



# UNIVERSITY *of* MARYLAND BALTIMORE

**REQUEST FOR PROPOSAL  
FOR  
CONSTRUCTION MANAGEMENT AT RISK SERVICES FOR  
SMITH HALL RENOVATION  
AT  
TOWSON UNIVERSITY  
RFP NUMBER: #22-333 ML  
Issue Date: April 4, 2022**

**Procurement/Issuing Office:**

**UMB Department of Facilities and Operations  
Construction & Facilities Strategic Acquisitions  
Saratoga Street Offices, Office Level 02  
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 Buyer listed above at least 48 hours in advance.

**NOTE:**

**All Addenda to this procurement will be posted on the UMB website at:**

**<https://www.umaryland.edu/procurement/ebid-board/>**

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## SOLICITATION SCHEDULE

### Smith Hall Renovation RFP #22-333 ML

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

<u>Issue Date:</u>	April 4, 2022
Pre-Proposal Conference Date:	Tuesday, April 12, 2022 at 10:00 a.m.
Pre-Proposal Conference Location:	Webex Online Meeting (See Section 00100 Instructions to Proposer for details.)
Deadline for questions for Technical Proposal: (See Section 00100, Item G.)	Tuesday, April 19, 2022 by 5:00 p.m. (See Section 00100 Instructions to Proposer for details.)
Technical Proposal Due Date:	<b>Wednesday, May 11, 2022 on or before 2:00 p.m.</b>
Submit Initial Technical Proposal: (See further instructions detailed in Section 00300 and required contents detailed in Section 00300, Article 2)	<a href="mailto:proc-oncallbids@umaryland.edu">proc-oncallbids@umaryland.edu</a> <b>The subject line of your email: 5/11/2022 RFP #22-333 ML, Your Company Name</b>
Anticipated Date of Notification following the Initial Technical Evaluation regarding shortlist:	Wednesday, June 1, 2022
Interview/Oral Presentation Sessions for Shortlisted Firms:	Wednesday, June 29, 2022 and Thursday June 30, 2022
Anticipated Date of Notification following the Second Phase Evaluation regarding shortlist:	Wednesday, July 6, 2022
Price Proposal Due Date:	Wednesday, July 27, 2022 on or before 2:00 p.m.
Board of Public Works Approval:	Wednesday, August 31, 2022
Anticipated Contract Award:	Thursday, September 1, 2022

**SECTION 00100**

**INSTRUCTIONS TO PROPOSERS**

**SECTION 00100**  
**INSTRUCTIONS TO PROPOSERS**

**I. INSTRUCTIONS TO PROPOSERS FOR THE CONSTRUCTION MANAGEMENT CONTRACT**

**A. SUMMARY:**

1. The objective of this Request for Proposal (RFP) is for **Towson University** (“Client”), a constituent institution of the University System of Maryland (“USM”), represented by the University of Maryland, Baltimore (“University”), another USM constituent institution, to select a Construction Management (CM) firm to provide professional management and construction services during design and construction of the **Smith Hall Renovation** (“Project”) in **the County of Baltimore, Maryland**. The Project is to be carried out at the expense of Client, and not at the expense of University, pursuant to agreements between the University and the Client. The Client has designated the University to represent the Client with regard to award and administration of the CM contract. A representative of the University is the Procurement Officer for this solicitation and for the resulting contract.
2. Generally, the Construction Manager will be a member of the Project Team consisting of representatives from the University, the Architect/Engineer, and other consultants as required as more fully set forth below. Generally, it will be the responsibility of the Construction Manager to integrate the design and construction phases, utilizing his skill and knowledge of general contracting to develop schedules; prepare project construction estimates; study labor conditions; and, in any other way deemed necessary, contribute to the development of the project during the pre-construction/design phase. During the construction phase, the CM will be responsible for constructing the project under the Guaranteed Maximum Price inclusive of all construction services therein.
3. Upon selection of the Construction Management firm and approval by the Board of Public Works (BPW), the Contract will be executed for pre-construction phase services only which includes the provision of the Guaranteed Maximum Prices (GMP) for construction of the Facility by the CM.

Subsequently, and in accordance with the terms and conditions of this RFP, amendments to the CM contract are anticipated to be issued for Construction services upon acceptance by the University and approval by BPW as applicable (as described elsewhere in this document).

4. The Contract will govern all Pre-Construction and Construction phases of this Project (Refer to Articles 1 through 3 of Section 00400 of this document for further detail).
5. All work performed under this contract shall be in accordance with the University of Maryland, Baltimore "Standard General Conditions of Construction Management with GMP Contract", (which is contained in this RFP as Section 00700 "Standard Conditions") as modified or supplemented by any amendments, supplementary conditions, the Contract Documents as listed herein, any addenda, and other components of the Contract.
6. The University anticipates having a contract in place with the successful Construction Management firm on or about **September 1, 2022**.

**B. INSTRUCTIONS FOR SUBMITTAL OF PROPOSALS:**

For detailed information on preparation and submittal of proposals see Section 00300 "Proposals, Evaluation, Forms".

**C. ISSUING OFFICE:**

1. The Issuing Office is:

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

Attn: Michael Lacey  
(410) 706-1558  
Fax: (410) 706-8577  
mail to: mlacey@umaryland.edu

2. The Issuing Office shall be the **sole** point of contact with the University for purposes of the preparation and submittal of the RFP proposal.
3. All questions on this procurement are to be directed to the Issuing Office.

**D. PRE-PROPOSAL CONFERENCE:**

1. A **Pre-Proposal Conference** will be held **via Webex** in accordance with the Solicitation Schedule. **Refer below to the hyperlink and phone information for this meeting.**

### [Join Webex meeting](#)

Meeting number (access code): 2622 932 7963 Meeting password: yeMhrxeW276

#### **Tap to join from a mobile device (attendees only)**

+1-202-860-2110,,26229327963## United States Toll (Washington D.C.)

+1-415-655-0001,,26229327963## US Toll

#### **Join by phone**

+1-202-860-2110 United States Toll (Washington D.C.)

+1-415-655-0001 US Toll

[Global call-in numbers](#)

### [Can't join the meeting?](#)

2. A walk through of the Project site will **not** be conducted immediately following the Pre-Proposal Meeting. Proposers may access the site themselves.
3. Attendance is **not mandatory** but is strongly recommended as clarifications may be provided.

#### **E. DUE DATE AND TIME:**

1. **Technical Proposal only** must be submitted electronically via email **by Wednesday, May 11, 2022 at or before 2:00 p.m.** to the following email address: [proc-oncallbids@umaryland.edu](mailto:proc-oncallbids@umaryland.edu). The subject line of your email: **5/11/2022, 22-333 ML, Your Company Name.**
2. Price Proposals will only be requested from those firms who are shortlisted following the second phase technical evaluation per the RFP (see Section 00300 for further details). The due date for Price Proposals will be set upon completion of the technical evaluation, however, the University anticipates the price proposal due date to be on or around Wednesday July 27, 2022 at or before 2:00 P.M.
3. **LATE PROPOSALS CANNOT BE ACCEPTED.** Proposers shall allow sufficient time in submitting responses to the RFP to ensure timely receipt by the Issuing Office via the University email site.

#### **F. MODIFICATIONS AND WITHDRAWAL OF PROPOSALS:**

1. Withdrawal of, or modifications to, proposals are effective only if written notice thereof 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.



2. No withdrawal or modifications will be accepted after the time proposals are due.

**G. QUESTIONS AND INQUIRIES:**

1. Questions and inquiries shall be directed to the individual referenced above with the Issuing Office no later than the date and time indicated in the Solicitation Schedule.
2. Items affecting the scope of work or conditions of the contract shall be subject to the conditions of Addenda per Section O below.

**H. TERMINOLOGY:**

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

**I. SITE INVESTIGATION:**

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

**J. COMPETITIVE NEGOTIATION:**

1. The University reserves the right to make an award with or without negotiations. Only those proposers who are determined "to be reasonably susceptible of being selected for award shall be offered the opportunity to participate in the process."
2. Minor irregularities in proposals, which are immaterial or inconsequential in nature, may be waived wherever it is determined to be in the best interest of the University.

**K. PROPOSAL SECURITY:**

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 Section 00300 "Proposals, Evaluation, and Forms").
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 (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to \$750,000. MSBDFA may also guaranty up to 90% of a surety's losses as a result of a contractor's breach of contract.

MSBDFA'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 MSBDFA. 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 Section 00100, L. 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.

**L. RIGHT TO REJECT PROPOSALS AND WAIVE INFORMALITIES:**

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.

**M. IRREVOCABILITY OF PROPOSALS:**

1. 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.
2. 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.

**N. LICENSES AND QUALIFICATIONS:**

1. 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.
2. 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 00300 of this RFP for further information/details.)

**O. CLARIFICATIONS AND ADDENDA:**

1. Should a Proposer find discrepancies in the RFP documents, or should he be in doubt as to the meaning or intent of any part thereof, he must, not later than **Tuesday April 19, 2022 at 5:00 P.M.**, 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.
2. Oral explanations or instructions will not be binding; only written Addenda will be binding. Any Addenda resulting from these requests will be posted to the UMB website (<http://www.procurement.umaryland.edu/ebid/ebid.cfm>). The Proposer shall acknowledge the receipt of all addenda in the space provided on the Proposal Form.
3. Any addendum/amendments to the RFP must be acknowledged by persons and entities known to have been issued, or otherwise to have received the RFP. Addendum Acknowledgement forms (found in Attachment A) are to be completed and signed with Technical Proposal. In addition, space is provided on the Price Proposal form to indicate these.

**P. CANCELLATION OF THE RFP:**

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

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

**R. ORAL PRESENTATION:**

1. Proposers who submit proposals and are shortlisted as a result of the initial technical evaluation will be required to make individual presentations to University representatives (see Section 00300 for details).
2. The University also reserves the right to visit Proposer's place of business during the evaluation process.

**S. ECONOMY OF PREPARATION:**

Proposals should be prepared simply and economically, providing a straight forward, concise description of the proposer's offer to meet the requirements of the RFP.

**T. 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 University under the Public Information Act, Part III, Title 4, General Provisions Article, 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 your entire proposal with a proprietary statement).

**U. MINORITY BUSINESS ENTERPRISE NOTICE:**

**1. Establishment of Goal and Subgoals.**

An overall MBE subcontractor participation goal of 20% of the total contract dollar amount has been established for this procurement. There are no subgoals.

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	
Part 2	MBE Utilization and Fair Solicitation Affidavit ( <b>must be submitted with Technical Proposal</b> )
Part 3	MBE Participation Schedule ( <b>must submit with GMP</b> )
Attachment H-1B	Waiver Guidance
Attachment H-1C	Good Faith Efforts Documentation to Support Waiver Request
Attachment H-2	Outreach Efforts Compliance Statement
Attachment H-3A	MBE Subcontractor Project Participation Certification
Attachment H-3B	MBE Prime Project Participation Certification
Attachment H-4A	Prime Contractor Paid/Unpaid MBE Invoice Report
Attachment H-4B	MBE Prime Contractor Report
Attachment H-5	Subcontractor/Contractor Unpaid MBE Invoice Report

Attachment H-6. Liquidated Damages Provisions for Construction Contracts Containing MBE Participation Goals

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

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

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 <http://mbe.md.state.md.us/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 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 (see Section 00700 paragraph 2.06 Contract Documents).



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**).
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 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 the Department's designated representative an MBE Subcontractor Paid/Unpaid Invoice Report (Attachment H-5) that identifies the

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

- (c) Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- (d) Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- (e) Upon completion of the Contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.
- (f) The liquidated damages provisions of Attachment G for non-construction procurements and Attachment H for construction procurements shall apply for all contracts awarded with MBE participation goals.

**V. 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 \$100,000, or more, during a calendar year shall, within 30 days of the time when the \$100,000 is reached, file with the Secretary of State a list containing the names and address of its resident agent, each of its officers, and any individual who has beneficial ownership of the contracting business.

**W. ARREARAGES:**

By submitting a response to this solicitation, a vendor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of

Maryland, including the payment of taxes and employee benefits and that it shall not become so in arrears during the term of the contract if selected for contract award.

**X. BID/PROPOSAL AFFIDAVIT:**

The Bid/Proposal Affidavit included in this package (see Attachment A for this form) must be executed by each responding proposer and submitted with the proposer's technical proposal.

**Y. MULTIPLE/ALTERNATIVE PROPOSALS:**

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

**Z. 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 technical proposal submission under the category of Profile of Proposer (see Section 00300 for details), the proposer must identify the responsibilities of each joint venture party with respect to the scope of services/work (per Section 00400) inclusive of the requirements for each entity based on such services as described in this RFP document.

**NOTE:** If the selected Construction Manager is a joint venture firm, all joint venture parties will be held responsible for the contract obligations separately and severally.

**AA. ADDENDUM**

Any addendum/amendments to the RFP must be acknowledged by persons and entities known to have been issued, or otherwise to have received the RFP. An Acknowledgment of Addendum form is provided in Attachment A and is to be submitted accordingly with the Technical Proposal. Space is provided on the Price Proposal form to also indicate these.

**BB. INCURRED EXPENSES:**

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

**CC. 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 offeror's proposal only and shall not include a

discussion of a competing offeror'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.

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

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

If the bidder/offeror has any questions concerning application of the State Ethics law to the bidder/offeror's participation in this procurement, it is incumbent upon the bidder/offeror to see advice from the State Ethics Commission; Executive Director, State Ethics Commission, 45 Calvert Street, 3<sup>rd</sup> Floor, Annapolis, Maryland 21401, 410-260-7770

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

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

**EE. 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.

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

By submitting a response to this solicitation, the Bidder/Offeror agrees to accept payments by electronic funds transfer. The selected Bidder/Offeror shall register using form COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. The web address is:

[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdfpdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdfpdf).

**GG. "eMARYLAND" MARKETPLACE ADVANTAGE**

The successful bidder/offeror under this solicitation must be registered on eMaryland Market Place Advantage prior to receiving a contract award. The instructions for registration can be found on the eMMA website at <http://emma.maryland.gov>.

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

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

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

The Policy and Procedures are incorporated herein. UMB reserves the right to terminate this contract if Contractor fails to comply with the above-referenced policy or procedures, or if, in the judgment of UMB, termination is necessary to protect the safety and welfare of children who come into contact with the UMB community.

**II. eBUILDER PROJECT MANAGEMENT SOFTWARE**

The University Facilities Management utilizes eBuilder Project Management software to assist in the management of all projects. Use of the eBuilder system involves submission of all documentation through the web based system. Such documentation includes submissions during design and construction phases, and includes construction document submissions, cost estimates, constructability reviews, reports, requests for information, product submittals, shop drawings, outage requests, invoices and other project related documents. The University of Maryland, Baltimore Design and

Construction (UMB D&C) has switched to an eBuilder unlimited licensing plan. This means that the project team (A/E and Contractor) will be required to register for use of the eBuilder system through UMB D&C and will NO LONGER be required to purchase an annual license for each Project Manager under this contract. This is ONLY for projects specifically at or managed by UMB. See eBuilder affidavit for further details.

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

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

**KK. 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.

**END OF SECTION 00100**

**SECTION 00200**

**INFORMATION AVAILABLE TO PROPOSERS**

**SECTION 00200**  
**INFORMATION AVAILABLE TO PROPOSERS**

**II. INFORMATION AVAILABLE TO PROPOSERS**

- A. CONTRACT DOCUMENTS:** This RFP #22-333 ML dated April 4, 2022 consists of the documents noted below.

All sections are contained **within the RFP document** with other documents packaged separately as noted:

00100	Instructions to Proposers;
00200	Information Available to Proposers;
00300	Proposals, Evaluation and Forms (Articles 1 through 4);
00400	Scope of Work (Articles 1 through 3);
00500	[Intentionally Omitted];
00600	Towson University Smith Hall Renovation Program Part II dated July 6, 2021;
00700	University's Standard General Conditions for Construction Manager with GMP Contract dated April 2020;
00800	Towson Amendments to University Standard General Conditions for CM with GMP Contract dated 9/12/2012
00830	Prevailing Wage Rates (To be issued to successful CM prior to trade bidding)

Attachment A University Forms Required with Proposal Submittal(s) (i.e., Minority Business Enterprise Utilization and Fair Solicitation Affidavit (MBE Attachment H-1A, Parts 1 & 2), Bid/Proposal Affidavit, [eBuilder Affidavit Form](#), Key Personnel Form, Key CM Personnel/ Basis of Selection Form, Working Relationship Form, Matrix of Anticipated Hours Form, Matrix of Services Form, CM Experience Form, Annual Sales Volume/Completed Projects Form, Current Workload Form, Certification of Investment Activities in Iran and Acknowledgment of Receipt of Addenda Form.



Attachment B University Forms Required to be signed/ provided by the Selected CM Firm at time of contract award (i.e., Contract Affidavit, Performance & Payment Bonds and MBE Participation Schedule (MBE Attachment H-1A, #4- H-3B), and University's Construction Contract, Contractor Affidavit, Apprenticeship Training Fund Verification);

Attachment C General Conditions Listing for non-personnel items;

Attachment D Towson Campus Map; <http://www.towson.edu/maps/>

Attachment E University Shop Drawing/Submittal Flow Chart.

Attachment F Building Commissioning

Attachment G Sample Price Proposal Form  
Bid Bond Form

Attachment H MBE Forms and Instructions

Attachment I Subcontractor Affidavit, Apprenticeship Training Fund Verification

The following Contract Documents are packaged separate from this RFP:

**Towson University Design Guidelines and Construction Standards; dated January 2021;**

UMB – Facilities Management – Procedure Manual for Professional Architectural / Engineering Services for UMB Construction and Service Center Projects dated March 22, 2019 also available at UMB - Facilities Management Architecture Engineering and Construction: [at Facilities Management - Architecture Engineering and Construction](#) ; and,

**Any Addenda**, which may be issued prior to the Proposal Due Date.

All of these materials 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.

- B. SET OF DOCUMENTS AVAILABLE TO PROPOSERS: The RFP and Attachments A through I are available on the UMB eBid Board at <http://www.procurement.umaryland.edu/>.

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 be required to advertise the project and provide a copy as well as confirmation of the locations in which the project bidding of trade work is advertised. The CM will also be required to comply with apprenticeship requirements for public works contracts.

C. PRE-PROPOSAL CONFERENCE

1. A Pre-Proposal Conference will be conducted for all interested parties early in the proposal phase of the project as indicated in Section 00100 Instructions to Proposers for the Construction Manager Contract.
2. Proposers may access the site themselves as indicated in Section 00100 Instructions to Proposers. A walk through of the site will not be provided by the University. Attention is directed to the following provisions in Section 00100:

G. Questions and Inquiries

I. Site Investigation

O. Clarifications and Addenda

D. AVAILABLE RECORD DOCUMENTS:

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

**END OF SECTION 00200**

**SECTION 00300**

**PROPOSALS, EVALUATION AND FORMS**

SECTION 00300  
ARTICLE 1  
PROPOSALS, EVALUATION AND FORMS  
INTRODUCTION/OVERVIEW

A. **INTRODUCTORY SUMMARY OF PROPOSAL SUBMITTALS:** Responses to RFP #22-333 ML are to consist of the following:

1. **Technical Proposal Submittal** (see Article 2 of this Section 00300 for detailed information): All proposers will be required to first submit **only a Technical Proposal without a Price Proposal**. The Technical Proposal Submittal is due by **Wednesday May 11, 2022 at 2:00 P.M. to the Issuing Office**.
2. **Oral Presentations** (see Article 3 of this Section 00300 for detailed information): Only those Proposers who are shortlisted as a result of the Initial Technical Evaluation will be requested to attend an Oral Presentation at the University. The date and time for these sessions will be set upon completion of the initial technical evaluation; however, it is **anticipated** that the Discussion Sessions will be conducted on **Wednesday June 29, 2022, and Thursday June 30, 2022**, so proposers are advised to set all day on these dates aside on the Key Personnel calendars accordingly so as to avoid any conflicts.

The purposes of the Oral Presentations Session are as follows:

- (i) 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**,
- (ii) 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;**
- (iii) **to discuss selected categories of the Proposer's Technical Proposal; and,**
- (iv) to review the Price Proposal form.

Each proposer will be required to have the following key personnel attend: *Project Executive, Project Manager, Field Superintendent, Project Estimator, BIM/VDC Manager and MEP Project Engineer.*

Following the Oral Presentations, the University will conduct a Second Phase Technical Evaluation per the RFP.

3. **Price Proposal Submittal** (see Article 3 of this Section 00300 for detailed information): Only those Proposers who remain shortlisted after the Second Phase Technical evaluation will be requested to submit a Price Proposal. The **due date** for submission of the **Price Proposal** is set for **Wednesday July 27, 2022 at 2:00 P.M. to the Issuing Office.**

**B. TRANSMITTAL LETTER**

A transmittal letter prepared on the Proposer's business stationery must accompany the Technical Proposal Submittal. The purpose of this letter is to transmit the Proposal; therefore, they should be brief, but shall list all items contained within the Technical Proposal. The letter must be signed by an individual who is authorized to bind his firm to all statements, including services and financials, contained in the Proposal.

**C. SIGNING OF FORMS**

The Price 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.

- D. **FORMS PACKAGE:** Forms for each of the items required in the Technical Proposal (except items 1, and 2 and the transmittal letter) are furnished under the RFP Number on the eBid board as a separate document. The forms required for the Technical Proposal are listed as Attachment A in the Forms Package.

The Price Proposal form is also provided in the Forms Package under Attachment B; however, the price proposal will only be requested from those firms who remain shortlisted following the second phase technical evaluation and is anticipated to be due on Wednesday July 27, 2022 at 2:00 P.M.

**END OF SECTION 00300, ARTICLE 1**

**SECTION 00300**  
**ARTICLE 2**  
**PROPOSALS, EVALUATION, AND FORMS**  
**TECHNICAL PROPOSAL SUBMITTAL**

**A. TECHNICAL PROPOSAL SUBMITTAL:**

The Technical Proposal must be emailed to the Issuing Office on, or before, **Wednesday, May 11, 2022 at 2:00 P.M.** UMB's Construction and Facilities Strategic Acquisitions email address is noted in both the Solicitation Schedule and Section 00200 Instructions to Proposers E. Due Date and Time of the RFP.

**A transmittal letter** prepared on the Proposer's business stationery **must** accompany the Technical Proposal Submittal. The purpose of this letter is to transmit the Proposal; therefore, they should be brief, but shall list all items contained within the Technical Proposal. The letter 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 following items must be included in this Initial RFP Submittal. (Forms for 3, 4, and 5 [if applicable] are included in the RFP package. Items 1 and 2 should be provided by Proposer.)

1. Detailed responses to Section 00300, Article 2, Item C, Technical Proposal Criteria, Items 1 through 5 (noted in "C" below);
2. Contractor's license (photocopy);
3. Bid/Proposal Affidavit;
4. Minority Business Enterprise Utilization and Fair Solicitation Affidavit (MBE Attachment H-1A, Part 2);
5. eBuilder Affidavit;
6. Certificate Regarding Investment Activities in Iran; and,
7. Acknowledgement of Receipt of Addenda (If addenda are issued prior to the Technical Proposal due date, this form acknowledging receipt of all addenda **MUST** be included with your Technical Proposal.)

Forms for each of the items required in the Technical Proposal (except items 1. and 2. and the transmittal letter) are available in the Forms Package listed with the RFP on the UMB eBid Board at <http://www.procurement.umaryland.edu/>

- B. PROJECT CONSTRUCTION COSTS AND SCHEDULE:** In order to be considered responsive, all firms must either agree with or take exception to the Project Costs and Schedule as follows:

1. **Project Construction Costs:** The total Project Construction Cost for the project is One Hundred and Two Million Dollars (\$102,000,000) inclusive of a Two Million Dollar (\$2,000,000) hazardous material abatement allowance.
2. **Project Schedule:** The total project schedule for the CM is anticipated as follows:

#	Phase	Duration
1	Design (Schematic Design Through Construction Documents)	17 Months
2	Bidding and Negotiation (inclusive of BPW approval)	5 Months
3	Construction	24 Months
4	Total Time Frame	46 Months

The University is requesting that Proposers also provide an alternate based on the University receiving construction funding earlier than currently scheduled in FY 2024. The funding would allow the University to provide for an early package that would start construction three (3) months in advance of the schedule described above. The early package work would create a three (3) month overlap between preconstruction/design and construction.

**ALTERNATE PROJECT CONSTRUCTION COSTS AND SCHEDULE:** In order to be considered responsive, all firms must either agree with or take exception to the Project Costs and Schedule as follows:

1. **Project Construction Costs:** The total Project Construction Cost for the project is One Hundred and Two Million Dollars (\$102,000,000) inclusive of a Two Million Dollar (\$2,000,000) hazardous material abatement allowance.
2. **Project Schedule:** The total project schedule for the CM is anticipated as follows:

#	Phase	Duration
1	Design (Schematic Design Through Construction Documents)	17 Months
2	Early Package Bidding and Negotiation (2 Months) Early Package Construction (3 Months) Bidding and Negotiation (inclusive of BPW approval) for GMP #1 (5 months)	2 - 5 Months
3	Construction	24 Months
4	Total Time Frame	43 Months*

**\*Note:** The Total Time Frame is forty three (43) months since construction starts after two (2) months in line item #2. The 2-5 month duration indicated in the table is the three (3) month overlap between preconstruction and construction.

The University considers the project to be feasible at the Project Construction Costs and the Project Time Frames and may disallow any change to them. Firms wishing to argue for higher Project Construction Costs 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 Costs and Project Time Frames.

The University will make the final determination. In the event the Project Construction Costs and/or Project Time Frames are adjusted, all firms will be notified. In the event the Project Construction Costs and Project Time Frames are not adjusted, all firms arguing for a higher Project Construction Costs 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 Costs and Project Time Frames noted in this RFP.

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

## **C. TECHNICAL PROPOSAL CRITERIA**

Per Item A, 1 above, the following information **must** be furnished in the Technical Proposal portion of the RFP. Failure to include any of the items listed below may disqualify your firm's response. Technical criteria are listed in order of importance. Proposers should describe in detail and provide evidence supporting the qualifications requested below. The University reserves the right to check any reference source at its sole discretion, including sources not identified by the proposer. The University may also consider the performance of the proposer on any/all projects performed for the University prior to submittal of this proposal, including ongoing/active projects, whether identified by the proposer or not.

All proposers are to compile their Technical Proposals in the order listed.

### **1. CM TEAM ORGANIZATION/KEY PERSONNEL:**

#### **1.1. Organizational Chart and Basis for Selection:**

- a. Provide an organizational chart of the proposed CM Team inclusive of the following: (i) Firm Name; (ii) CM Team Organizational and Reporting Structure including the positions of the Project Executive, Project Manager, Field Superintendent, Project Estimator, BIM/VDC Manager, MEP Project Engineer and Other Key People; and, (iii) Key Person's Name and Project Role;
- b. Complete the "Key CM Personnel/Basis for Selection Form" (Form found in Attachment A of the forms package) for all key personnel on the CM Team.



NOTE: If at the time of RFP submission, the CM cannot identify a specific person for a position on the CM team, please describe the qualifications you will be looking for in the person to be selected;

- c. Working Relationships: Complete the “CM Key Personnel Working Relationship Form” (found in Attachment A of the forms package) on all named CM Key Personnel (1.1 and 1.2) Complete this form fully so as to convey the previous working relationships between and among the proposed CM team members.

Key personnel including the Project Executive, Project Manager, Field Superintendent, Project Estimator, BIM/VDC Manager and MEP Project Engineer who have previously worked together on successfully completed projects similar to the University’s project are preferred.

**1.2 Key Supervisory Personnel Resumes:** Within this category the named positions are defined below. These people must be current employees of the Proposing Firm.

Note - Personnel Commitment: By submitting the names for consideration under this Key Personnel Section, the Proposer is committing these people to UMB for this project's duration if awarded the project. No personnel changes will be permitted without written authorization from the University via a contract amendment issued by UMB's Construction and Facilities Strategic Acquisitions Office.

CM Project Executive: 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: 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.

**(Note:** Some Proposers may elect to have separate Project Managers for Pre-construction and Construction. This is acceptable, however, the University prefers only one Project Manager. If the proposer elects to have separate project managers, the construction Project Manager must have involvement in the pre-construction phase.) **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.

CM Project Estimator: Person from the CM who will be directly responsible for preparing, testing in the marketplace, explaining, and defending the estimate (s). Note: This is to be the person who will be directly preparing the estimate, not the head of the estimating

department who will be overseeing and managing the process.

**BIM/VDC Manager:** Person from the CM who will lead the BIM effort throughout the project, including participating in the development of the BIM Execution Plan and other subcontractor modeling efforts. This person will ensure that an up-to-date construction model is maintained in accordance with the project protocols and loaded with schedule (4D) information. The position will be involved during both pre-construction and construction phases.

**MEP Project Engineer:** Person from the Construction Manager who must be on site 100% once construction of the MEP trades commences and will be responsible for the direct supervision of the MEP trade contractors, daily coordination of the work on site to maintain the schedule, on site management such as quality control, submittals, RFI's, outages, etc.

- a. Key Personnel Form: Provide names of the **Project Executive, Project Manager (100% during construction), Field Superintendent (100% on site supervisor), Project Estimator, BIM/VDC Manager and MEP Project Engineer** only to be assigned to this project, if awarded, (as defined above) and complete a Key Personnel Form on each inclusive of the following:
- (1) Specify percentage of time and anticipated hours to be committed to this project during both the pre-construction and the construction phases. (Note: If 50% time commitment is noted, this is understood to mean 20 hours per week for the duration of the phase or phases noted.);
  - (2) Current Workload of Key Personnel;
  - (3) Educational background;
  - (4) Work experience with prior employers, durations (by dates) of employment and position (s) held;
  - (5) Specific project experience similar\* to the Smith Hall Renovation (preferably the projects listed in #2.1 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 the Smith Hall Renovation Building project are preferred. ***Provide a description of the types of Pre-Construction and Construction Services performed by this individual.***
  - (6) A minimum of three (3) projects, but not more than four (4) projects, is to be listed for each person. A concise, detailed description of the project should be given (if not provided elsewhere in the technical proposal) inclusive of the type of work performed (i.e., building interior and envelope renovation, selective demolition and additions, MEP system replacement and civil/utility work, etc.), work setting (higher education, urban, etc.), dollar volume of project, contract method (CM at Risk, CM Agent, GC, DB, etc.) and schedule of the job; and,

NOTE: The Project Executive, Project Manager, Field Superintendent, Project Estimator, BIM/VDC Manager and MEP Project Engineer will be evaluated based on their background and experience with projects which have similar criteria to the Smith Hall Renovation, i.e., (projects performed CM at Risk, in a higher education setting, building interior and envelope renovation, selective demolition and additions, MEP system replacement and civil/utility work.) Key People that have worked together on other successful projects are preferred. Refer to Section 2.1, Firm Experience, for the criteria to be used to evaluate the individual's project experience.

NOTE: In the event that more than four (4) projects are listed for each named key person, only the first four (4) projects will be evaluated by the Evaluation Committee.

(7) Achievements/Other Notations.

- b. Key Personnel References: Provide three (3) project references (from the person's submitted project experience) on each of the four (4) proposed key people inclusive of contact person, email address, phone number and name of applicable project (in the space provided on the Key Personnel Form). Such references are to be project references on the Key Personnel Attachment Form not employment references; that is, the University is interested in speaking to a Project Owner or A/E regarding the person's performance on a particular project.

Such references are to be from different projects; that is, only one reference per project is allowed. As well, one (1) reference for each person must be from outside the University of Maryland, Baltimore and outside of Towson University.

In addition, the University reserves the right to check other sources available including itself even if not provided as such by the Proposer. Such references will be held in strictest confidence by the University.

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**.

\*NOTE: All references of the Key People and the Firm will be checked during the Second Phase Technical Evaluation. Only the shortlisted firms will have their references contacted, however, all firms responding must furnish this information within their Technical Proposals due on **Wednesday May 11, 2022 at 2:00 P.M.**

- 1.3. Matrix of Anticipated Total Hours:** Complete the enclosed "Anticipated Total Hours Form" for on-site staff during the construction phase.
- 1.4. Matrix of Services:** Complete the "Matrix of Services Form" to indicate which of the key people have primary or secondary responsibility in performing pre-construction and

construction services. **In completing this form, there should only be one person listed as having primary responsibility (1) for each service. Multiple people may be listed as having secondary responsibility (2) or Participating (P).** Include a narrative to explain the rationale behind how responsibilities are assigned.

2. FIRM RELEVANT EXPERIENCE/FIRM REFERENCES/PROJECT SPECIFIC BACKGROUND:

- 2.1. **CM Firm Experience:** Each Proposer is to submit information on a total of three (3) similar or relevant projects. For each project, the Proposer is to complete the CM Experience Form\* provided in Forms Package, Attachment A).

\*Note: All Proposers are required to use the CM Experience Form format; however, Proposers may elect to reproduce the form.

The project submission shall include the following:

Project Name and Location;  
Project Owner, Contact Person, Email Address and Telephone Number;  
Construction Start and Project Completion Date;  
Construction Cost  
Contract Method (i.e., GC, CM or DB)  
Project Gross Square Footage;  
Project Net Square Footage;  
Brief Project Description;  
Project Setting (i.e., university, urban, etc.);  
Names of Proposed Key Personnel (per #1.2 above) who were involved in the project and the assigned role for each (the University prefers the proposed key people were involved in the submitted projects and, particularly in the proposed role); and,  
Similarities of the submitted project to the University's project.

Note: If the Proposing CM firm is a joint venture firm, the following applies:  
Of the three (3) projects submitted, a minimum of two (2) projects **MUST** be from the majority joint venture party; of these two (2) projects, one (1) project **MUST** be a new construction academic facility in higher education completed with the CM at risk delivery.

**Note:** For project construction costs, Proposers are to use the following escalation chart to determine the project size in today's dollars for purposes of meeting any project cost requirement. The escalation factor is to be calculated from the midpoint of construction and is cumulative.

<b>Calendar Year</b>	<b>% Escalation Factor</b>
2008	6
2009	1
2010	1
2011	3.5
2012	3
2013	3.5
2014	3.6
2015	3
2016	3
2017	3.5
2018	4
2019	4
2020	9.3
2021	5
2022	4.5

The escalation factor is to be calculated from the mid-point of construction and it is cumulative.

**Projects must** meet the criteria noted below as well as the following items in order to be considered:

All projects submitted under this category are preferably a maximum of ten (10) years old based on the project completion date with a further preference for projects less than five (5) years; and, all projects must be done by the proposing firm.

**a. Project Type**

**The projects submitted under this category are to be similar in size, function, and complexity to the University's project. The criteria used in the evaluation of these projects include, but is not limited to, the following:**

- **Projects which are renovations of academic buildings on a higher education campus;**
- **Projects which include building envelope restorations/replacements;**
- **Projects that include active learning environments and collaborative student workspaces;**
- **Projects located in a higher education setting (Note: For evaluation, higher education can include comparable academic programs in community colleges);**
- **Projects which are constructed utilizing a fast-track Construction Management at Risk method (see definition in Section I);**

- **Projects which are constructed utilizing BIM, ideally during design and construction;**
- **Projects which include selective demolition and additions to existing buildings; and**
- **Projects that include abatement of hazardous materials.**

**b. Size of Project**

- **All three (3) projects should be a minimum of \$40M with dollar values closer to the Smith Hall Renovation cost preferred.**

**c. Contract Type**

- **All three (3) submitted projects should have been done using the construction manager (CM) at Risk contract method.**

(Please note: The Construction Management at Risk or Construction Management with GMP contract method are synonymous and are defined to be that contract method in which the Construction Manager is retained to provide pre-construction and construction services to the Owner inclusive of constructing the facility under a guaranteed maximum price.)

**d. Project Completion**

- **Two (2) projects must be complete and occupied for at least six (6) months;**
- **One (1) project can be substantially complete (available for use for its intended purpose) with completed projects preferred; and,**

The projects submitted under this category are to be similar in size, function and complexity to the University's project. The criteria used in the evaluation of these projects includes, but is not limited to, the following with a greater degree of consideration given if the majority of these factors are applicable to the projects submitted. (See Section 00400 and the Project Program for the specifics of the **Smith Hall Renovation**.)

All proposers are to base their responses on their three (3) most recently completed projects that reflects the size, type, schedule and CM services required under this RFP.

**e. Project Photographs:**

With each of these three (3) projects, provide project photograph(s) (color is desirable) with the description on the same or opposing page.

**2.2. Firm References: \*\***

**a. Firm Project References from submitted projects (in #2.1 above):**

- (1) Provide three (3) references per the projects submitted under the firm experience category above (#2.1). Provide contact name, address, email address and telephone number for each reference. Such references are to be from different projects; that is, only one reference per project is allowed. One (1) of the 3 references must be from outside the University of Maryland, Baltimore and one (1) must be from outside Towson University.
- (2) The University reserves the right to verify all information given, if it so chooses, as well as to check any other sources available. As well, the University may utilize itself as a reference even if not provided as such by the Proposer.
- (3) Please be sure that accurate information is provided and that the contact person is capable of speaking to your firm's capability in performing the services required. References will be held in the strictest of confidence.

**Additional Firm Project References:** Please provide two additional project references, including name of company, contact name, email address and phone number. These will be used only in the event the University is unable to contact one or more of the three projects given above (in #2.2.a).

- . Please include with these references, a list of applicable projects with a brief description of each inclusive of dollar size and date completed.

**\*\*NOTE:** All references of the Key People and the Firm will be checked during the Second Phase Technical Evaluation. Only the shortlisted firms will have their references contacted, however, all firms responding must furnish this information within their Technical Proposals due on **Wednesday May 11, 2022 at 2:00 P.M.**

### **3. PROJECT SPECIFIC ITEMS:**

#### **3.1. Project Challenge:** Select one (1) aspect of the **Smith Hall Renovation** which your CM Team finds to be the most challenging and provide the following:

- a. A description of this one (1) aspect;
- b. The reason your CM Team finds it to be the most challenging;
- c. A description of how your CM Team would address this issue and what your recommendations might be.

**Schedule:** Provide a narrative commenting on the construction schedule of twenty four months from NTP to substantial completion. The University is specifically requesting the proposer to evaluate the feasibility to complete the project in the construction timeframe provided. If the proposer does not feel that the timeframe is adequate, he should provide an evaluation for his own timeframe recommendation; make sure to include specific details and



reasoning behind the timeframe recommendation. Proposers should also include in the narrative a background of the firm's experience and abilities to deliver similar projects on time with tighter or truncated schedules. The University will be evaluating this section based on the firm's response of providing a thorough evaluation, explanation, and narrative of the construction schedule and not on the proposer simply agreeing with the University provided timeframe. Proposers may combine the Schedule with the Project Challenge if they find it to be the most challenging aspect of the project.

**3.2. Project Specific Background:** Provide summary information on your firm's specific background in doing a CM at risk project such as the Smith Hall Renovation Project. Information to be provided under this category includes, but is not limited to, (i) percentage of work done by the proposing firm which is a renovation of an existing academic facility on a higher education campus and utility as well as hardscape construction utilizing the CM at risk or CM with GMP method, and (ii) applicable project experience other than the three (3) projects submitted under the Experience Category (2.1) above.

**3.3. Pre-Construction Services:** Provide examples of 100% DD estimates, Constructability Review, and Value Engineering Reports that your firm submitted in performing pre-construction services for one of the jobs you have listed under your firm experience.

**4. PROFILE OF PROPOSER:** Provide the information requested below on your firm. Please note: If the Proposer is a local office of a parent company, the information requested under #4.2 and #4.3 are to be provided on the local office only who will be managing this contract not on the parent organization, unless the parent organization is the Proposer.

[Note: If the Proposer is a joint venture, the information requested in all subcategories (#4.1, #4.2 and #4.3) are to be provided on all parties. In addition, please note that the information provided under this category of Profile of Proposer will be evaluated for each joint venture party based on its percentage of the joint venture firm.]

**4.1 Company Background:** Provide a brief but **informative** history of your firm inclusive of (i) how your firm has developed over the years, (ii) type of work done, (iii) client base, (iv) year in which your firm commenced providing Construction Management at Risk services, (v) number of employees inclusive of a breakdown among office and field and supervisory and non-supervisory, (vi) your firm's bonding capacity, and (vii) your firm's Dun & Bradstreet Report inclusive of Rating and/or recent Financial statement.

Note: If **joint venture**, provide (i) history of joint venture experience for all parties and (ii) specifically history of this joint venture relationship inclusive of the reasoning for the establishment of the joint venture on this project and (iii) a listing of all joint venture parties and each party's percentage of the joint venture firm. In addition, the joint venture Proposer is to identify the responsible JV party for each of the CM services to be provided during the Pre-Construction and Construction phases of the Project.



4.2 Complete the "**Annual Sales Volume/Completed Projects form**" on a per year basis for the last three (3) years [2019-2021] and indicate what percentage of such work is CM at risk\*, GC, or other (name). (This information is to be about the responsible branch office only, not the parent organization.) \*Note: See definition of CM at risk on page 00300/11 of the RFP.

4.3 Complete the "**Current Workload form**" (found in Attachment A of the Forms Package) on which you are to list current projects on which your firm is committed, the dollar volume of each, the time frame for each, and the Project Manager and Field Superintendent. In addition, please describe your firm's ability to accomplish the proposed services on this project within specified time frames in the space provided on this form. (This information is to be about the responsible branch office only, not the parent organization, unless the parent organization is the Proposer.)

**Note:** If the selected proposer is a **joint venture firm**, a copy of the signed, joint venture agreement must be provided to the University for its review and approval prior to issuance of the Notice to Proceed. In addition, no changes can be made to the joint venture agreement without the written approval of the University.

5. **ECONOMIC BENEFIT:** Provide a detailed, but concise, overall description as to how the award of this contract will benefit the economy of the State of Maryland if your firm is the successful CM. Such items include, but are not limited to, (i) contract dollars to be recycled into Maryland's economy in support of this contract, through the use of Maryland subcontractors, suppliers, and joint venture partners; (ii) the number and type of jobs for Maryland residents resulting from the contract; (iii) tax revenues to be generated for Maryland and its political subdivisions; and (iv) subcontract dollars committed to Maryland small businesses and MBE's.

## **END OF SECTION 00300, ARTICLE 2**

**SECTION 00300**  
**ARTICLE 3**  
**PROPOSALS, EVALUATION, AND FORMS**  
**ORAL PRESENTATION AND PRICE PROPOSAL**

- A. **ORAL PRESENTATION (UNIVERSITY OPTION):** Only those Proposers who are shortlisted based on the initial technical evaluation will be requested to attend an Oral Presentation at the University.

The date and time of the Oral Presentation will be set by the University upon completion of the evaluation of the Technical Proposals, however, these sessions are anticipated to be held on **Wednesday June 29, 2022 and Thursday June 30, 2022**. Proposers are advised to set these dates aside in their entirety accordingly on all Key Personnel's calendars as these dates are not expected to change. The actual date will be confirmed in writing and sent to the applicable proposers at the time it is requested.

The purposes of the Oral Presentation 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 discuss selected categories of the Proposer's Technical Proposal;
3. 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 services required for this project, and their expertise in providing the same; and,
4. to review the Price Proposal form.

Each proposer will be required to have the following personnel attend the Presentation Session: Project Executive, Project Manager, Field Superintendent, Project Estimator, BIM/VDC Manager and MEP Project Engineer.

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.

Upon completion of the Oral Presentations, the University will conduct the Second Phase Technical Evaluation as described in Section 00300, Article 4.

- B. **PRICE PROPOSAL**: After completion of the Oral Presentations, only Proposers who remain shortlisted based on the second technical evaluation will be requested to submit a Price Proposal. The Price Proposal shall be submitted via email to the address provided in the Solicitation Schedule. The due date for submission of the Price Proposal is set at **Wednesday July 27, 2022 at 2:00 P.M.**

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

**1. CM Fixed Fees:**

- a. **CM Pre-Construction Phase Fee** for all costs associated with providing the CM services in the pre-construction phase for the Project and inclusive of the \$320,000 of pre-construction allowances. (see Section 00400 for details); and,
- b. **CM Construction Phase Fee.**

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

**2.1. 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 00400). In addition, Proposers are to complete the staff Reimbursables Cost Breakdown Form with its Price Proposal.
- b. **General Conditions Non-Personnel Items** for the Project per Attachment C inclusive of CM's General Liability Insurance, Builders' Risk Insurance and 100% Performance and Payment Bonds and to include the Third Party Testing & Inspection allowance of \$200,000. 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. (Firm prices for bonds and insurance are to be quoted. The balance of the non-personnel items must be a minimum of 3% of the Project Construction Costs.)

**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 1.75% of the Project Construction Costs. (see Section 00400 for details on this contingency).
- 3. CM Hourly Billing Rates for the Project** based on 00400/6 and 00400/7, Item 1.7.2 (b) 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.**

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.

Price Proposals will be evaluated based on the total price inclusive of all Fixed Fees and Reimbursable Costs as noted above and on the Price Proposal form for the Project.

### **END OF SECTION 00300, ARTICLE 3**

**SECTION 00300**  
**ARTICLE 4**  
**PROPOSALS, EVALUATION, AND FORMS**  
**EVALUATION OF PROPOSALS**

A. **TECHNICAL EVALUATION:**

1. An **Initial Technical Evaluation** of the Technical Proposals will be conducted by a University Selection and Evaluation Committee prior to the Oral Presentations. The order of importance, as detailed in Section 00300 Article 2, of the technical criteria is as follows: CM Team Organization/Key Personnel, Firm Experience, Project Specific Items, Profile of Proposer and Economic Benefit. The one exception to the order of importance is the reference checking on key personnel and proposing firm will only be conducted as part of the second phase technical evaluation noted below. Proposals cannot be modified, supplemented, cured, or changed in any way after the due date and time for technical proposals.

The Committee shall conduct its evaluation of the technical merit of the proposals in accordance with the evaluation criteria. Proposals are evaluated to determine which proposal is most advantageous to the University. The process involves applying the evaluation criteria to the RFP. Based on the results of the initial technical evaluation, the University will develop a short list of proposers that are deemed most qualified to perform the services required under this Contract who will advance in the procurement. Those proposers not deemed susceptible of the award and not short listed will be advised and will not progress further in the procurement.

2. Only those proposers shortlisted as a result of the Initial Technical Evaluation, will then be asked to attend an **Oral Presentation** at the University. (See Section 00300, Article 3 for further information regarding the Oral Presentation.)
3. Following the Oral Presentations, a **Second Phase Technical Evaluation** will be conducted. The order of importance of the technical criteria will be as follows: CM Team Organization/Key Personnel including References, Firm Experience including References, Project Specific Items, Profile of Proposer and Economic Benefit.

In the Second Phase Technical Evaluation, all information provided by the Proposer in both the initial technical proposal and the Interview session will be evaluated. A second shortlist will result from this evaluation.

Upon completion of the second phase technical evaluation, proposers will be notified as to the results; that is, whether their firm is included or not on the second shortlist.

4. Only those proposers who remain shortlisted based on the Second Phase Technical Evaluation will then be asked to submit a **Price Proposal** to the University. (See Section 00300, Article 3 for further information regarding the Price Proposals.)
5. Further information may be requested by the University during the technical evaluation process and a Best & Final technical phase may be conducted.

**B. PRICE PROPOSAL EVALUATION:**

1. Price Proposals will not be opened publicly.
2. Price Proposals for the base and alternate schedule will be evaluated based on the sum total price of CM Pre-Construction fee, CM Construction Phase fee, and CM Not-to-exceed Reimbursable costs for the project.
3. The University may elect to request Best & Final Price Proposal(s).

**C. FINAL PROPOSAL RATING:**

1. The final proposal rating will be based on the second phase technical evaluation and the Price Proposal evaluation.
2. Technical merit will have a much greater weight than cost.
3. The Evaluation and Selection Committee will choose from among the highest rated proposals that proposal which will best serve the interests of the State, in accordance with State procurement regulations.
4. As stated in Section 00100 Instructions to Proposers, J. Competitive Negotiation, and Q. Proposal Acceptance, the University reserves the right to make an award with or without negotiations.

**END OF SECTION 00300, ARTICLE 4**

**SECTION 00400**

**SCOPE OF WORK**

**SECTION 00400**  
**ARTICLE 1**  
**GENERAL PROVISIONS**

**IV. SCOPE OF WORK**

**1.1 TOWSON UNIVERSITY:**

Towson University enrolls more undergraduate and graduate students from the Baltimore region than any other institution in the University System of Maryland. The University emphasizes attracting well-prepared, academically inclined students. National recognition of its excellent programs in the arts and sciences, business, communication, fine arts, allied health sciences, and teacher education contributes to Towson's distinction as the most comprehensive university of the Baltimore region. The 316-acre Towson main campus is home to 54 buildings, over six million square feet of facility space, and more than 7,200 parking spaces. Currently enrolling more than 22,000 total students, the university plans to grow enrollment to 25,000 students by the fall of 2023.

**1.2 Project Overview:**

The primary goal of the project is to consolidate the College of Fine Arts and Communication (COFAC) Departments of Mass Communications (MC), Communications Studies (CS), and Electronic Media & Film (EMF) while resolving ongoing departmental space deficiencies. The project will support Towson University's academic programs, media production projects, and workforce demand initiatives. Additionally, the proposed facility will improve operational efficiency, provide up-to-date media production technology and maximize the provision of student services; all to support and continue Towson's national and international reputation in arts and communication. This project will involve the complete renovation and adaptive reuse of the existing Smith Hall building, centrally located in the heart of the university campus academic precinct. In 2021, Smith Hall was vacated when The Jess and Mildred Fisher College of Science and Mathematics relocated to a new facility. The existing 5-story Smith Hall consists of two wings, Smith I & II, also known as East Smith and West Smith; constructed in 1964 and 1976 respectively. Both wings will need to be completely renovated as a part of the project. Only the greenhouse facility located on the south side of the East Smith wing and the connector between the two wings are anticipated to be demolished as a part of the project.

Towson University's Teaching and Learning Center is also part of the Smith Hall Renovation which is an academic center focused on innovation in learning environments. The Center features multi-disciplinary classrooms that accommodate teaching pedagogies for a range of curricula. When complete approximately two thousand students will attend general education classes in the building every day. The program will also include collaborative spaces, both active learning classrooms and open study, which will facilitate a variety of teaching and learning styles.

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



(See Project Program, which is a separate document, for complete details).

The project construction is to provide for Substantial Completion of the Smith Hall Renovation within the identified time frame for the project.

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. Hazardous material abatement will be handled under an allowance of \$2,000,000 for this work by the CM within the CM's contract, but outside of the A/E's Design to Dollar Amount. Please note that the CM is responsible for competitively bidding the hazardous material abatement trade work (abatement firms and industrial hygiene monitoring services) in accordance with the RFP and will be responsible for managing the resulting contracts.

In addition, an allowance of \$200,000 for third party testing and inspection services are established within the Project Construction Costs of \$102M for the Smith Hall Renovation. Proposers are to include this allowance in their quoted not-to-exceed amount for General Conditions for Non-personnel items for the appropriate aspect of the project.

The University of Maryland, Baltimore intends to employ a Construction Management (CM) firm to aid the University in the management of the design and construction processes for the Smith Hall Renovation as described in this RFP.

Under the RFP, the University intends to employ a Construction Management (CM) firm in the management of the design and construction processes to perform the following (see Article 3 of this Section 00400 for further descriptions).

**1.2.1 Pre-Construction CM Services** for the full development of the project to 100% construction documents shall be completed as follows:

-within a total total of twenty two (22) months after issuance of the Pre-Construction/Design Notice to Proceed; inclusive of seventeen (17) months to 100% CDs and five (5) months for the CM's GMP preparation.

**1.2.2 Construction CM Services** with general conditions services being provided on an allowance basis, shall be completed as follows:

-within a total of twenty four (24) months after issuance of the Construction Notice to Proceed.

### **1.3. 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 constructability issues, and advise on the sequencing of construction work for the Project. The University will pay the CM the fixed, Pre-Construction Phase CM fee for this Project; such fees are to include all costs associated with the CM providing Pre-Construction Services.

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 00400, Item 3A.10) 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.

#### **1.4. Relationship of University and Construction Manager**

The Construction Manager (CM) accepts a relationship of trust and confidence between himself and the University. The Construction Manager agrees to furnish his best skill and his 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 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.

#### **1.5. Project Team**

The Construction Manager, the University, the Architect, the Design Engineers and any other project consultants 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

Construction Manager shall provide leadership to the Project Team on all matters relating to the project.

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, A/E, CM 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 of \$10,000** to be included in the CM's contract; said funds are to be utilized, with the University's prior approval, by the CM to establish a "Partnering" process to develop strong working relationships among all parties and thereby create an environment of trust and teamwork so as to facilitate the successful completion of this project. All costs associated with the Project Team participating in the "Partnering" process are to be handled within this allowance; the CM and AE will be reimbursed based on its quoted hourly rates to the University for its designated participants.

#### **1.6. University of Maryland, Baltimore General Conditions**

All work shall be performed and administered in accordance with the Contract, including but not limited to, the 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 allowance are described herein (see **1.7.3 below** as well as "**Attachment C**"). Allowance expenditures must be approved by UMB prior to the provision of said services.

As noted previously, a **third party testing and inspection allowance of \$200,000** is established for the Project and is to be included in Proposer's quoted not-to-exceed amount for General Conditions - Non-personnel items.

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.

#### **1.7. Construction Management Fees:**

##### **1.7.1 Pre-Construction (Design Phase) CM fees will be handled outside of the GMP.**

The CM pre-construction phase fee shall be an all-inclusive lump sum fee associated with the provision of the required services are described in **Section 00400, Article 3, Part "A."** as well as the allowances totaling \$320,000 for the Project as noted below and on the Price Proposal form. Allowances are to cover sub-contractor and vendor costs only, administrative or supervisory work by the CM associate with the allowances shall be included in the CM fee.

1.7.1.1 Please note that the following **allowances (totaling \$320,000)** are to be included in the CM's quoted Pre-Construction Phase fee for the project as

indicated on the Price Proposal form: (i) **A reproduction allowance of \$10,000; (ii) A partnering allowance of \$10,000; and (iii) A site investigation allowance of \$300,000.** These allowances are set up as follows:

**Reproduction (\$10,000):** This allowance is set up for reproduction costs associated with the bidding only of the trade packages by the CM in his GMP preparation process. Any reproduction costs incurred during the Construction Phase are to be handled under the General Conditions allowance (see Attachment C of the RFP).

**Partnering Allowance (\$10,000):** See description in Item #1.5 above.

**Site Investigation Allowance (\$300,000):** This allowance is set up for any site and building investigation work; such work will be approved by the University and performed under the direction of the A/E.

\*Note: Since these allowances are set up by the University, it will be the University's responsibility to replenish these if necessary; please note, however, that no costs are to be expended from these allowances 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.

**1.7.2 Construction Phase CM fees as well as the project's "General Conditions" allowance and the CM-GMP Contingency are to be included in the applicable GMP.**

- 1.7.2.1. **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 (1.7.2.2) below 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, on site field staff [as noted in (1.7.2.2) below], General Conditions costs [as noted in (1.7.2.2) below as well as Attachment C], 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 3B.10. 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. **The CM is not to expect that any change order will allow for an increase in General Conditions costs.**

- 1.7.2.2. **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 this section [1.7.2.2] and Attachment C of this Scope of Work. 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, which shall not be unreasonably withheld. 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 which are to include all costs as noted below through this General Conditions allowance\*\*. Field personnel costs shall be billed at Direct Personnel Expenses [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] with no employee overhead mark-up. The on-site field staff are **limited** to the **following positions**: (I) Full time staff which include the Project Manager\*\*\*, Project Engineers, and Superintendent(s); (ii) Part time staff which is limited to a Field Secretary/Clerk, Coordinated Drawing Engineer (who will not be needed further once coordinated drawings are completed), Clerk/ Document Control Person, BIM/VDC Manager and Field Accountant, Close-Out Engineer\*\*\*\*\*, Test Engineer\*\*\*\*\*, and Commissioning Support Engineer\*\*\*\*\*; and, (iii) the positions of Assistant Project Manager, and Assistant Superintendent which may be full or part time positions as determined by the CM. **All other CM positions 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.**\*\*\*\*\*

**\*\*Please note:** As part of the Price Proposal, the Proposers will be quoting on-site Staff Reimbursable costs for the GMP; the price evaluations will include these quoted amounts (see Section 00300, Article 4 for details). 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 he is the awarded CM firm. **\*\*\*Note:** 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.

**\*\*\*\*Note:** In the case of the Test Engineer and Commissioning Support Engineer, it is acceptable to the University that these roles can be handle 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.). As well, the role of Test Engineer and Commissioning Support Engineer cannot be performed by the same person.

\*\*\*\*\*Note: The Close-Out Engineer cannot be handled by a person who is involved in the construction portion of the contract unless otherwise approved by the University. This position is to commence at least four (4) months prior to the substantial completion date.

\*\*\*\*\*Note: The CM must provide a detailed worksheet of labor rates and positions for any Non-Personnel General Conditions labor costs. This worksheet must be provided prior to the start of construction.

**1.7.3** CM Contingency: To be used by the CM in accordance with 00400, Item 3A.10.

**1.7.4** Payments of the CM Fee, General Conditions' reimbursable costs, and CM Contingency due the CM will be authorized/ distributed pursuant to **Article 2** of this Scope of Work and to the Standard Conditions (Section 00700), as amended.

#### **END OF SECTION 00400, ARTICLE 1**

**SECTION 00400**  
**ARTICLE 2**  
**UNIVERSITY'S ROLE**

**2.1. 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.

**2.2. Design Services**

An Architect/Engineer (A/E) will be retained by the University for design services and the preparation of design documents for the project.

**2.3. 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.

**2.4. 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.

**2.5. Payments to Construction Manager**

**2.5.1. Pre-Construction CM Services:**

- a. Payments shall be made on the evaluation of work accomplishment.
- b. Such payment requests are to be submitted on University approved forms.
- c. 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.
- d. The CM will be paid for 100% of the approved monthly, Construction Manager's fee earned.

**2.5.2. Construction Phase CM Services**

- a. 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.



- b. 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.
- c. Trade-Contracts, Equipment Rentals, and Material Payment
  - (1) No mark-up for overhead or profit will be charged by the Construction Manager for Trade or Sub-Contracts, Equipment purchases and Material Payments.
  - (2) 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 UMB General Terms and Conditions, Section 00700 paragraph 8.04 regarding retainage.)
- d. Reimbursables under General Conditions Allowance; and,
- e. Use of CM Contingency in accordance with 00400, 3A.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.

## **2.6. 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 00400, ARTICLE 2**



**SECTION 00400**  
**ARTICLE 3**  
**CONSTRUCTION MANAGER'S OBLIGATIONS**

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

**Part A:** To provide Pre-construction CM services on the Smith Hall Renovation Project inclusive of design phase review services and to provide an acceptable Guaranteed Maximum Price (GMP) for the project.

**Part B:** To provide Construction Phase CM services as required to complete construction of the Smith Hall Renovation Project and to maintain the established GMP for the Project.

**Part A:** To provide preconstruction services inclusive of an acceptable Guaranteed Maximum Price (GMP) for the project.

**3A.1 Project Review**

**3A.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. The CM's staff is expected to be fully familiar with the Program documents as well as the University's Design Standards.

**3A.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.

**3A.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.

**3A.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.

**3A.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 AE 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.

- 3A.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.

### **3A.2 Consultation During Project Development**

- 3A.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.
- 3A.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.

### **3A.3 Value Engineering**

- 3A.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.
- 3A.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.
- 3A.3.3** Value engineering efforts shall also take into consideration applicable constructability issues.
- 3A.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.
- 3A.3.5** All value engineering studies must be provided on a timely basis within the design schedule.

**3A.3.6** Value engineering studies shall be continuous as the design is being developed.

**3A.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.

- a. Develop value engineering concepts for consideration at the session noted in (b) below (it is anticipated that the A/E will be concurrently conducting a similar activity);
- b. Brainstorming session(s) with design team;
- c. Written cost studies shall be produced and submitted to the University within two (2) weeks of the final brainstorming session;
- d. Written pro/con evaluation of the cost studies shall be provided to the University within two (2) weeks after submission of the cost studies;
- e. Formal presentation of the study to be conducted by the CM firm; and,
- f. 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.

**3A.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.

**3A.3.9** The CM takes the lead on this VE effort inclusive of compiling all VE ideas from all Project Team members (AE, 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.

**3A.3.10** The Construction Manager is to review the University's standard VE format with the AE and University at the onset of design.

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:

- 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).

The CM is responsible for establishing dollar amounts for each VE idea with back-up provided to substantiate how the VE savings was determined.

- 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.
- Final VE meeting at which time decisions are made with the AE, CM, UMB FM-AEC and the University's end user(s), as appropriate.
- 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 irregardless 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."

### **3A.4 Schedule**

- 3A.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.
- 3A.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.
- 3A.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.

- 3A.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.
- 3A.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.
- 3A.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, insure that this schedule is maintained and advise the University of any deficiencies in adhering to this schedule by any party.
- 3A.4.7** The CM may use Third Party Scheduling Consultants only with the review and approval of the University.
- 3A.4.8** The CM is to invite the University Project Manager to all scheduling update working sessions.

**3A.5 Constructability Review:**

CM is to review the design throughout the pre-construction/design phase as to constructability issues. On each issue, the CM is to do the following on a timely basis within the design schedule: (1) Description of constructability 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 constructability perspective throughout the design phases inclusive of construction phasing and/or sequencing options, if any.

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

**3A.6 Construction Cost Model/Estimates**

- 3A.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.

- a. The initial, full scale cost model is to be provided within ten (10) working days (unless an alternate duration is agreed upon by the project team) after the submission of the 100% Schematic Design Documents for approval.
- b. 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.
- c. 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.

**3A.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").

**3A.6.3** The Project Construction Costs exclusive of the Owner's contingency are as follows: One Hundred Two Million Dollars (\$102M), which includes \$200,000 for third party testing and inspection allowance as, noted previously.

**3A.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 Costs without additional compensation to the CM.

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):

- a. 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.
- b. 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.
- 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.

Notwithstanding anything in the RFP to the contrary, the CM shall perform the work set forth in this Section 00400 3A.6.4 without additional compensation.

- 3A.6.5** 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 Costs. 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 Costs and the Construction Manager's cost model. If indicated by the Project Construction Costs limitations or other circumstances, the Construction Manager shall work with the University and Architect to reach a mutually acceptable Probable Construction Cost.
- 3A.6.6** The cost model format must be coordinated between the CM and the A/E to insure compatibility and be approved by the University. The CM is required to reconcile its estimate with the AE's estimate at 100% SD and 100% DD and subsequently with the University. The CM is also required to meet with the AE and University to review the 50% CD estimate.
- 3A.6.7** 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).
- 3A.6.8** Notes on the Cost Estimate:

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.

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); 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% SD, 8% 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 (AE, CM, UMB-FM-AEC 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.

### **3A.7 Coordination of Contract Documents**

The Construction Manager shall review the drawings and specifications as they are being prepared, 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).

#### **3A.7.1 A/E TEAM’S RESPONSIBILITIES FOR COORDINATION DURING DESIGN AND CONSTRUCTION**

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 “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.

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

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.

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.

### **3A.7.2 THE PRIME CONTRACTOR'S RESPONSIBILITY FOR COORDINATION:**

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.

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".

### **3A.7.3 COORDINATION DRAWINGS/BUILDING INFORMATION MODELING:**

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.

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.

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 difference 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.

Coordination Drawings are not a design tool for the Architect to use in completing the design. The AE 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 AE.

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.

At this meeting, the Prime Contractor shall do the following: (1) Reiterate the purpose of the coordination drawings, (2) describe the responsibility of each of the parties, and (3) define the design professionals' role in assisting with coordination effort. 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.

The Prime Contractor's coordination drawings are reviewed by the Architect for conformance with the design intent and acknowledgement of changes thereto.

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.

RFI's arising from coordination meetings should only deal with information missing from the Contract Documents necessary to complete the coordination process.

### **3A.8 Construction Guaranteed Maximum Price (GMP)**

- 3A.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 noted in #1.7.2.2. shall be as quoted by CM in his Price Proposal or less.

The GMP must not exceed the Project Construction Budget for the Project noted above in 3A.6.3.

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

Prior to the start of GMP bidding, the Construction Manager will review the 50% 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.

- 3A.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. 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) 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 should include all applicable on site staff rates for the project as defined by the scope of work at the time of the GMP.

- 3A.8.3** The Construction Manager is to conduct a qualification process of all Trade Contractors to insure that all bidding have the necessary expertise. The CM shall submit a copy of it's Pre-qualification Form to the University for an informal review.
- 3A.8.4** The CM shall submit the list of prequalified trade bidders to the University for an informal review.
- 3A.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 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 University's Construction and Facilities Strategic Acquisitions Office. For scope review meetings, the AE 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.).
- 3A.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 UMB's General Conditions (Section 00700), the Construction Manager shall recommend an acceptable substitute at no additional cost to the University.
- 3A.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.

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.

Notwithstanding anything in the RFP to the contrary, the CM shall perform the work set forth in this Section 00400 without additional compensation.

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.

- 3A.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 Section 00100 of this RFP).
- 3A.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.
- 3A.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.

- 3A.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.
- 3A.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.
- 3A.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.
- 3A.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.

**3A.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.

**3A.10** **Contingencies:**

**3A.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.

**3A.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).

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.

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.

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.

The amount of the CM-GMP contingency is to be as quoted by the CM in its Price Proposal to the University but must be a minimum of 1.75% of the Project Construction Costs. 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.

### **3A.11 Non-Acceptance of the GMP and Termination of University-Construction Manager Contract**

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.

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 during Part "A" activities.

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.

### **3A.12 Ownership of Documents**

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 00400, ARTICLE 3, PART A**



**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.**

**3B.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 00400, Article 3, Part A.

**3B.2 Project Construction Costs**

**3B.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 follows:

-One Hundred Two Million Dollars (\$102,000,000)

This above estimate is inclusive of CM on-site staff reimbursable costs, a General Conditions allowance as quoted by the CM inclusive of the \$200,000 third party testing and inspection allowance, CM Construction Phase Fee and CM-GMP contingency but excluding only the A/E fee and the University/Owner's construction contingency as noted in the Price Proposal. 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 in Section 00400, 3A.6.3.

**3B.2.2** Upon completion of work, any and all non-expended funds remaining in any GMP revert to the University.

**3B.3 Project Schedule:**

**3B.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.

**3B.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.

**3B.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.

- 3B.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.
- 3B.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.
- 3B.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.
- 3B.3.7** The University requires occupancy of the Project within twenty four (24) months from the issuance of the Construction Notice to Proceed (NTP).
- 3B.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.
- 3B.3.9** It is the CM's responsibility to meet the required construction completion date as noted above in 3B.3.7. 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.

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 Standard Conditions, as supplemented by the provisions of this Section 00400. Notwithstanding anything in that Section 3.06, the provisions thereof shall apply only to work to be performed in the

Construction Phase.

### **3B.4 Trade Contracts**

- 3B.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.)
- 3B.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.).
- 3B.4.3** All contract documents between the CM and the Trade Contractors are to be made available for review by the University as requested.

### **3B.5 Project Control**

#### **3B.5.1 Project Staffing**

- 3B.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.
- 3B.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.
- 3B.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.

#### **3B.5.2 On-site Coordination/Management**

- 3B.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.
- 3B.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 00400, Article 3, Paragraph 3A.1.3 as well as site requirements per the Contract Documents. University representatives may attend such sessions.

- 3B.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.
- 3B.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.
- 3B.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.

### **3B.5.3 Meetings**

- 3B.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 00400, Article 3, Part B as to topics to be included in Progress meetings.]

- 3B.5.3.2 The Construction Manager shall also conduct Owner's meetings on a minimum of monthly or as requested by the University.

The Owner meetings are to be attended by representatives of the University [including, but not limited to, Towson University Project Manager, 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 insure a successful project.

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.

### **3B.5.4 Requests for Information (RFIs)**

- 3B.5.4.1 The CM will be responsible for developing and implementing a RFI form for use on the project.
- 3B.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 insure that the RFIs submitted are appropriate and not frivolous.

- 3B.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.
- 3B.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.
- 3B.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.

### **3B.5.5 Substitution Requests**

- 3B.5.5.1 The CM will be responsible for logging all substitution requests.
- 3B.5.5.2 The CM will be responsible for reviewing all substitution requests to insure that they are complete; and, if not, return them to the Trade Contractor for proper submission.
- 3B.5.5.3 The CM will be responsible to review all Substitution Requests with the University prior to submission to the Architect.
- 3B.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.
- 3B.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.
- 3B.5.5.6 **Project Photographs:** The UMB Standard General Conditions require the CM to submit Progress photographs monthly in sufficient detail to properly record the work. The Construction Manager is to provide three (3) sets of these pictures [which are to be labeled as to location and date] for distribution of two (2) sets to the University with one (1) set retained by the CM for its records. The cost of these photographs will be reimbursable under the General Conditions allowance.

### **3B.6 Cost Control**

- 3B.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.

- 3B.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.

### **3B.7 Quality Assurance/Inspection**

- 3B.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.

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 of \$200,000 for the Project.

- 3B.7.2** 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.

- 3B.7.3** 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.

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.

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.

### **3B.8 Commissioning**

- 3B.8.1** Commissioning for this project will be contracted directly by the University under a separate contract.

**3B.8.2** Commissioning for this project will include, but not be limited to, the following systems:

- All HVAC systems;
- Building Envelope;
- Fire Alarm and Life Safety Systems; and,
- Electrical Systems including lighting control, normal and emergency power distribution.

**3B.8.3** Commissioning services shall meet the requirements for USGBC LEED “Enhanced Commissioning” and “Measurement & Verification” points.

**3B.8.4** The CM will support the third party Commissioning Agent’s services as required with his on-site staff in the roles of Test Engineer and/or Project Engineers.

### **3B.9 Project Safety**

**3B.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.

**3B.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.

### **3B.10 Change in Scope and Change in GMP**

**3B.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.

**3B.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, as supplemented by the provisions of this Section 00400. Notwithstanding anything in that Section 3.06, the provisions thereof shall apply only to work to be performed in the Construction Phase.

**3B.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.

**3B.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, consistent with the intent of the Contract Documents.

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.

As set forth in Section 3.06 of the Standard Conditions, an equitable adjustment will be made in the CM fee, if appropriate, dependent on the scope of the change and the time frame therein.

- 3B.10.1.4 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.
- 3B.10.1.5 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.
- 3B.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.
- 3B.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.

### **3B.11 Shop Drawing Review/Processing**

- 3B.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 insure that shop drawing/submittals packages are submitted in an appropriate manner and, if not, return them to the Trade Contractor for proper submission.
- 3B.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.



- 3B.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]. (See UMB Shop Drawing/Submittal Flow Chart in Attachment E.)
- 3B.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.
- 3B.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.
- 3B.11.6** The Construction Manager shall provide coordinated drawings as indicated in Section 00400, Article 3, Item 3A.8.2.

### **3B.12 Project Site Documents**

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.

### **3B.13 Claims Avoidance/Resolution**

- 3B.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.
- 3B.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.

### **3B.14 Contract Close Out**

- 3B.14.1** The Construction Manager is required to bring on staff a Project Close Out Engineer, at the appropriate time, to handle project close out activities, which include punch list, scheduling of the required demonstrations and testing, and reviewing and submission of the O&M manuals. **Note:** This position cannot be performed by someone who has been assigned to other positions during the construction of the project.
- 3B.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.
- 3B.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.

**3B.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.

**3B.14.5** At the completion of the Project, and before final payment, the CM shall deliver all such records to the University along with completion set of as-built drawings for approval by the Architect.

### **3B.15 Reports**

**3B.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.

**3B.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.

**3B.15.3** The monthly report by the CM is to include the items noted below.

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.

Schedule: Revised project schedules with a summary statement as to the status of construction for the Project.

Cost Status: Overall summary of the financial status of the project with the cost control report included.

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.

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.

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.

### **3B.16 Date of Completion**

The Work and services under this Contract shall be scheduled for the time period necessary to permit completion and successful final inspection (occupancy) within twenty four (24) months of the Construction Notice to Proceed for the project. Time is of the essence.

### **3B.17 Separate Contracts**

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 00400, ARTICLE 3, PART B**

**END OF SECTION 00400**

**SECTION 00500**

**INTENTIONALLY OMITTED**



**SECTION 00600**

**TOWSON UNIVERSITY SMITH HALL RENOVATION PROGRAM PART II DATED  
JULY 6, 2021  
(Packaged separately from RFP)**

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**UNIVERSITY OF MARYLAND, BALTIMORE**

CONSTRUCTION SERVICE CENTER  
DEPARTMENT OF PROCUREMENT SERVICES

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

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**"STANDARD GENERAL CONDITIONS"  
SECTION 00700**

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*Revised, April 2020*

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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,
- (d) Quality Assurance/Inspection Non-Compliance Log, and,
- (e) 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 Procurement 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 Procurement 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 Procurement 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 Procurement 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, 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. 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. All policies of insurance shall provide that the policy shall not be subject to cancellation, termination, or reduction in coverage, except after thirty (30) days' prior written notice to University.

G. Upon request, Contractor shall also furnish a certificate(s) of the required insurance. Certificates must be amended to indicate: "Should any of the described policies be canceled before the expiration date thereof, or non-renewed, the issuing company will give thirty (30) 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 postjudgment 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 as 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, hoist 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) Bond and insurance 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 furnish 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 9.07. The name and position of the person so designated shall be reported to the University's Office of Facilities Management, with a copy to the Architect, by the Contractor at the commencement of the Work.

**J. Supervisory Personnel** – All supervisory personnel of the Contractor must be direct employees of the Contractor, unless otherwise approved in writing, in advance, by the University.

## **9.02 Non-Discrimination-Employment Policies**

A. Acceptance of 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 Procurement 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.mdod.gov](http://www.maryland.mdod.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**

SECTION 00800  
TOWSON UNIVERSITY AMENDMENTS TO  
UMB STANDARD GENERAL CONDITIONS FOR CONSTRUCTION  
DATED 9/12/2012

00700/5      #1.03, CONTRACTOR RESPONSIBILITIES, I.:      Add the following paragraph to this section:

"I.. Security:

- (1) When work is in, or not in, progress, doors to the work areas and/or buildings shall be kept locked.
- (2) The Contractor will provide when necessary, temporary closures at door, window, and louver openings to secure the area and building from theft, damage and weather.
- (3) The Contractor shall be responsible for the security of the building as it relates to the work area. If required by the University, any security deficiencies in the work area shall be immediately corrected.
- (4) Keys will be issued to the Contractor by the UMB Project Manager for the duration of the job. At the closing of the job, the Contractor must return the key(s) to the UMB Project Manager. Should the Contractor require access to other areas, the Contractor must request access through the UMB Project Manager. Should the Contractor or his agent lose a key(s), they will be held responsible for all and any expenses related to the replacement of the key(s) and all lock cylinders that can be opened with the lost key(s) on the Towson University system, with no recourse of action against the University or its agents."

00700/9      #2.07, SHOP DRAWINGS, E:      This paragraph is deleted and replaced with the following:

"Copies Required -- Contractor shall supply two (2) copies for the Architect's file, and four (4) copies for the University's Office of Facilities Management, in addition to such copies as the Contractor may desire for his own use."

00700/13      #4.05, COOPERATION WITH UTILITIES, G:      Add the following paragraph to this section:

"G. The Contractor will be allowed to use the existing sanitary facilities located near the project site, if available. Should a nuisance in or an abuse of these facilities occur, and continue after a notice from the University, then these facilities shall no longer be used by the Contractor, and he shall provide his own. The Contractor shall keep all facilities which he uses in clean, sanitary condition throughout the period of use and repaint such facilities, if required by the University, at the completion of the work at no cost to the University."

A. The following change is made in this paragraph: The University of Maryland at Baltimore's Office of Environmental Health and Safety is changed to Towson University's Department of Environmental Health and Safety.

B. The following new sections are added:

Materials, supplies, equipment and services shall comply in all respects with the Federal Noise Control Act of 1972, where applicable. Power equipment, to the greatest extent possible, shall be the quietest available. Equipment certified by the US EPA as a "Low Noise Emission Product" pursuant to the Federal Noise Control Act of 1972 shall be considered to meet the intent of the regulation.

The Contractor must supply and have immediately available to their employees spill containment equipment/supplies necessary to contain any hazards they may introduce to the job site. The Contractor is responsible for any and all costs incurred by the University in remediating spills or releases of materials he introduced onto the job site.

The Contractor must contact the TU Department of Environmental Health & Safety (704-2949) immediately following any spill of a hazardous material in excess of one (1) quart.

C. OCCUPATIONAL SAFETY AND HEALTH ACT (O.S.H.A.)

All materials, supplies, equipment, or services supplied as a result of this Contract shall comply with the applicable U.S. and Maryland Occupational Safety and Health Act standards.

D. HAZARD COMMUNICATION STANDARD

The vendor will be responsible for advising all of its employees of their rights under the University's Hazard Communication or more commonly referred to as the Right to Know (RTK) Program. The University will supply the vendor with sufficient copies of its Employee Safety program (ESP) booklet which outlines this program. Each and every vendor who physically works on campus shall be required to sign a form acknowledging the receipt of the ESP booklet and their rights/responsibilities pursuant to this program. The University's Department of Environment Health and Safety is responsible for administering the RTK program and will handle all information regarding this program. Failure to adhere to the requirements of the RTK Program may result in implementation of punitive action such as the cancellation of the contract(s).

Pursuant to the provisions of the RTK Program, the vendor will be responsible for the following:

1. Submission to the Department of Environmental Health and Safety of a complete list of all chemicals or chemical products to be used on the University's property. This listing shall include the chemical name, common name, manufacturer's name, quantity, and location (building and room number) for each product. This listing shall be given to the University's Department of Environmental Health and Safety by no later than (5) five days prior to the start of any work under this contract. Changes, additions, or deletions must be submitted in writing by the University's Department of Environmental Health and Safety, prior to the actual use of the new product on campus.
2. Submission to the University's Department of Environmental Health and Safety of the manufacturer's Material Safety Data Sheet (MSDS) for all chemicals or chemical products to be used or in use at the University. These MSDS's must be delivered to the University's Department of Environmental Health and Safety no later than (5) days prior to the start of any work under this contract. There must be MSDS for every product in use or present on the campus unless exempted in writing by the University's Department of Environmental Health and Safety, reserves the right to order a change in the use, storage, or method of handling of any chemical/chemical product that it feels poses an unreasonable hazard to the University community.
3. The vendor must warrant in writing to the University's Contract Administrator in the Procurement Department that all employees have been trained and will continue to be trained in the proper and safe storage, handling, use and disposal of all chemicals/chemical products.
4. The vendor agrees to obey and follow all local, state, and federal regulations regarding the storage, handling, use and disposal of all chemicals/chemical products. The vendor agrees to properly dispose of all regulated waste in accordance with all applicable regulations and to make available to the University's Contract Administrator all records necessary to support such activity.

E. ASBESTOS

The Contractor is responsible for training and equipping all personnel concerning work in asbestos environments as applicable. They must be trained as prescribed by July 1989. All new employees must be trained within 30 days after they are hired by the Contractor. This is to be accomplished at no additional cost to this contract or the University. An initial report on all employees as to their asbestos training will be presented to the Contract Administrator within the first 90 days of the Contract and

updated on a monthly basis. Thereafter, failure to comply with this requirement would place the Contractor in a default status.

F. FIRE SAFETY

The contractor agrees to comply with and follow all local, state, federal, and University regulations regarding fire safety. It is the contractor's sole responsibility to become familiar with all of the applicable regulations and policies. Copies of the University's policies and procedures are available from the University's Department of Environmental Health and Safety.

The contractor will be responsible for the following:

1. To provide all of its employees with sufficient training to ensure that they are fully aware of all pertinent regulation and policies in effect regarding fire safety.
2. To ensure that all of its employees are aware of and react to University Emergency Procedures including, but not limited to, fire drills and evacuations. All employees must be instructed on the proper personnel to call to report an emergency.
3. All portable electrical devices including extension cords should be disconnected at the completion of work assigned. All electrical equipment must be approved by Underwriters Laboratory and maintained in good working order. Under no circumstances should damaged electrical equipment be utilized on this campus.
4. After pulling the fire alarm, evacuate the building to a safe location and contact the University Policy by dialing extension 2133 immediately. If using a pay phone, dial 911 direct.
5. SMOKING IS NOT ALLOWED IN ANY OF THE BUILDINGS. Any employee of the contractor who wishes to smoke during a designated break, must do so outside.

The Contractor is responsible for fully complying with TU's Hot Works Permitting Program. A Hot Works permit is required any time a Contractor is doing any work on campus involving an actual or potential source of ignition (e.g., arc or gas welding, torch cutting, brazing, open flame soldering, grinding, fired space heaters, etc.); or may potentially cause the activation of a building fire alarm system; or may cause building occupants to notify emergency response agencies about the smell of smoke, heat, etc.

Hot Work Permits are issued prior to the start of work by the TSU Department of Environmental Health & Safety at 704-2949.

The Contractor assumes all responsibility for any work

delays associated with noncompliance with the Hot Works Permit Program.

G. BLOODBORNE PATHOGENS

The contractor will be responsible for providing the required training dealing with occupational exposure to bloodborne pathogens. Employees who have received this training may be required to perform services in area where they may be at risk of exposure to blood or other potentially infectious materials. Some responsibilities will include collection of domestic trash in areas that generate special medical waste, regular cleaning in these areas and spill response for accidents that occur on campus that involve blood. Employee must be informed on the potential hazards present in these areas and the proper protective measures that can be taken to prevent exposure. EH&S is available to provide more information concerning the areas on campus where personnel are at risk of exposure.

H. CONFINED SPACE ENTRY

The vendor/contractor agrees to comply with all local, state and federal regulations pertaining to the entry into confined spaces. The contractor is responsible for contacting the TU Contract Services Manager in the Facilities Management for the location of all campus confined spaces and for responsible for ensuring his workers and any subcontractors are adequately trained in confined space entry procedures in accordance with OSHA 1910.146, Permit Required Confined Spaces for General Industry.

The contractor will provide the TU Contract Administrator a written copy of their Confined Space Entry Plan (CSEP) for review and approval at least 5 working days in advance of the planned entry. Prior to work commencements, the contractor will also certify in writing that all of his workers and subcontractors have been trained in accordance with OSHA 1910.146, Permit Required Confined Spaced for General Industry. The certification will list all employees working on campus by name and social security number.

If the contractors CSEP is approved, the contractor/vendor may utilize his CSEP for entering into campus confined spaces. If disapproved, or if the contractor does not have a written CSEP, the contractor will comply with the TSU CSEP. Until such time as the contractor provides written certification that all of his employees and subcontractor employees working on campus have been adequately trained in confined space entry procedures, entry in TU confined spaces is strictly forbidden. Questions concerning TU's CSEP should be directed to the TU Department of Environmental Health & Safety.

The contractor assumes all responsibility for any work



delays associated with noncompliance with confined space regulations.

I. RESPIRATORY PROTECTION

The vendor/contractor agrees to comply with all local, state and federal regulations pertaining to the use of respiratory protection equipment. It is the contractors responsibility to ensure their workers are provided and wearing the appropriate respiratory protection device suitable to the hazard.

The contractor will provide the TU Contract Administrator a written copy of their Respiratory Protection Plan (RPP) for review and approval at least 5 work days in advance of the planned entry. If approved, the contractor/vendor may utilize his RPP while on campus. If disapproved, or if the contractor does not have a written RPP, the contractor will comply with the TSU RPP. Questions concerning TU's RPP should be directed to the TU Department of Environmental Health & Safety.

J. WASTE DISPOSAL

The Contractor is responsible for the removal and disposal of all non-hazardous solid/liquid waste products generated from his/her work on campus. Non-hazardous solid waste may be disposed of in dumpsters located throughout the campus. All liquid non-hazardous waste materials generated by the Contractor shall be removed from the campus and disposed of in accordance with all applicable Federal, State, and County laws and regulations. The University reserves the right to require the use of a TU Non-Hazardous Waste Manifest for transport off campus of any University non-hazardous liquid waste. The University also reserves the right to approve or disapprove the facility(ies) the Contractor utilizes for disposal of any University non-hazardous solid/liquid wastes. Any questions concerning the disposal of hazardous or non-hazardous waste should be directed to the TU Department of Environmental Health and Safety at 704-2949.

Under no circumstances is any Contractor's generated hazardous waste to be disposed of on campus. The Contractor is responsible for the removal and proper disposal of all his/her hazardous waste, in accordance with all applicable Federal, State and County laws and regulations. Contractor's generated hazardous waste is waste resulting from their operations/equipment on campus when using contractor owned/supplied materials/chemicals. Disposal costs for this will be borne solely by the Contractor. The University is responsible for the hazardous waste generated from University operations or equipment.

K. THE CONTROL OF HAZARDOUS ENERGY SOURCES (LOCK OUT/TAG OUT)

The Contractor agrees to comply with all local, state and federal regulations pertaining to the control of hazardous

energy sources. The Contractor is responsible for insuring his workers and any subcontractors are adequately trained in lockout/tryout procedures in accordance with OSHA 1910.147, The Control is responsible for the hazardous Energy Sources (Lock Out/Tag Out).

The Contractor will provide the TU Contract Administrator a written copy of their Lock Out/Tag Out policy (LO/TO) and/or procedures for review and approval at least five working days in advance of the commencement date of the contract. Prior to work commencement, the Contractor will also certify in writing that all of his workers and subcontractors have been trained in accordance with OSHA 1910.147. The certification will list all employees working on campus by name and social security number.

If the Contractor's LO/TO is approved, the Contractor may utilize their LO/TO for work on hazardous energy sources. If disapproved, or if the Contractor does not have a written LO/TO, the Contractor will comply with TU's LO/TO Policy/Procedures. Until such time as the Contractor provides written certification that all their employees and subcontractors working on campus have been adequately trained in LO/TO procedures, work on hazardous energy sources is strictly forbidden. Questions concerning TU's LO/TO Policy/Procedures shall be directed to the TU Department of Environmental Health and Safety.

The Contractor assumes all responsibility for any work delays associated with non-compliance with the control of Hazardous Energy Sources regulations.

00700/16 #4.15 - PARKING: This section is deleted and replaced by the following:

- A. Parking will be allowed in only designated areas.
- B. Parking of any contract related vehicles on sidewalks or unpaved areas will not be permitted at any time.
- C. Payment of fines for parking or other violations will be the responsibility of the Contractor.
- D. Campus parking tags to be displayed in the car windows will be available for the Contractor and his subcontractors from Dennis Bohlayer with TU's Facilities Management Department.

00700/17 #5.01 - MATERIALS - GENERAL, I: This paragraph is intentionally omitted. Contractors are to refer to Item #4.12, B.

00700/17 #5.01, MATERIALS - GENERAL, J: Add the following paragraph to this section:

- "J. The Contractor is responsible for his tools, materials, and equipment at the work site and anywhere else they may be on

campus. It shall be the sole responsibility of the contractor performing work for the contract to safeguard his own materials, tools, and equipment. The University shall not assume responsibility for vandalism and/or theft of materials, tools and/or equipment."

00700/17 #5.01, MATERIALS - GENERAL, K: Add the following paragraph to this section:

"K. Existing equipment and materials once removed from the project shall become the property of the Contractor, and it shall become his responsibility to remove from the campus unless previous arrangements have been made with the University in writing."

"L" All materials removed by the contractor for the purpose of recycling or salvage shall be the responsibility of the contractor to properly remove from campus for the purpose of salvage and shall not be released to university staff unless written approval is provided by the Towson University Associate Vice President for Facilities Management. Under no circumstances shall the contractor provide salvage service for the benefit of Towson University employees.

00700/17 #5.02, STORAGE AND HANDLING OF MATERIALS, F: Add the following paragraph to this section:

"F. In general, there will be no on site storage available except within the project work area. "

00700/21 #6.06 - CONTRACTOR'S LIABILITY INSURANCE, A: The last sentence of this paragraph is deleted and replaced with the following:

"All insurance except Workmen's Compensation shall name the University of Maryland at Baltimore, Towson University and the State of Maryland as additional insured."

00700/40 #8.01 - PAYMENTS, E.: The following is added to this paragraph:

"The Contractor shall submit to the University an updated schedule indicating work completed with each certificate of payment request."

.....END OF TU AMENDMENTS TO UMB GENERAL CONDITIONS

**SECTION 00830**

**PREVAILING WAGE RATES**

**(To be issued to the successful CM prior to trade bidding)**

## **Attachment A**

### **Technical Proposal Forms**

The following forms must be included within the Technical Proposal. However, please refer to Section 00300 for further required contents of the technical proposal. Completion of these forms is not the entire technical proposal.

#### Initial Phase:

- MBE –Attachment H, Part 1 – Instructions and Part 2 – MBE Utilization and Fair Solicitation Affidavit **(forms located in attachment H)**
- Bid/Proposal Affidavit
- Key Personnel Form
- Key Personnel/Basis of Selection Form
- CM Key Personnel Working Relationship Form
- Matrix of Hours Form
- Matrix of Services Form
- CM Experience Form
- Annual Sales Volume/Number of Projects Form
- Current Workload Form
- eBuilder Affidavit
- Certification Regarding Investment Activities in Iran
- Acknowledgment of Receipt of Addenda Form (if applicable)

It is the Proposer's responsibility to thoroughly review the RFP documents, in particularly Section 300, to ensure all required contents are submitted.

## BID/PROPOSAL AFFIDAVIT

A. AUTHORIZED REPRESENTATIVE

I HEREBY AFFIRM THAT:

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland.

"Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. Certification Regarding Minority Business Enterprises.

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

(1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;

(2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;

(3) Fail to use the certified minority business enterprise in the performance of the contract; or

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

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

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

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D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

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

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E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

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F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

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G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

J. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

K. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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



- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone whom the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
  - (i) The dangers of drug and alcohol abuse in the workplace;
  - (ii) The business' policy of maintaining a drug and alcohol free workplace;
  - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §K(2)(b), above;
- (h) Notify its employees in the statement required by §K(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §K(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §K(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §K(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
  - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
  - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

L. CERTIFICATION OF CORPORATION REGISTRATION AND TAX PAYMENT

I FURTHER AFFIRM THAT:

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

(If not applicable, so state).

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

M. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

N. Repealed.

O. ACKNOWLEDGEMENT

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

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

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

**RFP FOR SMITH HALL RENOVATION AT TOWSON UNIVERSITY**  
**RFP #22-333 ML**  
**KEY PERSONNEL FORM**

**Proposing Firm:** \_\_\_\_\_

**1. PERSON'S NAME:** \_\_\_\_\_

We confirm this person is available all day on **June 29, 2022 and June 30, 2022** for the Oral Presentation session: ☐ Yes ☐ No, if No, explain.

\_\_\_\_\_

**2. POSITION TO BE ASSIGNED:**

_____PROJECT EXECUTIVE	_____PROJECT ESTIMATOR
_____PROJECT MANAGER	_____FIELD SUPERINTENDENT
_____BIM MANAGER LEVEL 400	_____MEP PROJECT ENGINEER

**3. CM SERVICES TO BE HANDLED BY THIS PERSON:** (See Matrix of Services.)

**4. TIME COMMITMENT:** \_\_\_\_\_ **ANTICIPATED NUMBER OF HOURS**

**4.1 PRE-CONSTRUCTION PHASE:** \_\_\_\_\_% \_\_\_\_\_

**4.2 CONSTRUCTION PHASE:** \_\_\_\_\_% \_\_\_\_\_

**5. OTHER PROJECTS:** To which this person will be assigned during same time period as the schedule of UMB's Project:

Project Name & Geographic Location	Role:	%Time	Anticipated Completion Date of Person's Assignment
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**6. EDUCATIONAL BACKGROUND:**

Institution	Degree/Diploma/ Certificates	Major (if any) <b>Date</b> of Degree or H.S. Diploma
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. **EMPLOYMENT HISTORY\*:** (\*NOTE: If a person has more than three (3) employers in his/her employment history, please provide complete employment history via supplemental page(s) attached to this form.)

7.1 CURRENT EMPLOYER'S NAME: \_\_\_\_\_

DATES OF EMPLOYMENT: \_\_\_\_\_

POSITION HELD

DURATION BY DATE

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

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

7.2 PRIOR EMPLOYER'S NAME: \_\_\_\_\_

DATES OF EMPLOYMENT: \_\_\_\_\_

POSITION HELD

DURATION BY DATE

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

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

7.3 PRIOR EMPLOYER'S NAME: \_\_\_\_\_

DATES OF EMPLOYMENT: \_\_\_\_\_

POSITION HELD

DURATION BY DATE

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

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

8.0 **SIMILAR RELEVANT PROJECT EXPERIENCE/REFERENCES:**

On the following pages provide a **full** description of Key Person's project experience, including their role *and the services they performed during pre-construction*, on the project. (Note: As indicated in the solicitation document, references are to be **project references not employment references**; that is, the University is interested in speaking to a Project Owner (preferably) or the A/E regarding the person's performance on a particular project.)

8.1 PROJECT REFERENCE CONTACT PERSON & TITLE: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_

EMAIL: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

DESCRIPTION OF CONTRACT/PROJECT DONE: \_\_\_\_\_

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ROLE OF PERSON *AND SERVICES PERFORMED* in Pre-Construction/  
Construction: \_\_\_\_\_

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CONSTRUCTION DOLLAR SIZE: \$ \_\_\_\_\_

SQUARE FOOTAGE OF PROJECT: \_\_\_\_\_

CONTRACT METHOD: \_\_\_ CM AGENT \_\_\_ CM AT RISK \_\_\_ D/B \_\_\_ GC  
\_\_\_ OTHER: \_\_\_\_\_

SCHEDULE OF PROJECT (START AND END DATES): \_\_\_\_\_

DURATION KEY PERSON WAS ON THE PROJECT: \_\_\_\_\_

Note: If key person not assigned for the full duration of the project, explain: \_\_\_\_\_

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Why is this project similar/relevant to the University's project? (Refer to page 00300/10 for criteria.) \_\_\_\_\_

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8.2 PROJECT REFERENCE CONTACT PERSON & TITLE: \_\_\_\_\_

TELEPHONE #: \_\_\_\_\_

EMAIL: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

DESCRIPTION OF CONTRACT/PROJECT DONE: \_\_\_\_\_

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ROLE OF PERSON *AND SERVICES PERFORMED* in Pre-Construction/  
Construction: \_\_\_\_\_

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CONSTRUCTION DOLLAR SIZE: \$ \_\_\_\_\_

SQUARE FOOTAGE OF PROJECT: \_\_\_\_\_

CONTRACT METHOD: \_\_\_ CM AGENT \_\_\_ CM AT RISK \_\_\_ D/B \_\_\_ GC  
\_\_\_ OTHER: \_\_\_\_\_

SCHEDULE OF PROJECT (START AND END DATES): \_\_\_\_\_

DURATION KEY PERSON WAS ON THE PROJECT: \_\_\_\_\_

Note: If key person not assigned for the full duration of the project, explain: \_\_\_\_\_

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Why is this project similar/relevant to the University's project? (Refer to page 00300/10 for criteria.) \_\_\_\_\_

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**8.3 PROJECT REFERENCE CONTACT PERSON & TITLE:** \_\_\_\_\_

\_\_\_\_\_  
**TELEPHONE #:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

**COMPANY NAME:** \_\_\_\_\_

**DESCRIPTION OF CONTRACT/PROJECT DONE:** \_\_\_\_\_

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

**ROLE OF PERSON AND SERVICES PERFORMED in Pre-Construction/  
Construction:** \_\_\_\_\_

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

**CONSTRUCTION DOLLAR SIZE:** \$ \_\_\_\_\_

**SQUARE FOOTAGE OF PROJECT:** \_\_\_\_\_

**CONTRACT METHOD:** \_\_\_ CM AGENT \_\_\_ CM AT RISK \_\_\_ D/B \_\_\_ GC  
\_\_\_ OTHER: \_\_\_\_\_

**SCHEDULE OF PROJECT (START AND END DATES):** \_\_\_\_\_

**DURATION KEY PERSON WAS ON THE PROJECT:** \_\_\_\_\_

Note: If key person not assigned for the full duration of the project, explain: \_\_\_\_\_

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

**Why is this project similar/relevant to the University's project? (Refer to page 00300/10 for criteria.)** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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NOTE: For each Key Person, the Proposing Firm may attach other relevant similar project experience to this form.

**9      ACHIEVEMENTS/OTHER NOTATIONS (NOT REQUIRED):**

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NOTE:                      If a Proposer finds the space provided to be insufficient, he can attach additional pages to this form as he finds appropriate and just indicate on this form to see attached pages.



**Proposer:** \_\_\_\_\_

**Page 1 of 1**  
**RFP # 22-333 ML**

**KEY CM PERSONNEL/BASIS OF SELECTION FORM**  
**SMITH HALL RENOVATION AT TOWSON UNIVERSITY**

<b>Position</b>	<b>Name</b>	<b>Basis for Selection</b>	<b># of Yrs. w/Proposer</b>	<b># of Yrs. in Const. Field</b>	<b># of Yrs. in Assigned Role</b>
Project Executive					
Project Manager					
Project Estimator					
Field Superintendent					
Level 400 BIM Manager					
MEP Project Engineer					

Proposer: \_\_\_\_\_

WORKING RELATIONSHIP OF  
CM KEY PERSONNEL FORM

Job Information */**	Project. Executive	Project. Manager	Field Superintendent	Estimator	BIM Manager 400	MEP Project Engineer

\*minimum of 3 jobs to be listed

\*\* Job information to include job name, \$ amount, type of facility, setting & year completed

ANTICIPATED NUMBER OF HOURS  
FOR ON SITE STAFF – July 27, 2022  
**SMITH HALL RENOVATION**  
AT TOWSON UNIVERSITY  
RFP #22-333 ML

**Provide anticipated number of hours for the on site staff.** Per the RFP, only those positions listed below will be considered by the University to be staff reimbursable positions.

<b>Position</b>	<b>Anticipated Total Hours</b>
Project Manager	_____
Field Superintendent	_____
BIM Manager	_____
MEP Project Engineer	_____
Multi-Media Superintendent	_____
Project Engineer	_____
Assistant Project Manager	_____
Assistant Superintendent	_____
Field Secretary/Clerk	_____
Clerk/Document Control Person	_____
Coordinated Drawing Engineer	_____
Field Accountant	_____
Project Close-Out Engineer** (see notation below)	_____
Test Engineer** (see notation below)	_____
Commissioning Support Engineer** (see notation below)	_____
<b>TOTAL HOURS:</b>	_____

**\*\*Note:** Per the RFP, Section 00400, in the case of the Test Engineer and Commissioning Agent, 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. If this is the case, the Proposer is to so note this on the form in the space provided for the anticipated total hours for these positions (i.e., "N/A see Project Engineer", etc. In the case of the Close-Out Engineer, it is the University's intent that this position be "fresh eyes" to facilitate the close out process, therefore this position cannot be someone who has been assigned to other positions during the construction phase.)

As well, the role of Test Engineer and the Commissioning Agent cannot be performed by the same person.

**MATRIX OF SERVICES:** Include a narrative explaining the rationale behind responsibility assignments. Indicate the Key Person responsible for the following CM services. Use “1” for primary responsibility; “2” for secondary responsible party; and “P” for those key people who participate in the service, but are not the primary responsible party. **(Note: Only one person can be designated as primary (“1”) for each service.)**

**PRE-CONSTRUCTION PHASE CM SERVICES:**

Service	Project Executive	Project Manager	Field Super.	Project Estimator	BIM Manager Level 400
Project/Design Review					
CPM Schedule					
Cost Model/Estimates					
Value Engineering					
GMP Preparation					
Constructability Reviews/Recommendations					
Overall Management of During pre-construction					

**CONSTRUCTION PHASE CM SERVICES:**

Service	Project Executive	Project Manager	Field Super.	Project Estimator	BIM Manager Level 400
CPM Schedule					
Trade Contract Award					
Trade Contract Management					
Conduct Progress Meetings					
Conduct Owner’s Meetings					
RFI’s					
Substitution Requests					
Project Photos					
Change Orders					
Cost Control					
Project Safety					
QA/Inspections					
Monthly Report					
Shop Drawings/Submittals					
Project Site Documents					
Contract Close Out					
Claims Avoid/Resolve					
Overall CM Team Mgmt.					
Other:					

**CM EXPERIENCE FORM  
SMITH HALL AT TOWSON UNIVERSITY**

PROPOSER: \_\_\_\_\_

ARCHITECT'S NAME: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

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

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

CONTACT PERSON: \_\_\_\_\_

\_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

PROJECT OWNER'S NAME: \_\_\_\_\_

PROPOSER PROJECT MANAGER: \_\_\_\_\_

\_\_\_\_\_

PROPOSER FIELD SUPERINTENDENT: \_\_\_\_\_

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

CONSTRUCTION DOLLAR VOL. \$ \_\_\_\_\_ (BASE)

\_\_\_\_\_

CHANGE ORDER DOLLAR VOL. \$ \_\_\_\_\_

OWNER'S CONTACT PERSON: \_\_\_\_\_

TOTAL CONSTRUCTION \$ VOL:\$ \_\_\_\_\_ \*

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

(BASE CONTRACT PLUS C/Os)

All Three (3) projects should be in a minimum of \$40M\*.

TELEPHONE NUMBER: (\_\_\_\_) \_\_\_\_\_

PROJECT START DATE: \_\_\_\_\_

CONSTRUCTION METHOD: \_\_\_\_ D/B \_\_\_\_ CM at Risk\*\* \_\_\_\_ Other (\*\*3 of 3 should be CM at Risk)

PROJECT COMPLETION DATE\*\*\*: \_\_\_\_\_

TOTAL GROSS SQUARE FOOTAGE: \_\_\_\_\_

TYPE OF PROJECT: (CHECK ALL THAT APPLY)

<input type="checkbox"/>	Renovations of an academic building
<input type="checkbox"/>	Building envelope restoration/replacement
<input type="checkbox"/>	Active learning environment / collaborative student workspaces
<input type="checkbox"/>	Higher education setting
<input type="checkbox"/>	Constructed utilizing a fast-track CM at Risk method
<input type="checkbox"/>	Constructed utilizing BIM, ideally during design and construction
<input type="checkbox"/>	Selective demolition and additions to existing building
<input type="checkbox"/>	Abatement of hazardous materials

NOTE: All of the projects a) are preferably constructed in the last 10 years, with a further preference on project completion dates less than five (5) years old, b) must have been done by the proposing firm. \*All three projects should be in a minimum of \$40M for construction costs. \*\* Three (3) of the three (3) projects should have been done utilizing the CM at Risk contract method. \*\*\* Two (2) project must be complete and occupied for at least six (6) months; One (1) project can be substantially complete (available for use for its intended purpose) with completed projects preferred. See Section 00300 of the RFP for further details.

PROPOSER: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

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**TRADES INCLUDED: (check all that apply)**☐ Mechanical (HVAC) (name system type: \_\_\_\_\_) ☐ Electrical ☐ Carpentry ☐ Kitchen Equipment☐ Plumbing ☐ Drywall ☐ Acoustical ☐ Flooring ☐ Painting ☐ Telecommunications☐ Casework ☐ Fire Protection ☐ Masonry ☐ Concrete ☐ ATC ☐ Carpeting ☐ Audio/Video☐ Window ☐ Structural (Name type of structural system: \_\_\_\_\_)☐ Computer Cabling ☐ Other: \_\_\_\_\_

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**TYPE OF CM SERVICES PROVIDED: (Check all that apply)**Pre-construction/Design Phase: ☐ Scheduling ☐ Consultation during Design ☐ Value Engineering☐ Cost Models/Estimates at: ☐ 100% Schematics, ☐ 100% Design Dev. ☐ 50% Construction Documents ☐ Other Interval: \_\_\_\_\_☐ Constructability Review ☐ Other: \_\_\_\_\_

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Construction Phase: ☐ Cost Control ☐ Project Schedule ☐ Project Control Services ☐ Award and manage trade contracts ☐ Project Safety☐ Quality Assurance/Inspections ☐ Change Order Review/Processing ☐ Shop Drawing/Submittal Review/Processing ☐ Project Site Documents☐ Claims Avoidance/Resolution ☐ Contract Close Out ☐ Monthly Written Reports to Owner

PROPOSER: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

OVERALL DESCRIPTION  
OF THIS PROJECT

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DESCRIBE SITE CONSTRAINTS, IF ANY:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

DESCRIBE THE SIMILARITIES OF THIS PROJECT TO THE SMITH HALL RENOVATION AT TOWSON UNIVERSITY:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

LIST BELOW ALL PROPOSED CM TEAM MEMBERS WHO WORKED ON THIS JOB BY NAME AND POSITION:

TEAM MEMBER

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

POSITION HELD ON THIS PROJECT

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**RFP FOR SMITH HALL RENOVATION AT TOWSON UNIVERSITY**  
**RFP #22-333 ML**

**ANNUAL SALES VOLUME/NUMBER OF PROJECTS**

PROPOSER: \_\_\_\_\_

YEAR	SALES \$ VOLUME	# OF PROJECTS COMPLETED	LARGEST PROJECT SIZE	CM AT RISK%	D/B w/GMP	GC%	OTHER:
2021	\$ _____	_____	\$ _____	_____%	_____%	_____%	_____%
2020	\$ _____	_____	\$ _____	_____%	_____%	_____%	_____%
2019	\$ _____	_____	\$ _____	_____%	_____%	_____%	_____%

Is the proposing firm the local office of a parent company? \_\_\_\_ Yes \_\_\_\_ No

If yes, please verify below that the above figures reflect the sales data for the local office that will manage this contract, not the parent company:

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**RFP FOR SMITH HALL RENOVATION AT TOWSON UNIVERSITY**  
**RFP #22-333 ML**  
**CURRENT WORKLOAD**

PROPOSING FIRM: \_\_\_\_\_

Below find a list of the current projects on which our firm is committed, the dollar volume of each, % complete, the date of anticipated completion and whether bonds are applicable.

PROJECT NAME	DOLLAR VOLUME	% COMPLETE	ANTICIPATED COMPLETION DATE (MONTH/YEAR)	BONDED? YES/NO	ASSIGNED PROJECT MANAGER	ASSIGNED FIELD SUPERINTENDENT
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____
_____	\$ _____	_____ %	_____	_____	_____	_____

Based on this current workload, provide a description of proposing firm's ability to accomplish the proposed services on this project within required time frame:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**E BUILDER  
AFFIDAVIT**

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

In conjunction with the bid or offer submitted in response to Project Name: Smith Hall Renovation at Towson University Solicitation No. 22-333 ML, I affirm the following:

I acknowledge and intend to obtain an annual license for E Builder, and will submit all project documentation through eBuilder as instructed by UMB.

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.

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Bidder/Offeror Firm Name

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Signature of Affiant

---

Address

---

Printed Name, Title

---

City, State, Zip

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Phone

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Fax

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E-Mail

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Date

## CERTIFICATION REGARDING INVESTMENT ACTIVITIES IN IRAN

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

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

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

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

Or;

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

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Company Name

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Signature

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Title

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Print

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Date

Note: List is available at:

<http://bpw.maryland.gov>  
Click on "Debarments"

**RFP NO.:** 22-333 ML

**RFP FOR:** SMITH HALL RENOVATION AT TOWSON UNIVERSITY

**DUE DATE:** Wednesday, May 11, 2022 at 2:00 P.M.

**NAME OF PROPOSER:** \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

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

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

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

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

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

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

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

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

Date \_\_\_\_\_

## **Attachment B**

(TO BE COMPLETED BY THE SUCCESSFUL CM FIRM)

- UMB's Construction Contract
- Contract Affidavit
- 100% Performance & Payment Bonds
- MBE Participation Schedule - Attachment H-1A, Part 3 thru H-3B (as applicable) **(See Attachment H for Forms)**
- Contractor Affidavit, Apprenticeship Training Fund Verification

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

This Standard Form of Construction Contract (SFCC) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the University of Maryland at Baltimore ("University") and \_\_\_\_\_, \_\_\_\_\_, Maryland \_\_\_\_\_, FID # \_\_\_\_\_ ("Contractor").

WITNESSETH:

The University has issued a procurement solicitation in connection with a certain project known as **RFP #22-333 ML - SMITH HALL RENOVATION AT TOWSON UNIVERSITY.**

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 #22-333 ML Document dated April 1, 2022;  
RFP #22-333 ML Addendum #1 dated \_\_\_\_/\_\_\_\_/\_\_\_\_  
\_\_\_\_\_'s Technical Proposal dated \_\_\_\_/\_\_\_\_/\_\_\_\_; and,  
\_\_\_\_\_'s Bid Price or 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 substantially complete the work not later than \_\_\_\_ ( ) months for the completion of the project.
4. Total monetary compensation to the Contractor under the Contract is \_\_\_\_\_.

(Signatures on following page)

CONTRACT #C\_\_\_\_\_

Page 2 of 2

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

\_\_\_\_\_  
Contractor

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

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

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

University of Maryland, Baltimore

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

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

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

BUDGETARY DATA:

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

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

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

Approved by Board of Public Works:

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

Revised 9/18/96

Approved for legal form and sufficiency on 9/26/96 by Rachel E. Zelkind, Assistant Attorney General

## CONTRACT AFFIDAVIT

### A. AUTHORITY

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

and is registered or qualified as required under Maryland Law.

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

Name and Department ID

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

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



Name and Department ID Number: \_\_\_\_\_

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

#### C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require the business to file with the Secretary of State of Maryland certain specified information, including disclosure of beneficial ownership of the business, within 30 days of the date the aggregate value of any contracts, leases, or other agreements that the business enters into with the State of Maryland or its agencies during a calendar year reaches \$200,000.

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

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

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

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

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

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

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

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

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

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

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

By: \_\_\_\_\_ (printed name of Authorized Representative and affiant)

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

## **PERFORMANCE BOND**

## PERFORMANCE BOND

---

Principal

Business Address of Principal

---

Surety

Obligee

a corporation of the State of \_\_\_\_\_  
and authorized to do business in the State of Maryland

STATE OF MARYLAND

---

Penal Sum of Bond (express in words and figures)

Date of Contract

Description of Contract

Date Bond Executed

Contract Number: \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_\_

---

KNOW ALL 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.

---

In Presence of:

Individual Principal

Witness:

\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

---

In Presence of:

Co-Partnership Principal

Witness:

\_\_\_\_\_ (SEAL)

(Name of Co-Partnership)

\_\_\_\_\_ as to By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)  
\_\_\_\_\_ as to \_\_\_\_\_ (SEAL)

---

Corporate Principal

Attest:

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

\_\_\_\_\_ as to By: \_\_\_\_\_ AFFIX  
Corporate Secretary President SEAL CORPORATE

\_\_\_\_\_  
(Corporate Surety)

Attest: (SEAL)

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

Title \_\_\_\_\_

Signature

Bonding Agent's Name: \_\_\_\_\_

(Business Address of Surety)

Agent's Address \_\_\_\_\_

---

Approved as to legal form and sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

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



## Payment Bond

## PAYMENT 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	Date Bond Executed
	_____, 20____
Contract Number: _____	

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.

---

In Presence of:

Individual Principal

Witness:

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

\_\_\_\_\_ (SEAL)

---

In Presence of:

Co-Partnership Principal

Witness:

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(Name of Co-Partnership)

as to

By: \_\_\_\_\_ (SEAL)

as to

\_\_\_\_\_  
(SEAL)

as to

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
Corporate Principal

Attest:

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

AFFIX

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

\_\_\_\_\_  
Corporate Secretary

\_\_\_\_\_  
President SEAL

\_\_\_\_\_  
(Corporate Surety)

Attest: (SEAL)

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

Title \_\_\_\_\_

\_\_\_\_\_  
Signature

Bonding Agent's Name: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Surety)

Agent's Address \_\_\_\_\_

\_\_\_\_\_  
Approved as to legal form and sufficiency this

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

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

**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 Smith Hall Renovation at Towson University, Solicitation No. 22-333 ML, 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**  
**GENERAL CONDITION ITEMS**

**ATTACHMENT “C”**  
**SMITH HALL RENOVATION AT TOWSON UNIVERSITY**  
**RFP # 22-333 ML**  
**GENERAL CONDITION ITEMS**  
**Page 1 of 3**

GENERAL CONDITIONS ITEMS 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:

**I. 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 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.

**II. 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.

**MOBILIZATION:** Move on site and establish appropriate field offices.

**TEMPORARY FACILITIES**

**A. Trailer:**

- Provide Field office trailer(s) and all associated costs including, but non limited to the costs for utilities: water, electric, heat, telephone/data lines, sanitary lines, including all connections and usage.
- Provide Field office furniture.
- Provide Field office telephones.
- Include temporary sanitary facilities costs for the site.

**B. Site temporary heat and electric,** if applicable, is to be part of the Mechanical and Electrical Contractors, or the appropriate trade contractor respectively.

**ATTACHMENT "C"**  
**SMITH HALL RENOVATION AT TOWSON UNIVERSITY**  
**RFP # 22-333 ML**  
**GENERAL CONDITION ITEMS**  
**Page 2 of 3**

**TOOLS/EQUIPMENT**

Provide small power/hand tools and equipment as may be required by the CM'S field staff only.

Establish and maintain an appropriate shipping/receiving system.

Provide miscellaneous materials.

**PLANS/SURVEY'S/PERMITS/TESTING**

Provide reproduction of Construction Documents during construction phase.

Provide surveyors services (Site surveys, Layout, etc.), if required.

Acquire required permits and provide required third party inspection/testing services (Electric, Soils, Concrete, Steel, etc.)

**(An allowance of \$200,000 is established for inspection/testing services.)**

**SAFETY/CLEAN-UP**

Establish and maintain an on site safety program throughout construction phases.

Install and maintain temporary facilities as required: safety barricades, partitions, ladders, stairs, site fencing, signage, and traffic control devices.

Provide daily site clean-up, trash collection and removal.

Provide necessary LEED dumpsters.

Provide and maintain site security throughout project construction phases.

Provide site snow removal as may be required throughout project construction phases.

**GENERAL**

Provide temporary Weather and Dust protection (That which must practically remain outside of sub-contracts) as may be required during construction phases.

Provide progress photos throughout project construction phases; once a month is the minimum and as may be required to document special conditions. In addition, provide three (3) sets of six (6) photographs per month taken by a Professional Photographer (see Section 00400 of the RFP for further details.) Also, photograph all disputed items.



**ATTACHMENT "C"**  
**SMITH HALL RENOVATION AT TOWSON UNIVERSITY**  
**RFP # 22-333 ML**  
**GENERAL CONDITION ITEMS**  
**Page 3 of 3**

Provide appropriate office type equipment (copying machine, fax machine, etc.) for field office use.

Provide field support staff necessary to perform General Conditions work (i.e. laborers, craftsmen, etc. covered by Prevailing Wage Rates). These labor costs shall be charged under the non-personnel General Conditions.

**INSURANCE/BOND**

Provide 100% Performance & Payment Bonds

Provide CM liability insurance in accordance with Sections 00700.

Provide a builders risk insurance policy in the amount of the GMP in accordance with Sections 00700.

**CLOSE-OUT/DE-MOBILIZATION**

Provide final site/facility clean-up.

Provide as-built set drawings to the University for use by the A/E in record drawing preparation.

Turn over one copy of project files and records for University archives.

**ATTACHMENT D**  
**TOWSON UNIVERSITY CAMPUS MAP**

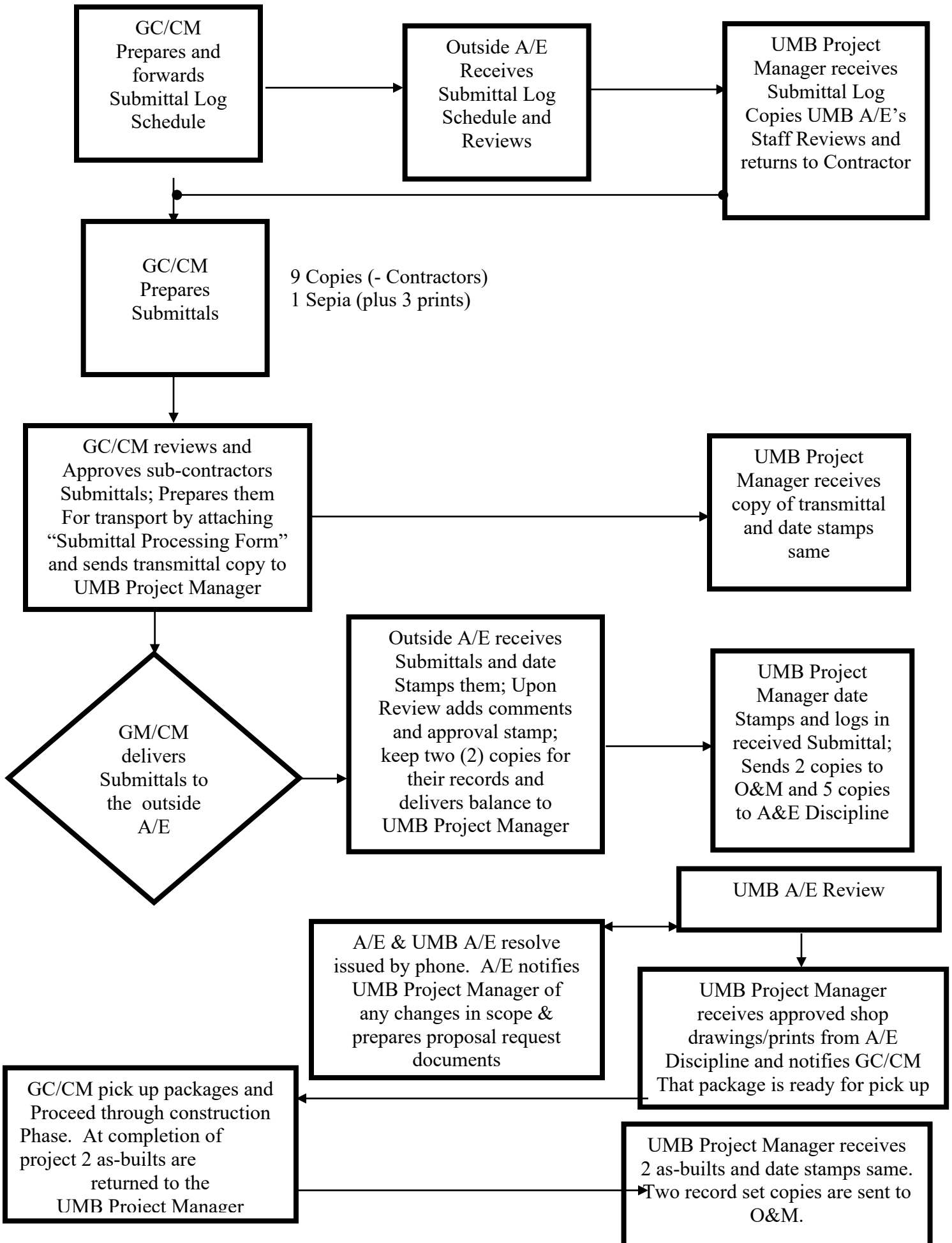
A Campus Map and Driving Directions are available at the following:

<http://www.towson.edu/main/maps/>

## **ATTACHMENT E**

### **UMB Shop Drawings/Submittal Flow Chart**

## UMB Shop Drawings/Submittal Review Process



**ATTACHMENT F**  
**COMMISSIONING**

## **BUILDING COMMISSIONING PROCESS**

### **TABLE OF CONTENTS**

1. Definition of Commissioning
2. Overview of the Building Commissioning Process
3. Commissioning Team Members
4. Sample Functional Testing Forms

## DEFINITION OF BUILDING COMMISSIONING

## **Definition of Commissioning**

Commissioning is a systematic process of ensuring that all building systems perform interactively according to the design intent and the owner's operational needs. This is achieved by beginning in the design phase and documenting design intent and continuing through construction, acceptance and the warranty period with actual verification of performance.

The Commissioning Process is the act of performance testing and verification of designed mechanical building systems, electrical (inclusive of fire alarm) building systems, building automation system (BAS) and plumbing building systems, and their associated components in accordance with the MEP design parameters as defined in the project specifications.

### **Discussion:**

The process includes the (i) documentation of the designed systems performance to ensure that all equipment, control sequences and operational procedures function as designed and (ii) fine tuning and calibration, as needed.

The items noted below are identified as base contract requirements of the trade contractors. Although these items are not part of "commissioning" per se, they are prerequisites to the commissioning process:

- A. Equipment installation, rigging, setting and alignment;
- B. Equipment checkout;
- C. Equipment start-up by the Contractor and/or Manufacturer's Representative;
- D. Equipment initial testing and adjustments per the specifications and manufacturer's recommendations;
- E. Air and water balancing; and,
- F. Owner training (scheduled for either before or after commissioning).

### **Notes:**

- O&M manuals for the mechanical, electrical, plumbing and building automation systems' equipment are to be provided to the University within six (6) weeks of the approved submittals
- Orientation sessions are to be conducted by the Commissioning Agent and the Mechanical and Electrical Design Engineers with OM staff prior to the training and demonstrations; the purpose of these sessions is to provide the OM staff with an overview of the systems, their interrelationships and sequencing.
- The University's Owner's Representative during Commissioning will consist of two (2) people; one from Architecture, Engineering and Construction (AEC) and the other from Operations & Maintenance (OM).



## OVERVIEW OF THE BUILDING COMMISSIONING PROCESS

## **OVERVIEW OF THE BUILDING COMMISSIONING PROCESS**

### **Definition of Commissioning**

Commissioning is a systematic process of ensuring that all building systems perform interactively according to the design intent and the owner's operational needs. This is achieved by beginning in the design phase and documenting design intent and continuing through construction, acceptance and the warranty period with actual verification of performance.

### **Discussion:**

The commissioning process shall encompass and coordinate the traditionally separate functions of system documentation, equipment startup, control system calibration, testing and balancing, performance testing and training.

Performance testing should include any deferred testing or seasonal testing that cannot be - completed at the time of substantial completion.

Traditional construction documents (plans and specifications), while doing an adequate job of providing information for the construction of a building, have been found to be inadequate for the operation and maintenance of the building and systems. Moreover, when the owner is faced with the prospect of renovating an area or changing the usage of a space, the documents are often inadequate to readily ascertain available system capacity for the renovation. Under the best of circumstances, commissioning begins during the project formation phase of a project and continues through the warranty period.

The following parties can be expected to be involved in the commissioning process to varying extents:

AE	Architect and design engineers	MC	Mechanical contractor
CA	Commissioning agent	OR	Owner's Representative(s)
ATC	Controls contractor	SUBS	Subcontractors
CM	Construction Manager	TAB	Test and balance contractor
EC	Electrical contractor	TE	Test Engineer

**Design Phase**

Adequate documentation of the design intent and basis of design of the energy- and comfort-related systems in a building is rarely found in bid documents. It is vital, however, that design intent and sequences of operation be documented adequately. That documentation serves as the goal that testing and verification seek to achieve. In addition, the design-intent document provides valuable information over the life of the building to the different parties involved in operating, maintaining, and troubleshooting the building systems.

Developing a statement of design intent and basis of design (design documentation) enables the parties involved with the building to better understand the building systems and better meet their responsibilities in designing, constructing, and operating the building. The basis of design document should be thoroughly reviewed with the A/E, owner and owner's representative for a mutual understanding of the design intent. This will become the basis of the Commissioning Plan.

The design documentation differs from traditional specifications in that it gives a more narrative description of the system or issue and "frames" the issue or building component with background information useful and understandable to all parties. However, design documentation often includes specifications. In general, specifications tell what is to be done on a component level, where design documentation tells why something is done and, in general, how design and operating objectives will be accomplished.

Design documentation is needed from the architect so that the design engineers can design systems and write specifications. Design documentation is needed from the design engineers and architect so that the building contractors and technicians can properly construct the building. Final design documentation is needed from the building contractors and all of the above parties so that the building operator and maintenance contractors can properly maintain the original intent of the systems' operations over time.

Since the plans of the construction documents will become one of the main references for maintenance, operation, and renovation, it is important that some of the basis of design information be included on the plans. For instance, a schedule of all typical spaces in the building should be included on the equipment schedule sheets, preferably on the first page. This table would include such information as design loads (lighting, equipment, people, building exterior), minimum and maximum air changes per hour, space design temperature, space design humidity, etc. (See Section on "Commissioning Team Members" for specific details of the Mechanical and Electrical Design Engineers' responsibilities.)

**Construction Phase**

Commissioning during the construction phase is intended to achieve the following specific objectives according to the Contract Documents:

1. Verify that applicable equipment and systems are installed according to the manufacturer's recommendations and to industry accepted minimum standards and that they receive adequate operational checkout by installing contractors.
2. Verify and document proper performance of equipment and systems.
3. Verify that O&M documentation provided on site is complete. The commissioning agent will request from the subcontractors full installation, operations and maintenance information before the equipment is installed. The installing subcontractor needs to review this information to insure that he provides adequate service clearances and takes into account all the manufacturers recommendations. This information is also required for the subcontractor's startup plan and procedures. O&M documentation has traditionally been assembled after the majority of the equipment has been installed and started.
4. Verify that the Owner's operating personnel are adequately trained.

The commissioning process does not take away from or reduce the responsibility of the system designers or installing contractors to provide a finished and fully functioning product.

**Demonstration Phase (Functional Testing)**

Functional testing is the dynamic testing of systems (rather than just components) under full operation (e.g., the chiller pump is tested interactively with the chiller functions to see if the pump ramps up and down to maintain the differential pressure setpoint). Systems are tested under various modes, such as during low cooling or heating loads, high loads, component failures, unoccupied, varying outside air temperatures, fire alarm, power failure, etc. The systems are run through all of the control system's sequences of operation and components are verified to be responding as the sequences state. The commissioning authority develops the functional test procedures in a sequential written form, coordinates, oversees and documents the actual testing, which is usually performed by the installing contractor or vendor.

The CA schedules functional tests through the CM, GC and affected Subs. For any given system, prior to performing functional testing, the CA waits until the prefunctional checklist has been submitted with the necessary signatures, confirming that the system is ready for functional testing. The CA oversees, witnesses and documents the functional testing of all equipment and systems according to the Specifications and the Commissioning Plan. The Subs execute the

tests. The control system is tested before it is used to verify performance of other components or systems. The air balancing and water balancing is completed and debugged before functional testing of air-related or water-related equipment or systems. Testing proceeds from components to subsystems to systems and finally to interlocks and connections between systems.

The CA documents the results of the test. Corrections of minor deficiencies identified are made during the tests at the discretion of the CA. The CA records the results of the test on the procedure or test form. Deficiencies or non-conformance issues are noted and reported to the CM on a *Commissioning Corrective Action Report*. Subs correct deficiencies, notify the CA and return a form certifying correction. The CA schedules retesting through the CM. Decisions regarding deficiencies and corrections are made at as low a level as possible, preferably between CA or CM and the Sub. For areas in dispute, final authority, besides the Owner's, resides with the A/E. The CA recommends acceptance of each test to the CM. The CM gives final approval on each test.

The Owner's facilities operating staff are encouraged to attend and participate in the testing process. This testing and verification does not constitute formal training. The CA will notify the facility staff when the commissioning events will occur.

### **Warranty Period**

During the warranty period, seasonal testing and other deferred testing required is completed according to the Specifications. The CA coordinates this activity. Tests are executed and deficiencies corrected by the appropriate Subs, witnessed by facilities staff and the CA. Any final adjustments to the O&M manuals and as-builts due to the testing are made. In addition the CA will return to the project approximately 10 months into the 24-month warranty period. During this visit(s) the CA will review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal commissioning. The CA will also interview facility staff and identify problems or concerns they have operating the building as originally intended. The CA will make suggestions for improvements and for recording these changes in the O&M manuals. The CA will identify areas that may come under warranty or under the original construction contract. The CA will also assist facility staff in developing reports and documents and requests for services to remedy outstanding problems.

**Summary Report**

A final summary report by the CA will be provided to the CM and Owner. The report shall include an executive summary, list of participants and roles, brief building description, overview of commissioning and testing scope and a general description of testing and verification methods. For each piece of commissioned equipment, the report should contain the disposition of the commissioning authority regarding the adequacy of the equipment, documentation and training meeting the contract documents in the following areas:

1. Equipment meeting the equipment specifications
2. Equipment installation
3. Functional performance and efficiency
4. Equipment documentation and design intent
5. Operator training.

All outstanding non-compliance items shall be specifically listed. Recommendations for improvement to equipment or operations, future actions, commissioning process changes, etc. shall also be listed. Each non-compliance issue shall be referenced to the specific functional test, inspection, trend log, etc. where the deficiency is documented. The functional performance and efficiency section for each piece of equipment shall include a brief description of the verification method used (manual testing, BAS trend logs, data loggers, etc.) and include observations and conclusions from the testing.

**Conclusion**

The concept of commissioning has arisen due to the complexity of modern systems and the problems experienced by designers, contractors, and building owners in system startup and operation. Properly executed, it takes the Basis of Design document and develops this into a commissioning plan. This enables the original design intent to be constructed, demonstrated, and transferred to the owners operating personnel by a method that is more complete than traditional construction methods.

## COMMISSIONING TEAM MEMBERS

# COMMISSIONING TEAM MEMBERS AND RESPONSIBILITIES

## GENERAL NOTES:

- All of the identified parties will form the “**Building Commissioning Team**”; that is, the CM, A/E, Trade Contractors and University. An Orientation Session will be conducted approximately 45 days after construction award. The intent of this session is to review (i) the overall Building Commissioning Process, (ii) the roles and responsibilities of each party, and (iii) identification of the first steps in the process which includes the Building Schedule.
  - The Building Commissioning Team, led by the CM, will meet on a regular basis. The agenda for these meetings will include a review of the building commissioning schedule as well as a review of task completion since the last meeting and an identification of task for each team member for the next meeting. Initially these meetings will be held as an adjunct (immediately after) the regularly scheduled progress meeting. Later in the process, the team will meet separately on a weekly basis and finally one day per week designated for Building Commissioning. The Commissioning Agent should be working with the trade contractors to assure the completion of the proper checkout and installation as soon as each piece of equipment is installed.
1. **MECHANICAL/ELECTRICAL DESIGN ENGINEERS (M/E):** Within the 100% construction documents, the Design Engineers are to include the following:
- Schedule of all typical spaces in the building on the first page of the equipment schedule sheets to include design loads, minimum/maximum air changes per hour, space design temperature, space design humidity, etc.;
  - A detail list of equipment to be commissioned;
  - Building commissioning specifications for all applicable trade contractors; and,
  - Commissioning forms; provide five (5) sample forms (for 5 different equipment/systems in the 100% Construction Documents and the remainder of these forms within forty-five (45) days of the Construction Notice to Proceed.



## **2. TEST ENGINEER (TE):**

The Test Engineer should be specifically from the mechanical or electrical discipline. This person should be someone with field experience. The specific duties of the Test Engineer include the following:

2.1 Design Phase: Assist the appropriate A/E design consultants (noted in #1 above) in the preparation of all building commissioning forms for each piece of equipment/system to be included in this process.

2.2 Construction Phase:

- Participate in the commissioning planning and scheduling meetings;
- Attend the Building Commissioning Team meetings;
- Make field inspections of equipment during regularly scheduled site visits;
- Review and approve the initial testing process;
- Review and approve the final completed individual checkout and test performance results;
- Participates in the actual equipment and/or system commissioning; and,
- Directs the correction of deficiencies found during the commissioning process and recommends modifications to system design for review by the Design Engineers and the University.

### **3. COMMISSIONING AGENT (CA):**

The independent Commissioning Agent will be managed by the Construction Manager. The duties of this person include the following:

- 3.1 Design Phase: Provide commissioning input in the project schedule, which is developed during the pre-construction phase.
- 3.2 Construction Phase:
  - Coordinates commissioning scheduling, planning and meetings with the Test Engineer;
  - Serve as Team Leader of Building Commissioning Team;
  - Conduct Building Commissioning Team meetings, which include the Test engineer, Specialty Contractors and the Owner's Representative and issue meeting notes accordingly;
  - Define the contractual obligations and responsibilities of the individual Specialty Contractors for each piece of equipment or system based on the 100% Construction Documents;
  - Arrange and manage all testing inclusive of cross system testing required by Specialty Contractors;
  - Submits schedules, procedures, forms and other documentation to Owner for review and approval before starting of the commissioning;
  - Coordinate and confirm the individual specialty contractor testing and checkout of equipment and systems;
  - Schedule and coordinate the participation of the Owner's Representative, Test Engineer, and individual Specialty Contractors for the actual commissioning and testing;
  - Review and maintain the various checkout and performance test forms and submit the completed forms to the Owner for record and recommend final acceptance;
  - Coordinate the participation of the Owner's personnel for the meetings and commissioning test; and,

3. **COMMISSIONING AGENT (CA):** (continued)

3.2 Construction Phase (continued):

- Compile a Building Commissioning Schedule giving durations for each system based on the anticipated substantial completion date; this schedule will be provided to each trade contractor team member at the Building Commissioning orientation session. Each trade contractor is to provide to the CM the specific schedule elements for its trade relative to each system; the CM is to incorporate this information and finalize this schedule with the Building Commissioning Team early in the process.

4. **BALANCING CONTRACTOR:** In addition to the Balancing Contractor performing his work in accordance with the plans and specifications, the Construction Manager is to include in this Contractor's work site visits during the installation of the mechanical systems with a written report provided with each visit. The purpose of these site visits is to provide feedback from the Balancing Contractor on the installation and, in particular, any areas or installations which the Balancing Contractor notes could result in potential problems in balancing the systems.

5. **OWNER REPRESENTATIVE (OR):**

The University designates the appropriate UMB personnel to participate in the commissioning process on a continual basis as the Owner's Representative(s). As noted previously, the University anticipates that the Owner's Representative will include a person from AEC and OM. The duties of this person(s) include the following:

- A. Participate in the commissioning meetings and schedule the appropriate UMB personnel for the individual commissioning test; and,
- B. Receive the completed test forms from the Commissioning Agent and retain them as part of the project records and make them available for review upon request.

**6. SPECIALTY CONTRACTORS (SC) [ PLUMBING, HVAC, ELECTRICAL, ATC/BAS]:**

The representative from the applicable Trade Contractors or Specialty Contractors should be identified by the trade contractor at the scope review meeting and, if possible, be in attendance; the CM should have the ability in its contract with the trade contractor to request any personnel changes should a person not demonstrate the necessary field expertise to be the Building Commissioning representative.

**The following list of items must be performed, as part of the original contract by the Specialty Contractors in preparation for commissioning:**

- A. *Pre-requisites to the Building Commissioning Process:* The Specialty Contractor providing the equipment is to:
1. Thoroughly checkout and confirm the individual pieces of equipment have been supplied as specified by contract and purchase documents. (i.e. Motor and pump sizes, electrical requirements, electrical disconnects, tank capacities, proper valves, gauges, equipment identification & etc.);
  2. Check the QC of the equipment as supplied and installed against the specifications, submittals and manufacturer's installation and maintenance information;
  3. Check the installation of the equipment against contract documents, including the manufacture's installation instructions, for actual location, orientation, serviceability, proper piping arrangements, ATC and electrical connections;
  4. Coordinate and cooperate with the other trades for completeness of the equipment and systems installation for final checkout and commissioning by the team; and,
  5. Coordinate with the various manufacture's representatives for the startup and checkout of the individual pieces of equipment and systems and provide any and all startup reports as part of the commissioning documents.

6. SPECIALTY CONTRACTORS (SC) [ PLUMBING, HVAC, ELECTRICAL, ATC/BAS] (continued):

**The following are commissioning items and are to be included as a separate line item in the trade contractor's bid price to the Construction Manager:**

B. *Building Commissioning Process Activities:*

1. The contractor providing the equipment is to certify the equipment has been inspected, operates correctly and is ready for final commissioning by signing and submitting the required commissioning forms to the Commissioning Agent;

Note: If during the commissioning of a particular piece of equipment or system a cancellation occurs more than twice, on the same piece or system, and the cancellation is found to be due to an incomplete checkout and improper notification of readiness for commissioning, the Specialty Contractor responsible for the cancellation will be held accountable for any and all cost to reassemble the Commissioning Team.

2. All Specialty Contractors are to provide the required qualified manufacturer personnel, trade mechanic, and test equipment to perform the actual commissioning and performance testing.

## SAMPLE FUNCTIONAL TESTING FORMS

## SYSTEM COMMISSIONING

### AIR HANDLING UNITS 1 & 2

### FUNCTIONAL TESTING

Manufacturer: \_\_\_\_\_ Model #: \_\_\_\_\_ Serial #: \_\_\_\_\_  
Equipment Location: \_\_\_\_\_ Service: \_\_\_\_\_  
Equipment Tag: \_\_\_\_\_

#### Documentation Submitted

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

	<u>Y/N</u>	<u>Comments</u>
Final Operation & Maintenance Manuals Received	_____	_____
Hot Water System Functional Test Complete	_____	_____
Chilled Water Functional Test Complete	_____	_____
AHU Pre-Functional Checklist Complete	_____	_____
EF-3, EF-4 Pre-Functional Checklist Complete	_____	_____

#### Date & Attendees

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
UMAB: \_\_\_\_\_  
UMAB: \_\_\_\_\_  
UMAB: \_\_\_\_\_  
Landis & Staefa: \_\_\_\_\_

#### Control Sequence of Operation

- A. General Information
1. Both AHUs serve areas on first through seventh floors. Units are variable air volume (VAV), each with single supply and return fan. AHU-1 serves areas on west half of building while AHU-2 serves east half.
  2. Each DCP shall share necessary global information, such as outdoor air temperature and relative humidity, on peer network.
  3. Complete programming, including but not limited to parameters necessary to execute control loop functions as specified shall be resident in DCP.
  4. Operation of both AHUs is similar.
- B. Unit shall be indexed to start manually or by BAS command based on time-of-day and day-of-week, and following sequence shall be executed:
1. Before unit starts, outdoor damper shall be fully closed, return/mixing damper fully open, and relief damper fully closed.
  2. Mixed air temperature, enthalpy economizer and coil control valve control loops shall be enabled.

Commissioning Services

Equipment Tag: \_\_\_\_\_

3. Duct and relief plenum static pressure control loops shall be enabled.
  4. Modulating return/mixing damper shall open, smoke-isolation damper in discharge of supply fan and at return connection to AHU shall open.
  5. End-switch contacts of both smoke-isolation dampers and return/mixing damper shall close to energize fans.
  6. IGV's (inlet guide vanes) serving supply fan shall modulate fan speed to maintain duct static pressure, as measured by remote duct-mounted static pressure sensor located where shown on drawings, at setpoint. IGV serving return fan shall modulate to maintain differential flow between supply and return. Required differential flow shall be reset to maintain building pressurization, and shall be computed by measuring supply airflow and return airflow, and accounting for building exfiltration airflow (assumed constant, 2500 cfm per AHU) and sum of building exhausts. Sum of building exhausts shall be computed by summing instantaneous airflows measured at exhaust airflow control valves and assigning fixed airflows (obtained from TAB report) to other exhaust fans, depending on whether they operate.
  7. When fans operate in stable manner, minimum outdoor air damper shall modulate open to maintain outdoor airflow, as measured by airflow measuring station, at occupied or unoccupied setpoint.
- C. Unit shall be indexed to stop manually or by BAS command based on time-of-day and day-of-week, and following sequence shall be executed:
1. Deenergize supply fan and close IGV's. Return fan shall be deenergized by interlock with supply fan and return IGV shall close.
  2. If other AHU remains operational, following sequence applies unless overridden by operator:
    - a. Normally-open two-position control damper connecting supply air discharge plenums of AHU-1 and AHU-2 shall open.
    - b. Normally-open two-position control damper connecting AHU-1 return air plenum with service corridor, and similar damper connecting AHU-2 with service corridor shall open.
  3. Mixed air temperature and enthalpy economizer control loops, and coil control valve control loop for cooling shall be disabled.
  4. Duct and relief plenum static pressure control loops shall be disabled.
  5. Outdoor and relief air dampers shall close and return/mixing dampers shall open.
  6. Coil control valve shall fully open.
  7. Coil temperature control loop for heating shall remain enabled.
- D. Occupied Mode
1. DCP shall start AHU as described above.
  2. AHU shall be indexed to occupied mode manually, or by BAS command based on time-of-day and day-of-week.
  3. Following control loops shall be enabled:



- a. DCP shall modulate minimum outdoor air damper based on maintaining outdoor airflow at occupied setpoint.
- b. Mixed Air Temperature Control Loop: DCP shall modulate open minimum outdoor air damper and maximum outdoor air damper in sequence, and modulate relief air damper to maintain relief plenum static pressure at setpoint, and return/mixed air damper, to maintain supply air discharge temperature at setpoint.
- c. Enthalpy Economizer Control Loop: Using input from temperature and humidity sensors in return air and sharing global information on outdoor air enthalpy, DCP shall override mixed air control loop to maintain outdoor air at minimum flow by closing maximum outdoor air damper and modulating minimum outdoor air damper whenever outdoor air enthalpy is greater than return air enthalpy.
- d. Coil Valve Control Loop
  - 1) DCP shall modulate two-way coil control valve to maintain system supply air discharge at occupied setpoint.
  - 2) Heating mode of control valve (falling discharge temperature modulates valve open) shall be indexed when outdoor air is 5°F below supply air temperature setpoint.
  - 3) Cooling mode of control valve (falling discharge temperature modulates valve closed) shall be indexed when outdoor air is above supply air temperature setpoint.
- e. Coil Heating Control Loop
  - 1) When heating mode of coil control loop is enabled, pump P-13 shall be energized.
  - 2) In heating mode, hot water control valve serving heat exchanger HX-4 shall modulate to maintain leaving water temperature, as measured by temperature sensor mounted in pipe leaving shell side of HX-4, at setpoint.
  - 3) In cooling mode, pump P-13 shall be deenergized, and hot water control valve serving heat exchanger HX-4 shall close.

E. Unoccupied Mode

- I. AHU shall be indexed to unoccupied mode manually, or by BAS command based on time-of-day and day-of-week.

Sequence shall be similar to occupied mode except:

  - a. Discharge temperature shall be maintained at unoccupied setpoint.
  - b. Outdoor airflow shall be reset to unoccupied setpoint, or as required to maintain building pressurization if pressurization requires outdoor airflow greater than minimum unoccupied setpoint.
  - c. Either AHU-1 or AHU-2 shall be deenergized (operator-selectable).
  - d. Normally-open two-position control damper connecting supply air discharge plenums of AHU-1 and AHU-2 shall open.
  - e. Normally-open two-position control damper connecting AHU-1 return air plenum with service corridor, and similar damper connecting AHU-2 with service corridor shall open.
  - f. If unoccupied airflow required to meet cooling and pressurization demands results in supply or return fan operating in unstable portion of fan curve, as measured by fan speed, fan airflow and duct static pressure, modulate primary air valves of fan-powered terminal boxes open sequentially from pre-selected list to maintain unit flow at minimum stable flow. Stable operating data shall be obtained by Testing and Balancing Contractor from fan manufacturer and confirmed by field tests.

Equipment Tag: \_\_\_\_\_

**F. Safety Hard-Wire Interlocks**

1. **Freezing Temperature:** When sensing leaving air temperature below setpoint (35°F, adjustable), averaging low-limit thermostat located immediately downstream of cooling coil shall deenergize supply fan via hard-wire interlock with fan starter, and return fan shall be deenergized by interlock with supply fan starter. Low-limit thermostat must be manually reset before fan can be restarted.
2. **Smoke Detection:** When sensing products of combustion in supply or return air, smoke detectors shall deenergize supply fan via hard-wire interlock to starter by Division 17, and return fan shall be deenergized by interlock with supply fan starter. Smoke-isolation dampers shall close. Smoke detector must be manually reset before fan can be restarted.
3. **High Duct Static Pressure:** When sensing static pressure exceeding setpoint (4 inches WG, adjustable) in supply fan discharge plenum upstream of AHU supply isolation damper, differential pressure switch shall deenergize supply fan via hard-wire interlock to fan starter, and return fan shall be deenergized by interlock with supply fan starter. Differential pressure switch must be manually reset before fan can be restarted.

**G. Alarms**

1. Unit shut-down due to temperature below low-limit setpoint.
2. Shut-down of fan due to fan motor current sensor not detecting suitable operating current after normal start sequence. Two alarms for each AHU.
3. Shut-down of fan due to non-closure of end-switches of dampers in appropriate airflow path.

**BAS Points & Alarms****AHU-1**

SF Start/Stop	Start/Stop	_____
SF Status	Run/Stop	_____
Alarm	Abnormal Run/Stop	_____
SF IGV Control	% Open	_____
Supply Air Flow	CFM	_____
Supply Duct Static Pressure	In. wc	_____
RF Start/Stop	Start/Stop	_____
RF Status	Run/Stop	_____
Alarm	Abnormal Run/Stop	_____
RF IGV Control	% Open	_____
Return Air Flow	CFM	_____
Preheat Coil Valve	% Open	_____
Cooling Coil Valve	% Open	_____
Supply Air Temp	°F	_____
Return Air Temp	°F	_____
Return Air Humidity	% RH	_____
OA Damper Control	PSIG	_____
Return Air Damper Control	PSIG	_____
Relief Air Damper Control	PSIG	_____
Relief Air Static Pressure	In. wc	_____

Equipment Tag: \_\_\_\_\_

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**SF Start/Stop**

\_\_\_\_\_

Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units (AHU):**

1. System/Equipment to be Tested: (AHU-1, AHU-2) control system.
2. Functions to be Tested: Damper and control valve actuation in order to maintain temperature setpoint and minimum outside air.
3. Conditions of Test: Test damper modulation capability when outside air temperature is below 45° F, around 60°F, and above 82°F. Test system under 25%, 50%, 75% and 100% air flow within design tolerances.
4. Acceptable Results: Every mode of system operation and every item in control description shall be proved.

**Test Results**

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**Corrective Actions Required**

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**Corrective Actions Completed**

Date:

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**Comments**

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Equipment Tag: \_\_\_\_\_

**Test Procedure**

Air Handling Units - Cooling and Heat Capacity:

1. System Equipment to be Tested: AHU-1, AHU-2 and their associated control systems.
2. Functions to be Tested: Capacity of heating and cooling coils.
3. Conditions of Test: Conditions at heating coil shall be as scheduled on drawings, measure and record leaving heating coil and cooling coil temperatures, water flows, valve positions and air flow for a period of 20 minutes; repeat test while increasing coil entering conditions by 15°F, intervals up to scheduled cooling coil entering coil air temperature. Test coils at design conditions and 100% air flow; retest at 25%, 50%, and 75% air flow.
4. Acceptable Results: Coils provide scheduled/submitted capacities, and supply air temperature is maintained throughout test; when heating coil has modulated closed; and while cooling coil is operating, the heating coil has modulated closed.

**Test Results**

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**Corrective Actions Required**

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**Corrective Actions Completed**

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

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**Comments**

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~~Building~~ Commissioning Services

Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units - Freeze Protection**

1. System/Equipment to be Tested: AHU-1, AHU-2, associated control dampers and control system.
2. Functions to be Tested: Freeze protection alarm, valve and damper responses.
3. Conditions of Test: Provide means to falsely "chill" freeze protection thermostat: do NOT subject coils to true freeze condition.
4. Acceptable Results: Freeze protection sequence specified is confirmed.

**Test Results**

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**Corrective Actions Required**

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**Corrective Actions Completed**

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

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**Comments**

Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units - Supply Fan/Return Fan Exhaust Fan Interlock:**

1. System/Equipment to be Tested: AHU-1, AHU-2, RAF-1, RAH-2, EF-3 and EF-4, and associated control system and associated return and exhaust systems.
2. Functions to be Tested: Confirm interlock function between supply fans and their associated return fans.
3. Conditions of Test: Begin test with all associated fans of system (as described in Specifications) "ON": Shut off each of the fans individually at disconnect while remaining are "ON".
4. Acceptable Results: Unit confirms interlock functions.

**Test Results**

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**Corrective Actions Required**

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**Corrective Actions Completed**

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

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**Comments**

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Commissioning Services

Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units - Supply Fan Starting and Stopping:**

1. System/Equipment to be Tested: AHU-1, AHU-2, associated control and fire alarm systems.
2. Functions to be Tested: Stopping of supply air fans as described in Specifications.
  - a. Freeze protection thermostat shutdown.
  - b. Smoke detection.
  - c. Starter to disconnect manual shutdown.
  - d. DDC operator command.
3. Conditions of Test: Begin test with all associated fans of system (as described in specification) "ON": Each test shall be performed individually.
4. Acceptable Results: Control system is confirmed.

**Test Results**

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**Corrective Actions Required**

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**Corrective Actions Completed**

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

**Comments**



Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units - Supply Duct Static Pressure Control:**

1. System/Equipment to be Tested: AHU-1 and AHU-2, their associated air distribution and control systems and variable speed drives.
2. Functions to be Tested: Modulation of fan speeds in correlation to static pressure sensing.
3. Conditions of Test: Begin test with all associated variable air volume boxes in system calling for maximum air flow, measure and record drive speed, air flow, and static pressure for 20 minutes. Reduce air flow to 75% over 5 minutes. Repeat test at 75%, 50%, and 25% air flow.
4. Acceptable Results: The static pressure is maintained,  $\pm 0.10$ " wg at sensor (by varying fan speed) as air flow demand is reduced.

**Test Results**

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**Corrective Actions Required****Corrective Actions Completed**

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

**Comments**\_\_\_\_\_  
Commissioning Services

Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units: Return Fan tracking Control:**

1. System/Equipment to be tested: AHU-1, AHU-2, and their associated return fans and air distribution and control systems and variable speed drives.
2. Functions to be Tested: Modulation of return fan speeds in correlation to supply fan speeds and air flow offsets.
3. Conditions of Test: Begin test with all associated variable air volume boxes on system calling for maximum air flow, measure and record static pressure, supply and return air flows, and drive speed for 20 minutes. reduce supply air flow to 75% over 5 minutes. Repeat test at 75%, 50% and 25% air flow.
4. Acceptable Results: The return fan maintains the air flow offset within 5%.

**Test Results**

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**Corrective Actions Required****Corrective Actions Completed****Date:** \_\_\_\_\_**Comments**\_\_\_\_\_  
Commissioning Services

Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units - Loss of Control Power:**

- System/Equipment to be Tested: AHU-1, AHU-2, and their associated return fans and air distribution, control systems.
2. Functions to be Tested: Fail-Safe position of control dampers and valves when control power is lost; and return to normal operation once power is restored.
  3. Conditions of Test: Begin test with all systems operating; disengage control power.
  4. Acceptable Results: Valve and dampers fail to their "safe" positions and return to normal operation upon restoration of power.

**Test Results**

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**Corrective Actions Required**

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**Corrective Actions Completed**

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

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**Comments**

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Equipment Tag: \_\_\_\_\_

**Test Procedure****Air Handling Units - Loss of Power:**

1. System/Equipment to be Tested: EF-3 and EF-4 and their associated air distribution and control systems.
2. Functions to be Tested: Shutdown of units in an emergency power mode and their return to normal operation once power is restored.
3. Conditions of Test: Begin test with all systems operating; disengage normal power, switch to emergency power and then restore normal power. Repeat with EF-3 manually disconnected, then with EF-4 manually disconnected.
4. Acceptable Results: Exhaust system maintains exhaust flow under conditions of: two fans initially on-line; EF-3 on-line and EF-4 off-line; EF-3 off-line and EF-4 on-line the system returns to power per the specified sequence.

**Test Results**

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**Corrective Actions Required**

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**Corrective Actions Completed**

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

Signature: \_\_\_\_\_

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**Comments**

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### General Comments

\_\_\_\_\_. Signature Date\_\_\_\_\_

Printed Name & Title Chester Duncan

\_\_\_\_\_  
Signature Date \_\_\_\_\_

**Printed Name & Title** Jay W. Voshell, P.E. Manager of Commissioning Services

Reviewed by Owner \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name &amp; Title \_\_\_\_\_

## SYSTEM COMMISSIONING

### HOT WATER HEATING PUMP

### PRE-FUNCTIONAL CHECKLIST

Manufacturer: \_\_\_\_\_ Model #: \_\_\_\_\_ Serial #: \_\_\_\_\_  
Equipment Location: \_\_\_\_\_ Service: \_\_\_\_\_  
Equipment Tag: \_\_\_\_\_

#### Documentation Submitted

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

Y/N

Comments

Submittals Approved  
Nameplate Matches Approved Submittal  
Performance Data (pump curves)  
Installation and Startup Manual & Plan  
Operation & Maintenance Manuals Received

#### Pre-Startup Inspection

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

Y/N

Comments

##### General Installation

Mountings Checked Pump & Motor  
Alignment By Millwright or Installer  
Equipment Guards Installed  
Pump Rotates Freely  
Shaft Bearings Lubricated  
Vibration Isolation Devices Installed & Functional  
Pump Base Grouted  
Shaft Seal OK  
Equipment Identification Label Installed

##### Piping (immediately around pump)

Piping Complete & Properly Supported  
Piping Reducers Installed  
Vibration Isolators Installed  
Piping Insulation Complete  
Piping Properly Labeled  
Isolation Valves Installed  
Valves Properly Tagged  
Piping System Cleaned & Flushed  
Flexible Connectors Installed  
Strainers in Place & Clean  
Pressure Gauge with Gauge Manifold & Needle Valves  
Instrumentation Wells Installed  
Flow Switch Location Proper

##### Electrical & Controls

Power Disconnects in Place and Labeled  
Electrical Connections Completed & Tight

~~Commissioning Services~~

**HOT WATER HEATING PUMP****PRE-FUNCTIONAL CHECKLIST**

Equipment Tag: \_\_\_\_\_

Power Wiring Cable Size \_\_\_\_\_  
Starter Installed Size \_\_\_\_\_  
Overload Heater Installed - Size \_\_\_\_\_  
Proper Grounding For Unit \_\_\_\_\_  
Motor Safeties in Place and Operable \_\_\_\_\_  
Control System Interlocks Hooked Up & Operable \_\_\_\_\_  
All Controls, Pneumatic Tubing & Wiring Complete \_\_\_\_\_

**Startup Inspection**

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

Y/NComments

Local Valving Set for Normal Position \_\_\_\_\_  
Pump Rotation Correct \_\_\_\_\_  
Electrical Interlocks Verified \_\_\_\_\_  
HOA Switch Properly Activates & Deactivates Unit \_\_\_\_\_  
Pump Status Indicators Verified (Local/Remote) \_\_\_\_\_  
Check Valve Operation Tested \_\_\_\_\_  
System Static Pressure Setting \_\_\_\_\_  
Vibration & Noise Level Acceptable \_\_\_\_\_  
Motor Amps - Rated \_\_\_\_\_ Actual \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Motor Volts - Rated \_\_\_\_\_ Actual \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Pressures (Strainer/Suction/Discharge) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Strainers Clean \_\_\_\_\_  
No Apparent Leaking Around Fittings \_\_\_\_\_  
Manufacturer Startup Scheduled \_\_\_\_\_  
Mechanical Contractor Present \_\_\_\_\_  
Electrical Contractor Present \_\_\_\_\_  
Controls Contractor Present \_\_\_\_\_  
TAB Contractor Present \_\_\_\_\_

The work listed above has been performed and checked by all responsible Contractors to be installed per the contract documents, manufacturers installation instructions, and good trade practices. The installation is complete, functionally tested and ready for verification by the Commissioning Agent.

John J. Kirlin, Inc. \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name &amp; Title \_\_\_\_\_

Enterprise Electric \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name &amp; Title \_\_\_\_\_

Landis &amp; Staefa \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name &amp; Title \_\_\_\_\_

The work listed above has been performed by the Contractors and verified by \_\_\_\_\_, \_\_\_\_\_ Commissioning Services and Owner (The University of Maryland at Baltimore).

\_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name &amp; Title \_\_\_\_\_ Chester Duncan

\_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name &amp; Title \_\_\_\_\_ Jav W. Voshell, P.E. Manager of Commissioning Services

Reviewed by Owner \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name &amp; Title \_\_\_\_\_

\_\_\_\_\_ Commissioning Services

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**ATTACHMENT G**

**PRICING FORMS**

**(ALTERNATE TO BE ISSUED VIA ADDENDUM)**

**BID BOND**



FID #: \_\_\_\_\_

**PRICE PROPOSAL – JULY 27, 2022**

DATE \_\_\_\_\_

Michael Lacey  
Department of Strategic Sourcing and Acquisition Services  
University of Maryland, Baltimore  
Saratoga Street Offices, Room 02-100  
220 Arch Street  
Baltimore, MD 21201-1531

Dear Mr. Lacey:

The undersigned, hereby submits a price proposal for the construction management services for the **RFP FOR SMITH HALL RENOVATION AT TOWSON UNIVERSITY** as set forth in the University of Maryland at Baltimore RFP #22-333 ML dated July 27, 2022 and Addenda as follows:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_  
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:

**1. PART A. PRE-CONSTRUCTION PHASE\*:**

**1.1 Pre-Construction Services Construction Management Fee:**  
(in words and figures)

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

\*Proposers are to **include** a total of \$320,000 of CM allowances (These are: \$10,000 Reproduction allowance for costs associated with trade contract bidding, a \$10,000 Partnering allowance, and a \$300,000 Site Investigation allowance for the Design Phase in its quoted CM Pre-construction Services fee. A schedule for the tasks associated with pre-construction is attached to this form.

2. **PART B. CONSTRUCTION PHASE CM FEE:** The total projected hard construction costs (Project Construction Budget) for this Construction Project are as follows: \$102,000,000 inclusive of a \$2,000,000 Hazardous Material abatement allowance, CM fees, General Condition allowance (including the Third Party Inspections and Testing of \$200,000) and the CM-GMP contingency but exclusive of the University/Owner's Construction contingency and A/E fees.

2.1 **Construction Services Construction Management Fee:**  
(in words and figures)

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

3. **PART C: REIMBURSABLE ITEMS:** Each Proposer is to provide Not-to-exceed amounts for (i) General Conditions - On Site Staff Reimbursables, (ii) General Conditions Non-Personnel items per the RFP (bonds and insurance are to be quoted separately) and (iii) CM-GMP Contingency for the Project (which must be a minimum of 1.75% of the Project Construction Budget).

3.1 **GENERAL CONDITIONS - ON SITE CM STAFF REIMBURSABLES\* ONLY FOR THE PROJECT [Note: Non-personnel General Conditions items per Attachment C of the RFP are not to be included herein.]:**

Total General Conditions-On Site CM Staff Reimbursables

(In words and figures)

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

**Note:** The Staff Reimbursable Breakdown Attachment is to be completed and attached to the Proposer's price proposal as required in the RFP documents (Attachment A of the Price Proposal Form)

**3.2 GENERAL CONDITIONS FOR NON-PERSONNEL REIMBURSABLE COSTS** per Attachment C of the RFP document [inclusive of insurance (liability, workmen's compensation and builder's risk) and 100% performance and payment bonds] as well as the \$200K General Conditions Non-personnel allowances for the project as noted above in #2. Note: Firm fixed prices for bonds and insurance are to be quoted. The remaining items under this non-personnel reimbursable allowance should be quoted as a lump sum not-to-exceed amount.

3.2.1 Performance and Payment Bonds \$\_\_\_\_\_

3.2.2 Insurance \$\_\_\_\_\_

3.2.3 Balance of Non-Personnel \$\_\_\_\_\_  
(Cannot be less than 3% of project construction costs)

**3.2.4 Total Non-Personnel Reimbursable:** (in words and Figures)

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

**3.3 CM-GMP Contingency:** Quoted amount of this contingency (see Section 00400 for details on this) for the Project. Note: The quoted CM-GMP contingency must be no less than 1.75% of the project construction costs:

Total CM-GMP Contingency (in words and figures)

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

**3.4 Total Not-to-Exceed (NTE) CM Reimbursable Costs** (sum of 3.1, 3.2.4 and 3.3):  
(in words and figures)

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

**4. TOTAL CM PRICE PROPOSAL (SUM OF #1, #2, and #3.4)**  
(in words and figures)

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

**5. Billable, hourly rates for on site staff:**

<b>Position</b>	<b>Hourly Rate</b>
Project Manager	\$ _____
Field Superintendent	\$ _____
BIM Manager	\$ _____
MEP Project Engineer	\$ _____
Multi-Media Superintendent	\$ _____
Project Engineer	\$ _____
Assistant Project Manager	\$ _____
Assistant Field Superintendent	\$ _____
Field Secretary/Clerk	\$ _____
Clerk/Document Control Person	\$ _____
Coordinated Drawing Engineer	\$ _____
Field Accountant	\$ _____
Close-Out Engineer (cannot be done by person who has been assigned to other positions during construction)	\$ _____
<b>*Test Engineer (if this work being done by another position, please note accordingly)</b>	<b>\$ _____</b>
<b>Commissioning Support Engineer</b>	<b>\$ _____</b>

Note: The billing rates for on site staff positions for which prevailing wage rates apply are required to be listed herein and costs for such positions are to be included in #3.1 above based on the quoted billing rates; upon issuance of the prevailing wage rates, adjustments (if any), will be made accordingly with the successful CM firm.

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 20% 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:                      Pre-Construction Tasks Breakdown  
   Staff Reimbursable Breakdown Attachment A  
   Non-Personnel General Conditions Breakdown Attachment B

(Signatures should be placed on following page.)

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

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

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

\_\_\_\_\_  
(Name of Co - Partnership)

ADDRESS \_\_\_\_\_

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

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

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

Printed Name: \_\_\_\_\_  
BY \_\_\_\_\_  
(Partner)

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

Printed Name: \_\_\_\_\_  
BY \_\_\_\_\_  
(Partner)  
Printed Name: \_\_\_\_\_

### C. CORPORATE PRINCIPAL

Attest:

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

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

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

ADDRESS \_\_\_\_\_

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

BY: \_\_\_\_\_

\_\_\_\_\_  
Signature of Officer and Title

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

\_\_\_\_\_  
Title

**RFP FOR SMITH HALL RENOVATION AT TOWSON UNIVERSITY  
RFP #22-333 ML**

**PRE-CONSTRUCTION SERVICES SCHEDULE OF COSTS**

PROPOSER'S NAME: \_\_\_\_\_

**PLEASE NOTE THE FOLLOWING:**

1. This attachment is to be included with the Proposer's Price Proposal.
2. This attachment is per Section 00400 Scope of Services for Pre-Construction of the RFP documents.

ITEM		ESTIMATED COST
1. Project Review/Progress Meetings		\$ _____
2. Value Engineering Services		
Concept Design:	\$ NA	
Schematic Design:	\$ _____	
Design Development:	\$ _____	
Construction Documents:	\$ _____	
Total for VE:		\$ _____
3. Cost Estimate Services (inclusive of ad hoc estimating as needed)		
Concept Design:	\$ _____	
Schematic Design:	\$ _____	
Design Development:	\$ _____	
50% Construction Documents:	\$ _____	
GMP Reconciliation/Realignment:	\$ _____	
Total for Cost Estimate:		\$ _____
4. Scheduling Services		
Concept Design:	\$ NA	
Schematic Design:	\$ _____	
Design Development:	\$ _____	
Construction Documents:	\$ _____	
Total for Scheduling:		\$ _____
5. Constructability Review		
Concept Design:	\$ NA	
Schematic Design:	\$ _____	
Design Development:	\$ _____	
Construction Documents:	\$ _____	
Total for Constructability:		\$ _____

**PRE-CONSTRUCTION SERVICES SCHEDULE OF COSTS (Continued)**

6. Bidding and GMP Preparation

Bidding and GMP Preparation \$ \_\_\_\_\_

**Total for Bidding/GMP \$ \_\_\_\_\_**

7. Allowances\*

Site Investigation \$300,000

Partnering \$10,000

Reproduction \$10,000

Total University Allowances: \$320,000

**Total CM Pre-Construction Fee** \$ \_\_\_\_\_

\*CM to be reimbursed by the University for actual costs within their allowances for specified items.



**RFP FOR SMITH HALL RENOVATION AT TOWSON UNIVERSITY**  
**RFP #22-333 ML**

**STAFF REIMBURSABLE BREAKDOWN ATTACHMENT A**

**PLEASE NOTE THE FOLLOWING:**

1. This attachment is to be included with the Proposer's Price Proposal. (Total Hours must at a minimum match those provided for evaluation in the Technical Proposal.)
2. If any of the positions noted below will not be filled by the Proposer, the Proposer is to note in the space provided what position will be handling the duties associated with the unfilled position.

<b>POSITION</b>	<b>ESTIMATED HOURS</b>	<b>HOURLY RATE</b>	<b>TOTAL COST</b>
Project Manager	_____	\$ _____	\$ _____
Field Superintendent	_____	\$ _____	\$ _____
BIM/VDC Manager	_____	\$ _____	\$ _____
MEP Project Engineer	_____	\$ _____	\$ _____
Multi-Media Superintendent	_____	\$ _____	\$ _____
Project Engineer	_____	\$ _____	\$ _____
Assistant Project Manager	_____	\$ _____	\$ _____
Assistant Superintendent	_____	\$ _____	\$ _____
Clerk/Document Control Person	_____	\$ _____	\$ _____
Coordinated Drawing Engineer	_____	\$ _____	\$ _____
Field Accountant	_____	\$ _____	\$ _____
Project Close-Out Engineer	_____	\$ _____	\$ _____
Test Engineer	_____	\$ _____	\$ _____
Commissioning Support Engineer	_____	\$ _____	\$ _____
<b>Total Hours/Cost</b>	_____		<b>\$ _____</b>
Based on _____ hours per year			

**RFP FOR SMITH HALL RENOVATION AT TOWSON UNIVERSITY  
RFP #22-333 ML**

**NON-PERSONNEL GENERAL CONDITIONS BREAKDOWN ATTACHMENT B**

PROPOSER'S NAME: \_\_\_\_\_

**PLEASE NOTE THE FOLLOWING:**

1. This attachment is to be included with the Proposer's Price Proposal.
2. This attachment is per Attachment C of the RFP documents **excluding field staffing** as the breakdown for such staff reimbursables to be handled under a separate breakdown.

<b>ITEM</b>	<b>ESTIMATED COST</b>
Mobilization	\$ _____
Temporary Facilities	\$ _____
Tools/Equipment	\$ _____
Plans/surveys/permits/testing*	\$ _____ *
*Note: This line item is to include the <b>\$200,000</b> third party inspections and testing allowance indicated in the solicitation documents.	
Safety/Clean-up	\$ _____
General Items (i.e., weather and dust protection, photos, office equipment, and travel expenses for off site surveys and inspections)	\$ _____
Close out/De-mobilization	\$ _____
<b>SUBTOTAL</b>	<b>\$ _____</b>
Insurance (Refer to 6.06 and 6.07 Of Section 00700)	\$ _____
Bond	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

**BID BOND**

# BID BOND

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

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

WHEREAS, the Principal has submitted a bid for.

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

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

In Presence of Witness

Individual Principal

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

In Presence of Witness

Co-Partnership Principal

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

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

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

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

Corporate Principal

Attest:

.....  
(Name of Corporation)

.....  
Corporate Secretary

By: .....  
AFFIX  
CORPORATE

President

SEAL

.....  
(Surety)

AFFIX

Attest:

CORPORATE

SEAL

.....  
Signature

Title: .....

Bonding Agent's Name: .....

.....  
(Business Address of Surety)

Agent's Address .....

Approved as to legal form and sufficiency

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

.....  
Asst. Attorney General

## **Attachment H**

### **Minority Business Enterprise (MBE) Forms**

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

**PART 1 - INSTRUCTIONS**

*PLEASE READ BEFORE COMPLETING THIS DOCUMENT*

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

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

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
- ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
- ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
- ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 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](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  $5\% \times 60\% = 3\%$**

**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 [mbes@mdot.state.md.us](mailto:mbes@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):	<u>20</u> %
---	-------------

## **PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT**

**This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and the Schedule in Part 3 with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.**

In connection with the bid/proposal submitted in response to Solicitation No. 22-333 ML (Smith Hall Renovation), 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 20 percent and all of the following subgoals:

- \_\_\_\_\_ percent for African American-owned MBE firms
- \_\_\_\_\_ percent for Hispanic American-owned MBE firms
- \_\_\_\_\_ percent for Asian American-owned MBE firms
- \_\_\_\_\_ 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.

### **OR**

☐ I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule 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. 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 4 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 of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

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

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

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

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

**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 TECHNICAL PROPOSAL**

## **PART 3 - MBE PARTICIPATION SCHEDULE**

Set forth below are the (i) certified MBEs I intend to use, (ii) the percentage of the total Contract value allocated to each MBE for this project and, (iii) the items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

Prime Contractor	Project Description	Project/Contract Number
	Smith Hall Renovation at Towson University	22-333 ML

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

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

<p>MBE Prime Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p> <input type="checkbox"/> African American-Owned  <input type="checkbox"/> Hispanic American- Owned  <input type="checkbox"/> Asian American-Owned  <input type="checkbox"/> Women-Owned  <input type="checkbox"/> Other MBE Classification         </p> <p>NAICS code: _____</p>	<p>Percentage of total Contract Value to be performed with own forces and counted towards the MBE <b>overall participation goal</b> (up to 50% of the overall goal): _____% <b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p>Percentage of total Contract Value to be performed with own forces and counted towards the <b>subgoal</b>, if any, for my MBE classification (up to 100% of not more than one subgoal): _____%</p> <p> <input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)  <input type="checkbox"/> Manufacturer (count 100%)  <input type="checkbox"/> Broker (count reasonable fee/commission only)  <input type="checkbox"/> Furnish and Install and other Services (count 100%)         </p> <p><b>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.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products / services from suppliers, wholesalers, regular dealers and brokers) _____%</p> <p><b>B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule). Total percentage of Supplies/Products _____% x 60% = _____%</p> <p><b>C. Percentage amount of fee where the MBE Prime firm is being used as broker</b> (count reasonable fee/commission only) _____%</p> <p>Description of the Work to be performed with MBE prime's own forces: _____</p>
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**SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)**

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>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.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_____%</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule)). Total percentage of Supplies/Products_____ % X 60% = _____%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)_____%</p> <p>Description of the Work to be Performed: _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>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.</b></p> <p><b>A. Percentage amount of subcontract where the MBE Firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_____%</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule)). Total percentage of Supplies/Products_____ % X 60% = _____%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)_____%</p> <p>Description of the Work to be Performed: _____</p>

<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>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.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_____%</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule). Total percentage of Supplies/Products_____% X 60% =_____%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b> (count reasonable fee/commission only)_____%</p> <p>Description of the Work to be Performed: _____</p>
<p>MBE Firm Name: _____</p> <p>MBE Certification Number: _____</p> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>NAICS code: _____</p>	<p><b>Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies.</b></p> <p><input type="checkbox"/> Supplier, wholesaler and/or regular dealer (count 60%)</p> <p><input type="checkbox"/> Manufacturer (count 100%)</p> <p><input type="checkbox"/> Broker (count reasonable fee/commission only)</p> <p><input type="checkbox"/> Furnish and Install and other Services (count 100%)</p> <p><b>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.</b></p> <p><b>A. Percentage amount of subcontract where the MBE firm is being used for manufacturer, furnish and install, and/or services</b> (excluding products/services from suppliers, wholesalers, regular dealers and brokers)_____%</p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer</b> (60% Rule)). Total percentage of Supplies/Products_____% X 60% =_____%</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker</b>_____%</p> <p>Description of the Work to be Performed: _____</p>

CONTINUE ON SEPARATE PAGE IF NEEDED

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH GMP**

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

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

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

#### **I. Definitions**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **C. Solicit MBEs**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## E. Assisting Interested MBE Firms

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

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

## III. Other Considerations

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

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

## IV. Documenting Good Faith Efforts

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

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

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

### B. Outreach/Solicitation/Negotiation

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

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

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

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

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

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

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

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

**D. Other Documentation**

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

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

**Exhibit A**

**MBE Subcontractor Unavailability Certificate**

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

was offered an opportunity to bid on Solicitation No. 22-333 ML

in \_\_\_\_\_ County by (Name of Prime Contractor's Firm)  
 \_\_\_\_\_

\*\*\*\*\*

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

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

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

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

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

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

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

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

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

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**MBE ATTACHMENT H-1C**  
**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST**

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

Prime Contractor	Project Description	Solicitation Number
	Smith Hall Renovation at Towson University	22-333 ML

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

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

## GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

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

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

Prime Contractor	Project Description	Solicitation Number
	Smith Hall Renovation at Towson University	22-333 ML

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

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

☐ Please check if Additional Sheets are attached.



# GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

## PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

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

Prime Contractor	Project Description	Solicitation Number
	Smith Hall Renovation at Towson University	22-333 ML

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment 1-B). If the bidder/offeror used a Non-MBE or is self-performing the identified items of work, Part 3 must be completed.

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

☐ Please check if Additional Sheets are attached.

## GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

### PART 3 – ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES

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

Prime Contractor	Project Description	Solicitation Number
	Smith Hall Renovation at Towson University	22-333 ML

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

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

☐ Please check if Additional Sheets are attached.

## **MBE Attachment H - 2**

### **OUTREACH EFFORTS COMPLIANCE STATEMENT**

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

In conjunction with the bid/proposal submitted in response to Solicitation No. 22-333 ML, I state the following:

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

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

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

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#### **4. Please Check One:**

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

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#### **5. Please Check One:**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

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

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

Provided that \_\_\_\_\_ (Prime Contractor's Name) is awarded the State contract in conjunction with Solicitation No. 22-333 ML, such Prime Contractor intends to enter into a subcontract with \_\_\_\_\_ (Subcontractor's Name) committing to participation by the MBE firm \_\_\_\_\_ (MBE Name) with MDOT Certification Number \_\_\_\_\_ which will receive at least \$ \_\_\_\_\_ which equals to \_\_\_\_\_ % of the Total Contract Amount for performing the following products/services for the Contract:

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

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) has fully complied with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

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

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

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

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. 22-333 ML, such MBE Prime Contractor intends to perform with its own forces at least \$ \_\_\_\_\_ which equals to \_\_\_\_ % of the Total Contract Amount for performing the following products/services for the Contract:

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

**MBE PRIME CONTRACTOR**

Signature of Representative:

\_\_\_\_\_

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

\_\_\_\_\_

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

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

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

\_\_\_\_\_

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

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

## MBE Attachment H-4A

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

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

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

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

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

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

UMB MBE Liaison  
University of Maryland, Baltimore  
Strategic Sourcing and Acquisition Services  
220 Arch Street, Rm. 02-100  
Baltimore, MD 21201 Email: [MBEReports@umaryland.edu](mailto:MBEReports@umaryland.edu)

This form must be completed  
monthly by all MBE subcontractors.

## Sample MBE ATTACHMENT D-5

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

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

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

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

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

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

UMB MBE Liaison  
University of Maryland, Baltimore  
Strategic Sourcing and Acquisition Services  
220 Arch Street, Rm. 02-100  
Baltimore, MD 21201 Email: [MBEReports@umaryland.edu](mailto:MBEReports@umaryland.edu)

## MBE Attachment H-4B

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

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

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

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

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

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

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

UMB MBE Liaison University of Maryland, Baltimore Strategic Sourcing and Acquisition Services 220 Arch Street, Rm. 02-100 Baltimore, MD 21201    Email: <a href="mailto:MBEReports@umaryland.edu">MBEReports@umaryland.edu</a>
--



**MBE ATTACHMENT H-5**  
**Minority Business Enterprise Participation**  
**Subcontractor Paid/Unpaid MBE Invoice Report**

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

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

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

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

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

UMB MBE Liaison  
University of Maryland, Baltimore  
Strategic Sourcing and Acquisition Services  
220 Arch Street, Rm. 02-100  
Baltimore, MD 21201    Email: [MBEReports@umaryland.edu](mailto:MBEReports@umaryland.edu)

**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**

### **Subcontractor Affidavit, Apprenticeship Training Fund Verification**

**SUBCONTRACTOR AFFIDAVIT  
APPRENTICESHIP TRAINING FUND VERIFICATION**

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

In conjunction with the bid or offer submitted in response to Smith Hall Renovation at Towson University Solicitation No 22-333 ML, 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