged documents.

30. IRREVOCABILITY OF PROPOSALS:

The pre-construction phase CM fee price proposal for this project shall be irrevocable for one hundred twenty (120) calendar days from the proposal due date. This period may be extended by written mutual agreement between the Proposer and the University.

The Construction Phase CM fee price proposal shall remain irrevocable until acceptance of each GMP and approval of the amendment to the contract to reflect the construction work.

END OF ATTACHMENT J