

**SMALL BUSINESS RESERVE PROCUREMENT**

**AE SOLICITATION  
FOR  
BIKEWAY LOOP  
AT  
TOWSON UNIVERSITY  
RFP 19-012 AE-CB**

**ISSUED: January 9, 2019**

**PRE-PROPOSAL MEETING:** **Wednesday, January 23, 2019 at 10:00 a.m.**  
**Towson University**  
Liberal Arts Building, Room 2110  
251 University Ave  
Towson, MD 21252  
Visitor parking is available in the Towsontown Garage (250 University Ave)  
See Attachment C for Towson University Campus Map  
(Note: The site tour will be conducted in conjunction with this meeting.)

**INITIAL TECHNICAL PROPOSAL DUE DATE:** **Tuesday, February 12, 2019 at or before 2:00 p.m.**  
**UMB DEPARTMENT OF PROCUREMENT SERVICES**  
Saratoga Street Offices, Office Level 02 (13<sup>th</sup> Floor)  
220 Arch Street, Room 02-100  
Baltimore, Maryland 21201-1531

**PROCUREMENT/ISSUING OFFICE:** UMB Department of Procurement Services  
University of Maryland, Baltimore  
Saratoga Street Offices, Office Level 02  
220 Arch Street, Room 02-100  
Baltimore, Maryland 21201

**PROJECT MANAGEMENT:** TU Office of Facilities Management  
General Services Building  
Towson University  
8000 York Road  
Towson, Maryland 21252

**SPECIAL ACCESS:** Anyone requiring special assistance in obtaining a copy of the solicitation, in attending a pre-proposal 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**

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00100	INSTRUCTIONS TO PROPOSERS
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00400	SCOPE OF WORK <ul style="list-style-type: none"><li>- GENERAL PROVISIONS</li><li>- SUMMARY AE SERVICES</li></ul>
ATTACHMENT A	<p>The following forms are to be submitted by each proposer as indicated in the solicitation documents herein:</p> <ul style="list-style-type: none"><li>- Attachment H1-A, MBE Utilization and Fair Solicitation Affidavit &amp; MBE Schedule</li><li>- Bid/Proposal Affidavit</li><li>- Professional Liability Insurance Form</li><li>- Registration Documentation Form</li><li>- Acknowledgement of Receipt of Addenda Form (if applicable)</li><li>- Certification of Investment Activities in Iran</li><li>- Current Workload Form (Second Phase Only)</li><li>- Reference Forms (Second Phase Only)</li></ul>
ATTACHMENT B:	<p>The following forms are to be submitted/signed by the successful firm:</p> <ul style="list-style-type: none"><li>- Contract Affidavit Form</li><li>- MBE Participation Schedule/MBE Attachment H-1B/MBE Attachment H1-C/MBE Attachment H-2/MBE H-3A/MBE H-3B</li><li>- University's Standard Form of Agreement with Architects and Engineers</li></ul>

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ATTACHMENT C: Campus Map can be found on web site  
[www.towson.edu/maps/index](http://www.towson.edu/maps/index)

ATTACHMENT D: Intentionally Omitted

ATTACHMENT E: UMB Policy for Travel Reimbursement & Mileage

ATTACHMENT F: Intentionally Omitted

ATTACHMENT G: Fee Proposal Form (to be furnished to highest ranked firm)

ATTACHMENT H: MBE Forms and Instructions H-1A thru H-6

ATTACHMENT I: Schedule SBR

**DOCUMENTS PACKAGED SEPARATELY:**

Towson Bikeway Loop Conceptual Route Map

UMB - Facilities Management - Architecture Engineering and Construction the University's Procedure Manual for A/E Services, 2009 Edition with 2015 Updates, are available at <https://www.umaryland.edu/designandconstruction/documents/>

Towson University Design Guidelines and Construction Standards, Dated January 2016

## SECTION 00100

### INSTRUCTIONS TO PROPOSERS

## SECTION 00100

### I. INSTRUCTIONS TO PROPOSERS FOR THE ARCHITECT/ENGINEER (A/E) 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 secure professional architectural/engineering services during design of the Towson University Bikeway Loop (“Project”) in 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 AE contract. A representative of the University is the Procurement Officer for this solicitation and for the resulting contract.
2. The A/E will be required to provide complete design services for four (4) project phases: Concept Design/Program Verification, Schematic Design, Design Development, and Construction Document Phase as well as any other identified special services, (see Sections 00400 of this solicitation for further details). The A/E team is to include but are not limited to the following:  
  
Principal in Charge  
A/E Project Manager  
A/E Project Architect or Engineer  
Site Civil Engineer  
Landscape Architect  
Structural Design Engineer  
Electrical Design Engineer  
Cost Estimator  
Geotechnical Engineer
3. The University anticipates using the Design-Bid-Build contract method.
4. Upon selection of the A/E firm, the Contract will be executed through the Construction Document phase. Amendments to the A/E contract are not anticipated to be issued for the remainder of the Construction Administration and Post Construction phases.

5. The Contract will govern all phases of this Project. A copy of the University's Standard Form of Agreement with Architects and Engineers can be found in Attachment B of this solicitation; this document will be the contract form to be signed by the successful A/E firm.
6. This is a Small Business Reserve Procurement for which award is limited to certified small business vendors. Only businesses that meet the requirements set forth in State Finance and Procurement Article, Title 21 – Subtitle 11 – Chapter 01, §§ 14-501 – 14-505, Annotated Code of Maryland, and who are registered with the Department of General Services Small Business Reserve Program herein as Schedule SBR (Attachment D) are eligible for award.

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

7. The University anticipates having a contract in place with the successful A/E firm for the requested design services on **Friday, July 12, 2019**

**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  
Department of Procurement Services  
Saratoga Street Offices  
220 Arch Street, Office Level 02 (13<sup>th</sup> Floor), Room 02-100  
Baltimore, Maryland 21201

Attn: Christina Blair (410) 706-4728  
[cblair@umaryland.edu](mailto:cblair@umaryland.edu)

Or

Billye Sanford (410) 706-7197  
[bsanford@umaryland.edu](mailto:bsanford@umaryland.edu)

2. The Issuing Office shall be the **sole** point of contact with the University for purposes of the preparation and submittal of proposals in response to this solicitation.

3. All questions on this procurement are to be directed in writing to the Issuing Office.

D. **PRE-PROPOSAL CONFERENCE:**

1. A **Pre-Proposal Conference** inclusive of site tour will be held on **Wednesday, January 23, 2019 at 10:00 a.m.** at Towson University, Liberal Arts Building, Room 2110, 251 University Ave, Towson, MD 21252. Visitor parking is available in nearby garages around campus, including the Towsontown Garage at 250 University Ave.  
[www.towson.edu/maps/index](http://www.towson.edu/maps/index)
2. A walk through of the Project site will be conducted as part of the Pre-proposal Conference and immediately following the meeting portion of the agenda. The conceptual bikeway loop is a 2-mile public route that may be toured individually by vehicle if access by foot is limited by weather or other challenges on the meeting date.
3. Attendance is not mandatory, but is strongly recommended as clarifications may be provided.

E. **DUE DATE AND TIME:**

1. An original plus seven (7) copies (for a **total of 8**) of the **Initial Technical Proposal** must arrive at the Issuing Office **by Tuesday, February 12, 2019 at or before 2:00 p.m.** in order to be considered. Proposers are requested to clearly mark the "original" set of the Initial Technical Proposal.
2. At the sole discretion of the University, Proposers that are short-listed as a result of the evaluation of the First Phase Technical Proposals may be required to submit additional materials for evaluation by the Qualification Committee. Should the University elect to require such a submittal, the requirements will be specified in an Amendment to this RFP and a due date and time will be established for submittal. The University reserves the right to waive the Second Phase Technical Proposal. Selection of the candidate firm may be based on the First Phase Technical Proposal alone. Proposers are therefore encouraged to submit the best possible proposal at each opportunity for submittal

Second Phase Technical Proposals will be requested from only those firms shortlisted as a result of the Initial Technical Evaluation (see Section 00300 for further details). The due date for the Second Phase Technical Proposals will be set upon completion of the initial technical evaluation, however, the University anticipates the **Second Phase Technical Proposals to be due on or around Monday, March 18, 2019 at or before**

**2:00 p.m. Oral Presentations will be conducted with the short-listed A/E firms on Tuesday, April 9, 2019 and Wednesday April 10, 2019.**

3. A Price Proposal will be requested from only the highest technically rated A/E firm as a result of the Second Phase Technical Evaluation (see Section 00300 for further details). The **Price Pre-proposal meeting** is anticipated to be held on **Thursday, May 9, 2019 from 2:00 pm - 4:30 pm**; the University requests that the candidate A/E firm submit (via e-mail) any **scope clarification questions** to the University by **Thursday, April 25, 2019**.

The due date for the initial price proposal will be set upon completion of the second phase technical evaluation, however, the University anticipates the **initial price proposal due date** to be on or around **Thursday, May 23, 2019**.

4. Proposers mailing proposals shall allow sufficient mail delivery time to insure timely receipt by the Issuing Office. Proposals or unsolicited amendments to proposals arriving after the due date and time will not be considered.
5. The Saratoga Street Offices, which houses the Department of Procurement Services, is accessible by the general public between the hours of 8:00 a.m. until 5:00 p.m. Monday through Friday with exception of legal holidays. There is a guard in the lobby area and vendors are required to sign in at the guard's desk and gain permission to enter the Office Levels of the building. Office Level 2 (13th floor), where the Department of Procurement Services is located is accessible to the public by two elevators located in the main lobby of the building. If you park in the Saratoga Street Garage and Office building, you must take the garage elevators down to the ground level and then enter the Lobby where the guard's desk is located and utilize the elevators located in the Lobby in order to ascend to the Office Level 2 (13<sup>th</sup> floor). Vendors must allow sufficient time in delivering replies to solicitations to insure timely receipt by the Issuing Office.
6. **LATE PROPOSALS CANNOT BE ACCEPTED.** Proposals are to be delivered to the University's Department of Procurement Services, Saratoga Street Offices, Room 02-100, Office Level 02, 220 Arch Street, Baltimore, Maryland 21201. The University recommends against use of mail or delivery services that will not guarantee delivery directly to Room 02-100. Proposals delivered to the campus central mail facility or to locations other than 02-100 will not be considered "received" by the University's Department of Procurement Services until they arrive at Room 02-100 and are clocked in. The University will not waive delay in delivery resulting from need to transport a proposal from another campus location to Room 02-100, or error or delay on the part of the carrier.



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

G. **QUESTIONS AND INQUIRIES:**

1. Should a proposer find discrepancies in the RFP documents, be in doubt as to the meaning or intent of any part thereof, he must, not later than **Tuesday, January 29, 2019**, request clarification in writing from the Issuing Office. 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. Questions and inquiries shall be directed in writing, preferably by email, to the individuals referenced with the Issuing Office above. The Issuing Office will be open from 8:00 a.m. to 5:00 p.m., weekdays.

H. **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 University. For the same reason, the University reserves the right to waive any minor irregularity in a proposal.

I. **IRREVOCABILITY OF PROPOSALS:**

1. The final A/E fee/price proposal for the design phases of this project shall be irrevocable for one hundred twenty (120) calendar days from the final fee proposal due date. This period may be extended by written mutual agreement between the Proposer and the University.
2. The final A/E fee/price proposal for the construction phases (Construction Administration and Post Construction) shall remain irrevocable until approval by the University of the amendment(s) to the contract to reflect these phases.

J. **LICENSES AND REGISTRATIONS:**

Proposers must be licensed and registered as required by the Laws of the State of Maryland and shall submit proof of current licensing and/or registration, upon request.

K. **ORAL PRESENTATION:** If required at the sole discretion of the University of Maryland

1. Proposers who submit proposals and are shortlisted as a result of the initial technical evaluation may 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.

L. **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 solicitation.

M. **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).

N. **MINORITY BUSINESS ENTERPRISE REQUIREMENTS:**

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

An overall MBE subcontractor participation goal of 30% of the total contract dollar amount has been established for this procurement.

In addition, the following subgoals have been established for this procurement:

- 6% for African-American MBEs,
- 2% for Hispanic-American MBEs,
- 9% for Woman-Owned MBEs.

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

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

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

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.mdot.state.md.us/directory/>. The most current and up-to-date

information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**

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 Contract – **Attachment B**, Paragraph 1.3).
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 \_\_ -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 \_\_ -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 H for construction procurements shall apply for all contracts awarded with MBE participation goals

O. **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.

P. **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.

Q. **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 initial technical proposal submission, the proposer must identify the percentage partnership for each joint venture party, the responsibilities of each joint venture party with respect to the scope of services/work inclusive of the requirements for each entity based on such services as described in this RFP document.

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

R. **ADDENDUM**

Any addendum/amendments to the solicitation must be acknowledged by persons and entities known to have been issued, or otherwise to have received the solicitation. An Acknowledgement of Addendum form is provided in Attachment A and is to be submitted accordingly with the Initial Technical Proposal.

S. **INCURRED EXPENSES:**

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

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

1. The Maryland Public Ethics Law prohibits, among other things: State employees or officials (and in some cases, former employees) and businesses in which such an individual is employed or holds a financial interest from (i) submitting a bid or proposal, (ii) negotiating a contract, and (iii) entering into a contract with the governmental unit with which the individual is affiliated per the §5-502 of the Maryland Public Ethics Law, Title 5, General Provisions Article, Annotated Code of Maryland.
2. If the bidder/offeror has any questions concerning application of the State Ethics Law to the bidder/offeror's participation in this procurement, it is incumbent upon the bidder/offeror to seek advice from the State Ethics Commission: Executive Director, State Ethics Commission, 45 Calvert Street, 3<sup>rd</sup> Floor, Annapolis, Maryland 21401, 410-260-7770
3. 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.
4. 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.

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

Contractor may not for any period during the Contract term, seek to reduce the amount of Contractor's income subject to Maryland income tax by payments made to an affiliated entity or an affiliate's agent for the right to use trademarks, trade names, or other intangible property associated with Contractor. Contractor agrees that during the course of this Contract it shall not make any such royalty or similar payments to any affiliated company; and if any such royalty or similar



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

**V. 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.

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

If the annual dollar value of this contract will exceed \$200,000.00, the Bidder/Offeror is hereby advised that electronic funds transfer (EFT) will be used by the State to pay the Contractor for this Contract and any other State payments due Contractor unless the State Comptroller's Office grants the Contractor an exemption.

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

The form is available as a pdf file on the web site of the General Accounting Division of the Comptroller of Maryland. That web address is:

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

**X. eMARYLAND MARKETPLACE**

The successful bidder/offeror under this solicitation must be registered on eMaryland Marketplace prior to receiving a contract award. Contractors shall pay the fee in accordance with guidelines issued by the Maryland Department of General Services. These guidelines can be found on the eMaryland Marketplace website at [www.eMarylandMarketplace.com](http://www.eMarylandMarketplace.com).

**Y. CONTRACTOR REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT**

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

The Policy and Procedures are incorporated herein. 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.

**Z. eBUILDER PROJECT MANAGEMENT SOFTWARE**

Intentionally Omitted

**AA. 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.

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

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

**END OF SECTION 00100**

## SECTION 00200

### INFORMATION AVAILABLE TO PROPOSERS

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

- A. **CONTRACT DOCUMENTS:** This A/E solicitation RFP #19-012 AE-CB **January 9, 2019** consists of the documents noted below.

All sections are contained **within the solicitation 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	AE Scope of Work;

Attachment A University Forms Required with Proposal Submittal(s):

- H1-A, MBE Utilization and Fair Solicitation Affidavit & MBE Schedule
- Bid/Proposal Affidavit,
- Professional Liability Insurance Form,
- Registration Documentation Form,
- Acknowledgement of Receipt of Addenda Form
- Certification of Investment Activities in Iran
- Current Work Load Form (second phase only)
- Reference Forms (second phase only)

Attachment B The following forms are to be submitted/signed by the successful firm:

- Contract Affidavit,
- MBE Participation Schedule/MBE Attachment H-1B/MBE Attachment H1-C/MBE Attachment H-2/MBE H-3A/MBE H-3B (whichever are applicable)
- University's Standard Form of Agreement with Architects and Engineers,

Attachment C Campus Map

Attachment D Intentionally Omitted

Attachment E UMB Policy for Travel Reimbursement and Mileage

Attachment F Intentionally Omitted

Attachment G Fee Proposal Form (to be furnished to highest ranked firm)

Attachment H MBE Forms and Instructions H-1A thru H-6

Attachment I Schedule SBR

The following Contract Documents are packaged separately from this solicitation document:

Towson Bikeway Loop Conceptual Route Map

UMB - Facilities Management - Architecture Engineering and Construction the University's Procedure Manual for A/E Services dated June 2015 are available at <https://www.umaryland.edu/designandconstruction/documents/>

Towson University Design Guidelines and Construction Standards, Dated January 2016

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 A/E, will be bound under the Contract to all the terms and conditions thereof inclusive of the University's Standard Form of Agreement with Architects and Engineers

**B. SET OF DOCUMENTS AVAILABLE TO PROPOSERS:** A set of documents which consists of the sections noted above shall be provided to all interested parties via eBidBoard at <http://www.procurement.umaryland.edu/>

**C. AVAILABLE RECORD DOCUMENTS:**

1. The University's Facilities Management upon request will make accessible to the Proposers any available record drawings, utility plans, and other data pertinent to existing conditions to the extent that such material is available. The University, however, can offer no assurances that such drawings, property description, or other data are accurate, current or complete.
2. Such documents must be used, or copied, at the University of Maryland Office of Facilities Management. 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**  
**PROPOSALS, EVALUATION, AND FORMS**  
**ARTICLE 1**  
**INTRODUCTION/OVERVIEW**

A. **INTRODUCTORY SUMMARY OF PROPOSAL SUBMITTALS:** Responses to the A/E solicitation RFP #19-012 AE-CB are to consist of the following:

1. **Initial Technical Proposal Submittal** (see Article 2 of this Section 00300 for detailed information): All proposers will be required to first submit **only an Initial Technical Proposal**. One (1) original and seven (7) copies (for a total of 8) of the Initial Technical Proposal Submittal are to be provided by each proposer. The Initial Technical Proposal Submittal is due by **Tuesday, February 12, 2019 at or before 2:00 p.m. to the Issuing Office**.
2. **Second Phase Technical Proposal Submittal:** (see Article 3 of this Section 00300 for detailed information) At the sole discretion of the University, Proposers that are short-listed as a result of the evaluation of the First Phase Technical Proposals may be required to submit additional materials for evaluation by the Qualification Committee. The University reserves the right to waive the Second Phase Technical Proposal. Should the University elect to require such a submittal, the due date for the **Second Phase Technical Proposal** is set as **Monday, March 18, 2019 at or before 2:00 p.m.**

Selection of the candidate firm may be based on the First Phase Technical Proposal alone, or any written materials provided in the First and Second Phase Proposals combined. Proposers are therefore encouraged to submit the best possible proposal at each opportunity for submittal.

3. **Oral Presentations** (see Article 3 of this Section 00300 for detailed information): The University reserves the right to waive the Interview/Oral Presentations. At the sole discretion of the University, short-listed Proposers may be required to appear before the Qualification Committee for an oral presentation. Should the University choose to conduct Oral Presentation Sessions, only those Proposers who are shortlisted based on the initial technical evaluation will be requested to attend an Oral Presentation at the University. The actual time and date for this session will be set upon completion of the initial technical evaluation; however, it is anticipated that the Oral Presentation Session, if required, will be conducted on **Tuesday, April 9, 2019 and Wednesday, April 10, 2019**, so Proposers are advised to set these dates aside in their entirety on the appropriate people's calendars accordingly as they are not expected to change.

The purposes of the Oral Presentation are as follows:

- (i) To allow the University to meet the Proposer's key personnel; and,

- (ii) Discuss those items addressed in the Second Phase Technical Proposal, if required.

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

Each shortlisted AE firm will be required to have the following key personnel attend:

Principal in Charge  
A/E Project Manager  
Site Civil Engineer  
Landscape Architect  
Structural Design Engineer  
Electrical Design Engineer  
Cost Estimator

Proposers are advised to set these dates aside with its consultants so as to avoid a conflict. Following the Oral Presentation, if required, a Second Phase Technical Evaluation will be conducted. (See Article 4 of this Section 00300).

- 4. **Price Proposal Submittal** (see Article 3 of this Section 00300 for detailed information): Only the highest rated technical firm will be engaged in fee negotiations with the University. The **Price Pre-proposal Meeting** is anticipated to be held on **Thursday, May 9, 2019 from 2:00 pm – 4:00 pm**; the following representatives from the AE team are anticipated to be in attendance: Prime Architect and/or Engineer(s) and Joint Venture Engineers and Landscape Architect (as applicable).

The agenda for this meeting includes the following:

- **Review of the A/E's scope clarification questions:** As previously indicated, the candidate AE firm is to submit (preferably by e-mail) any scope clarification questions that its team has to the University by **Thursday, April 25, 2019** the University anticipates responding and discussing these items at the Price Pre-proposal meeting.
- **AE Fee Proposal Form:** The candidate firm will be provided with the format for the A/E Fee Proposal, which will be reviewed accordingly. The due date for the initial AE fee proposal is anticipated to be **Thursday, May 23, 2019 at 1:00 pm**.



- **AE Fee Negotiation Schedule:** The schedule for AE fee negotiations is anticipated as follows:

First AE Fee Negotiation Session: **Thursday, May 30, 2019**, 10:00 a.m.-1:00 p.m.;

Second AE Fee Proposal Due Date: **Monday, June 10, 2019** at 1:00 p.m.;

Second AE Fee Negotiation Session: **Tuesday, June 18, 2019**, 10:00 a.m.-1:00 p.m.;

Third AE Fee Proposal Due Date: **Tuesday, June 25, 2019**, at 1:00 p.m. if necessary

Third AE Fee Negotiation Session: **Tuesday, July 2, 2019** at 9:00 a.m. – 10:00 a.m., if necessary

**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.

**END OF SECTION 00300, ARTICLE 1**

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

The Initial Technical Proposal must be submitted in a sealed envelope. The following information shall be clearly written on the sealed envelope:

1. The Proposer's name,
2. The project name "Towson University Bikeway Loop"
3. The words "RFP #19-012 AE-CB"
4. The words, "INITIAL TECHNICAL PROPOSAL".
5. The full address of the Issuing Office to which the proposal is being delivered

**Initial Technical Proposals** shall be delivered on, or before, **Tuesday, February 12, 2019 at or before 2:00 p.m.** to the UMB's Procurement Services at the address noted in Section 00100 of the RFP as "The Issuing Office".

The following items must be included in this Initial Technical Proposal (forms for items #2, #3, #4, #5, #6, and #7 are included in the solicitation package in Attachment A):

1. Detailed responses to Section 00300, Article 2, Initial Technical Proposal Criteria, Items 1 through 8 (noted below);
2. Bid/Proposal Affidavit;
3. MBE Utilization and Fair Solicitation Affidavit
4. Certificate of Investment Activities in Iran
5. Acknowledgment of Receipt of Addenda (If addenda are issued prior to the Initial Technical Proposal due date, this form acknowledging receipt of all addenda **MUST** be included with your Initial Technical Proposal.)

**INITIAL TECHNICAL PROPOSAL CRITERIA:**

The following information must be furnished in the Initial Technical Proposal per this solicitation. Failure to include any of the items listed below may result in a determination by the Procurement Officer that the Proposer is not reasonably susceptible of being selected for award.

Proposers should describe in detail and provide evidence supporting the qualifications requested below. All proposers are to compile their Technical Proposals in the order listed. It is preferable that tabs separating each section/aspect of the response be utilized.

**1. STANDARD FORM SF 330:**

- 1.1 SF 330 Part I, Contract Specific Qualifications and additional information requested in this RFP
  - 1.2 SF 330, Part II General Qualifications
  - 1.3 Required Forms (See Attachment A )
2. Standard Form 330, Extra Pages for Part 2 of SF 330, Extra Section E for SF 330, and Extra Section F for SF 330 are available on the General Services Administration's website : <http://www.gsa.gov>. Click on "Federal Forms," and select "Standard Forms"
3. Technical Proposal Contents: Describe in detail and provide evidence supporting qualifications requested below:
- 3.1 Standard Form SF 330, Part I, Contract Specific Qualifications and additional information requested in this RFP: Submit form completing all sections and following the form's instruction. Provide the following information.
    - 3.1.1 Section A, Contract Information
    - 3.1.2 Section B, Architect-Engineer Point of Contact.
    - 3.1.3 Section C, Proposed Team
    - 3.1.4 Section D, Organization Chart of Proposed Team. Include the following information:
      - a. Each firm's name and discipline or specialty.
      - b. Each key person's name, role and discipline or specialty.
      - c. The managerial relationship among the persons and/or firms.
      - d. Provide a written description of the proposed contractual relationships among the firms. If the proposal includes more than one architecture firm or a joint venture, identify the proposed general scope of work of each architecture firm.
      - e. Provide a summary or matrix of prior working relationships among proposed team members.
    - 3.1.5 Section E, Resumes of Key Personnel Proposed for this Contract

- a. Key Personnel: Submit resumes and experience for the following:

Principal in Charge,  
A/E Project Manager,  
A/E Project Architect or Engineer  
Site Civil Engineer,  
Landscape Architect,  
Structural Design Engineer,  
Electrical Design Engineer, and  
Cost Estimator

**Note: If a person has less than five years with his/her current employer, Proposers are to provide prior employment history for this Key Person (i.e. prior employer(s) name and number of years with that employer(s)).**

Note: These key personnel must be **direct** employees of the applicable design or consulting firm.

- b. Qualification Requirements for Key Personnel:

**Principal-in-Charge:** Senior level position from prime/proposing AE firm (such as Vice President) who will oversee the project from an executive level and to whom the A/E Project Manager directly reports. May also be the A/E Project Architect or Engineer.

**A/E Project Manager:** Professions, licensed architect or engineer from the prime/proposing firm who is responsible for the management of the design professions (i.e., Project Architects, Structural Engineer, Electrical Engineer, Consultants, etc) and the completion of the design documents. This person may also be serving as the A/E Project Architect or Engineer, Civil Engineer, or Landscape Architect.

**A/E Project Architect or Engineer:** Professional, licensed Landscape Architect or Engineer who is responsible for leading the design of the project. This person may also be serving as the Principal-in-Charge, Project Manager, Civil Engineer, or Landscape Architect.

**Site Civil Engineer:** Licensed, professional civil engineer who is directly responsible for the civil design of the project. This person may also be serving as the Project Manager or A/E Project Architect or Engineer.

**Landscape Architect:** Licensed, professional Landscape Architect who is directly responsible for the landscape architectural design of the project. This person may also be serving as the Project Manager or A/E Project Architect or Engineer.

**Structural Design Engineer:** Licensed, professional structural engineer who is directly responsible for the structural design of the project.

**Electrical Design Engineer:** Licensed, professional electrical engineer who is directly responsible for the electrical design of the project.

**Cost Estimator:** Professional person who is directly responsible for the cost estimating of the design.

Note: These key personnel must be direct employees of the applicable design or firm.

Note regarding project experience. Resumes for the Key Personnel should include similar and relevant project experience. Information provided for Project Experience and each of the Key Personnel should include the name, location, and full description of the project including the role the person performed on the project, the dollar amount, start and completion date of the project, construction method, square footage, use of building etc to adequately convey the experience and expertise of the person. Refer to pages 7 through 11 of this Section 00300 for the criteria to be used to evaluate project experience.

- c. **Personnel Commitment:** By submitting the names of these key personnel for consideration, the Proposer is committing these people to the University for this Project's duration if awarded the Project. No personnel changes will be permitted without written authorization from the University via a contract modification issued by the Procurement Officer.
- d. **Other Key Personnel:** In a **separate** section of the initial technical proposal Section E, the proposing AE firm is to submit resumes and project experience for all other key design team members inclusive of the Geotechnical Engineer.

3.1.6 Section F, Example Projects Which Best Illustrate Proposed Team's Qualifications for this Contract

- a. **Project Experience:** Submit up to ten (10) projects which are similar or relevant to the Towson University Bikeway Loop as indicated below. All projects submitted under this category must be a maximum of ten (10) years old based on the project completion date with the University prefers projects less than five (5) years old. The project submission shall include the following:

- Project Name and Location;
- Project Owner, Contact Person and Telephone Number;
- Design Start Date, Construction Start and Project Completion Date;

- Construction Cost;
  - Contract Method (i.e., GC, CM or DB)
  - Project Gross Square Footage;
  - Similarities of the submitted project to the University's project;
  - Brief Description including bikeway and utility design within the public right-of-way, project setting, constrained conditions, environmental features, signage components
  - Names of Proposed Key Personnel who were involved in the project and the assigned role for each key people. The University prefers key people who were involved in the submitted projects and, particularly in the proposed role;
  - Project Setting (i.e., university, urban setting, open or constrained site, right-of-way/easement, in-use, etc.);
- i) **Prime A/E Firm Experience:** Four (4) projects performed in the past five years are to be submitted by the prime A/E firm in which the proposing/prime A/E firm was the Architect or Engineer of Record. The Prime A/E Firm may be a Civil Engineering or Landscape Architectural firm. Such projects must meet the criteria noted below.

If the proposing/prime AE firm is a joint venture, the following applies: Of the four (4) projects submitted a minimum of two (2) projects must be from the majority joint venture party; these two (2) projects, should be a bike path, bikeway, or shared-use path; with University preference for those done in an urban setting, as a new build, including projects with constrained conditions, environmental features, and signage component..

**Project Status:** Of the four (4) submitted projects, the following applies:

Two (2) projects must be complete and in-use for at least six (6) months;

Of the other two projects:

One project **may be** substantially completed (available for its intended use) with projects that are completed and in-use preferred, and,

The other project **may be** at the 100% Design Development phase projects which are further designed or completed are preferred.

**Contract Method:** Proposing A/E to describe submitted projects' construction contract delivery method.

**Project Dollar Size:** Of the four (4) submitted projects, the following construction costs apply. Projects which are closer to the size of the University's project are preferred;

Construction costs exceeding \$3 million

**Project Type:**

Two (2) of the four (4) submitted projects should be a bike path, bikeway, or shared-use path; with University preference for those done in an urban setting, as a new build, including projects with constrained conditions, environmental features, signage component.

Projects should include experience developing right-of-way, easement, and utility agreements with county government agencies, Baltimore Gas & Electric (BGE) and State Highway Administration (SHA).

**A/E of Record:** For all four (4) submitted projects, the proposing A/E must be the A/E of record for the project.

- ii) **Site Civil Engineering Firm: Two (2) projects** are to be submitted from the Civil Engineering Firm which meets the criteria noted below with University preference for those done in the urban setting. In the event that the Prime A/E Firm is the Site Civil Engineering Firm, the provisions of the Prime A/E Firm submission requirements shall serve.
- Should be a bikeway, sidewalk, or pedestrian path project designed, in part, within the public right-of-way and;
  - Must be \$3M or greater for construction costs;
  - Must be complete and in-use for at least six (6) months;
  - Must be designed by the Civil Engineering firm; and,
  - Should include experience developing right-of-way, easement, and utility agreements with county government agencies, Baltimore Gas & Electric (BGE) and State Highway Administration (SHA).
  - There is University preference for those done in an urban setting, as a new build, including projects with constrained conditions, environmental features.

- iii) **Landscape Architecture Firm: Two (2) projects** are to be submitted from the Landscape Architecture Firm which meets the criteria noted below with University preference for those done in the urban setting. In the event that the Prime A/E Firm is the Landscape Architecture Firm, the provisions of the Prime A/E Firm submission requirements shall serve.
  - The University prefers a bikeway, sidewalk, or pedestrian path project designed, in part, within the public right-of-way;
  - Must be \$3M or greater for construction costs;
  - Must be complete and in-use for at least six (6) months;
  - Must be designed by the Landscape Architecture firm
  - Should include development of right-of-way, easement, and utility agreements with county government agencies, Baltimore Gas & Electric (BGE) and State Highway Administration (SHA); and,
  - There is University preference for those done in an urban setting, as a new build, including projects with constrained conditions, environmental features.
- iv) **Structural Engineering Firm: Two (2) projects** are to be submitted from the Structural Engineering Firm which meets the criteria noted below with University preference for those done in the urban setting.
  - Must be a bikeway, sidewalk, or pedestrian path project that includes retaining walls and preferably a pathway utilizing a pier system for support, or similar structure ;
  - Must be in excess of \$3M for construction costs with higher;
  - Must be complete and in-use for at least six (6) months; and,
  - Must be designed by the structural engineering firm.
- v) **Electrical Engineering Firm: One (1) project**, performed in the past five years are to be submitted from the Electrical Engineer in which the proposing firm was the Engineer of Record. Such projects must meet the criteria noted below:
  - Project may be substantially completed (available for its intended use) the University prefers if the project is completed and in-use.



- Submitted project **must** be electrical design related to lighting and utilities within the public right-of-way, with University preference for those related to bikeway design, sidewalk, or pedestrian path projects.;
- The project must be in excess of \$3M
- The electrical design work must have been done by the proposed Electrical firm.
- vi) Cost Estimators: One (1) project is to be submitted by the Cost Estimating Firm. Such projects must meet the criteria noted below.
  - Should be a bikeway, sidewalk, or pedestrian path project designed, in part, within the public right-of-way where utilities needed to be identified and relocated;
  - Must be \$3M or greater for construction costs;
  - Must be complete and in-use for at least six (6) months

**NOTES:**

- The projects submitted by the Civil Engineering, Landscape Architecture, Structural Engineering, Electrical Engineering, and Cost Estimating firms may duplicate the projects submitted by the Prime AE firm provided the consultants have provided the required services for those projects.
- The University prefers the key person's role is the same for both this proposal and the submitted project.

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 new facilities that include bikeway and/or shared-use paths;
- \* Projects which include paths requiring retaining walls and boardwalks, or other structural pathway features supported by a pier system;
- \* Projects located in an urban setting;
- \* Projects which include a signage and graphics component;
- \* Projects which include the public right-of-way, state highways property, or BGE utilities; and,
- \* Projects which include sensitive environmental features.

- 3.1.7 Section G, Key Personnel Participation in Example Projects. Provide matrix depicting key personnel identified in Section E, provide role on the example projects, and proposed roles in this contract.
- 3.1.8 Section H, Additional Information. Provide a Summary of Qualifications, a written description of why the Proposer is most qualified and skilled to design this Project. This should be objective and limited to not more than four typewritten pages.
4. **BASIS OF SELECTION:** Provide a brief explanation as to why each firm was selected for the proposed A/E team. (limit 6 pages)
5. **STANDARD FORM SF330,** Part II, General Qualifications: Submit form for each proposed firm and proposed branch office, completing all sections and following the form's instructions. For Item 9, Employees by Discipline, if a person spans disciplines, the disciplines should be clearly noted with partial times indicated (i.e., ½ project manager and ½ architect, etc.).
6. **PROFESSIONAL LIABILITY COVERAGE:** Complete the Professional Liability Coverage Form (found in Attachment A) to confirm the required professional liability insurance coverage (\$2M) including current and/or proposed additional coverage to be guaranteed if awarded the contract. Please include in this statement the dollar value of such coverage, expiration date and name of the insurance company.
- Note:** Where the proposing A/E team is a joint venture (JV), either (a) the JV, as a legal entity, must have the required \$2M professional liability insurance coverage; OR (b) each party of the JV must have the required \$2M professional liability insurance coverage.
7. **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 AE. Such information is to include, but are not limited to, (i) AE team members who are Maryland firms and (ii) number of employees in each AE team member firm who are Maryland residents.
8. **REGISTRATION DOCUMENTATION:** Complete and submit the Registration Documentation form (found in Attachment A).

**Note:** It is preferred that the proposed Key People be registered in the State of Maryland and listed on the registration documentation. If the Key People are not registered in the State of Maryland, you must list the name of the person who is registered in the State of Maryland and will be able to sign documents for the Key People. **In any event, you must have someone registered in the state of Maryland for each discipline listed prior to the start of any fee negotiations.**

## END OF SECTION 00300, ARTICLE 2

**SECTION 00300**  
**PROPOSALS, EVALUATION, AND FORMS**  
**ARTICLE 3**  
**SECOND PHASE TECHNICAL PROPOSALS AND ORAL PRESENTATIONS**

**A. SECOND PHASE TECHNICAL PROPOSAL**

At the sole discretion of the University, Proposers that are short-listed as a result of the evaluation of the First Phase Technical Proposals may be required to submit additional materials for evaluation by the Qualification Committee. Should the University elect to require such a submittal, only those AE firms who are shortlisted based on the initial technical evaluation will be requested to submit a Second Phase Technical Proposal. **Second Phase Technical Proposals** shall be delivered on, or before, **Monday, March 18, 2019 at 2:00 p.m.** to the UM's Procurement Services at the address noted in Section 00100 of the solicitation as "The Issuing Office".

The following items must be included in this Second Technical Proposal are as follows:

1. **Understanding of the Project Program:** The A/E firm shall state, in a clear, concise manner, its understanding of the project and the program by its proposed design team inclusive of the following:
  - Its interpretation and understanding of the project and the program;
  - Its vision for the design of Towson University Bikeway Loop as described in the Program; at a minimum, the team shall describe what was discerned from the site visit, its expected design approach, and its interaction with the University's faculty, staff and students during the design and construction process;
  - Its expression of how its qualifications can best be applied to solving the program challenges;
  - Its ability to control the design schedule, respond to project cost estimating, and respond to Team Value Engineering efforts if the project is outside the "design to" amount.

Note: The statement should be objective and limited to not more than five (5) single-spaced, typewritten pages using 12-point font.

2. **Special/Unique Qualifications:** Provide a narrative to elaborate on the special/unique qualifications and/or experiences of the proposed AE team, which make it uniquely capable to provide AE services on the University's project. Special firm and/or individual expertise is to be included.

Note: The statement should be objective and limited to not more than three (3) single-spaced, typewritten pages using 12-point font.

3. **Project Challenge:** Select one (1) aspect of this project which the Proposing AE team finds to be the most challenging and provide the following:

- (i) A description of this one (1) aspect and why your AE Team finds it to be the most challenging; and,
- (ii) A description of how your firm would address this issue and what your recommendations might be.

4. **Design Approach/Quality Control:** Provide a narrative of your team's background and approach inclusive of how these items will be addressed/utilized by your team on the Towson University Bikeway Loop:

5. **References:**

- 5.1 **Firm References:** Provide the following A/E firm references by completing the **Firm Reference Form** for each (see Attachment A of the A/E Solicitation Document for this form). In the event that the Prime A/E Firm is also performing a discipline listed below, the provisions of the Prime A/E Firm reference requirements shall serve.:

- A. Prime/Proposing A/E Firm: Provide three (3) firm references based on the four (4) submitted projects.
- B. Civil Engineering Firm: Provide one (1) firm references based on the two (2) submitted projects.
- C. Landscape Architecture Firm: Provide one (1) firm references based on the two (2) submitted projects.
- D. Structural Engineering Firm: Provide one (1) firm references based on the two (2) submitted projects.
- E. Electrical Engineering Firm: Provide one (1) firm references based on the one (1) submitted projects.

F. Cost Estimating Firm: Provide one (1) firm references based on the one (1) submitted projects.

- 5.2 **Additional Firm Project References:** Please provide one additional project reference for each firm noted above (#5.1), including name of company, contact name, and phone number. These will be used only in the event the University is unable to contact one or more of the references provided for the submitted projects given above (in #5.1.)

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

- 5.3 **Key Personnel References:** Provide three (3) references for the following Key Personnel references by completing the **Key Personnel Reference Form** for each (see Attachment A of the Solicitation Document for this form):

- A. Principal in Charge
- B. A/E Project Manager
- C. A/E Project Architect or Engineer
- D. Site Civil Engineer
- E. Landscape Architect
- F. Structural Design Engineer
- G. Electrical Design Engineer
- H. Cost Estimator

**Reference Notes:**

- Such references are to be from different projects; that is, only one reference per project is allowed. Only one (1) reference may be from the University of Maryland, Baltimore and one (1) may be from Towson University.
- The University reserves the right to verify all information given if it so chooses, as well as to check any other sources available (including itself if not provided as such.)
- Please be sure that accurate information is provided and that the contact person is capable of speaking to a firm's and/or key person's capability in performing the services required. References will be held in the strictest of confidence.

B. **ORAL PRESENTATION :**

At the sole discretion of the University, short-listed Proposers may be required to appear before the Qualification Committee for an oral presentation

The University reserves the right to waive the Interview/Oral Presentations.

Selection of the candidate firm may be based on the First Phase Technical Proposal alone, or any written materials provided in the First and Second Phase Proposals combined. Proposers are therefore encouraged to submit the best possible proposal at each opportunity for submittal. If Oral presentations are required the due and time of the Oral Presentation will be set by the University upon completion of the initial technical evaluation, however, this session(s) is (are) anticipated to be held on **Tuesday, April 9, 2019 and Wednesday, April 10, 2019**. Proposers are advised to set these dates aside in their entirety accordingly on the appropriate people's calendars to avoid any conflicts. The actual time on this date will be verified with 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,
2. Discuss those items addressed in the second Phase Technical Proposal.

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

Each shortlisted AE firm will be required to have the following key personnel attend: Principal in Charge, A/E Project Manager, A/E Project Architect or Engineer, Site Civil Engineer, Landscape Architect, Structural Engineer, Electrical Engineer, and Cost Estimator.

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

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

**SECTION 00300**  
**PROPOSALS, EVALUATION, AND FORMS**  
**ARTICLE 4**  
**EVALUATION AND NEGOTIATIONS PROCESSES**

**A. TECHNICAL EVALUATION:**

1. An evaluation of the Initial Technical Proposals will be conducted by the University's Qualification Committee. Firms will be ranked and shortlisted based on the evaluation; it is anticipated that a short-list of at least two (2) AE firms will be recommended by the Qualification Committee. Only shortlisted AE firms will advance in the procurement process. The Procurement Officer will review these rankings and, upon approval, notify all proposing firms of the names of all proposers indicating those who have been short-listed.
2. At the sole discretion of the University, Proposers that are short-listed as a result of the evaluation of the First Phase Technical Proposals may be required to submit a Second Phase Technical Proposal by the Qualification Committee.

The scores from the Initial Technical Proposal evaluation will be brought forward with the exception of the category for key personnel, which will be rescored based on the oral presentation. These scores will be combined with the Second Phase Technical Evaluation for a final ranking

The University reserves the right to waive the Second Phase Technical Proposal. Selection of the candidate firm may be based on the First Phase Technical Proposal alone. Proposers are therefore encouraged to submit the best possible proposal at each opportunity for submittal

3. The Qualification Committee will submit to the Procurement Officer the final ranking of the shortlisted AE firms.
4. The Procurement Officer will review these rankings accordingly.
5. Upon approval of the Qualification Committee's ranking report, the Procurement Officer shall designate a Negotiation Committee.
6. All shortlisted firms will be notified and the candidate firm ranked number one will be asked to provide a price proposal.

**B. FEE NEGOTIATIONS:**

1. The candidate firm ranked number one shall submit a detailed price proposal; the University will provide the format for this price proposal to the candidate firm at the Price Pre-proposal meeting, which is anticipated to be held on **Thursday, May 9,**

**2019.** See Page 2, Section 00300, Article 1, Item #4 - Price Proposal Submittal for further details

2. Negotiations shall be conducted between the candidate firm and the University Negotiation Committee (see Page 2, Section 00300, Article 1, and Item #4 - Price Proposal Submittal for the anticipated schedule for fee negotiation sessions).
3. If the Procurement Officer determines that a satisfactory contract cannot be negotiated, the negotiations shall be terminated. In such instances, the USM Service Center shall either commence negotiations with the candidate firm ranked number two or re-advertise the procurement, as it deems appropriate.
4. Upon successful completion of negotiations, the USM Service Center will proceed with the contract award.

**\*Note regarding reimbursables for A/E:**

Please note the following regarding reimbursable: The University only accepts the following items as “reimbursable”: (i) printing expenses (reproduction of documents for review by other parties such as the University and other State agencies), (ii) out-of state travel (if any) defined as a minimum of seventy five miles one way from the University), (iii) geotechnical testing, (iv) renderings, (v) models, and (vi) fire flow tests. All other expenses are part of the cost of doing business and, therefore, included in a firm’s overhead rate.

**C. AWARD:**

1. The successful AE firm will be required to sign the University’s AE contract (see Attachment B for the University’s Standard Form of Agreement with Architects and Engineers).

**END OF SECTION 00300, ARTICLE 4**



## SECTION 00400

### SCOPE OF WORK

**SECTION 00400**  
**SCOPE OF WORK**  
**ARTICLE I**  
**GENERAL PROVISIONS**

**1.1 Institutional Profile of Towson University (TU):**

Towson University's 328-acre campus is home to 54 buildings, over 5.4 million square feet of facility space, and more than 7,200 parking spaces that serve an institutional enrollment of over 22,500 students. Current plans aim to grow enrollment to approximately 25,000 students at the main campus in Towson by 2023. Enhancing bike and pedestrian facilities on and around campus is part of the University's master plan and sustainability objectives.

**1.2 Project Overview:**

Towson University is engaging an AE design team to develop fully permitted, biddable, 100% construction documents for an approximately 1.8 mile campus bikeway/shared-use path loop around Towson University (see Conceptual Route Map for reference).



The objective of the project is to design a primarily off-road bikeway/shared-use path with signage, pavement markings, interpretive graphics, lighting, and landscaping to allow bicyclists and pedestrians a safe, inviting facility for access around the campus and improved connectivity to and from the surrounding Towson community. A secondary objective is to design improvements to increase safety and enhance connectivity at seven intersections that tie-into the bikeway/shared-use path.

### 1.3 **Project Team**

The University, the Architect or Engineer, 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 documentation and that the Prime A/E shall provide leadership to the Project Team during the design phases.

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

TU shall review all Project documents at each design phase (i.e. Concept/Program Verification, Schematic Design, Design Development, and Construction Documents.); such review, however, will be made to insure that the intent of the Program, and the Project Design Standards are maintained and that the University's comments have been incorporated as requested. The A/E is solely responsible for the content, accuracy and coordination of all documents.

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.

**1.4 Insurance Coverage Requirements:** The A/E shall obtain and maintain from and after the date of the AE Contract the following insurance:

- (i) Professional Liability insurance in an amount not less than \$2M from the date of the AE Contract and through ten (10) years after final acceptance by UM of the Project.
- (ii) General Liability insurance in an amount not less than \$2,000,000 from and after the date of the AE Contract and through two (2) years after final acceptance by UM of the Project. Such insurance is to include a contractual liability endorsement.
- (iii) Workmen's Compensation insurance per statutory requirements.

As a condition to the A/E contract, the AE shall deliver to UM, not later than the date of execution of the AE Contract, a certificate of insurance verifying compliance with the above insurance requirements. Such Certificates/ Memoranda shall also provide for notice to UM not later than thirty (30) days prior to the expiration or cancellation of the referenced policy.

Any and all insurance obtained and maintained by the A/E under this Agreement shall indicate, in form satisfactory to UM that UM may make a claim against such insurance. Failure to do so shall be a material breach of the AE Contract. In the event that the A/E terminates, as a business entity, for any reason whatsoever, or in any manner whatsoever, the A/E shall obtain and provide for the maintenance of professional liability insurance, specifically covering the A/E's obligations performed or to be performed under this Agreement, in the amount set forth herein for the remainder of the time set forth herein.

### **1.5 Ownership of Project Documents**

All data, information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the A/E or in the A/E's possession or control relating to the Project are the property of the University and shall be delivered to the University upon completion of any project done under this AE Contract. In addition, all documents in progress are the property of the University and shall be delivered to the University promptly in the event of termination of the A/E Contract prior to completion of the contract.

The A/E shall be responsible for protection and/or replacement of any Construction Documents or other documents in its possession. The University shall receive all original drawings and the A/E shall retain a reproducible copy.

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

**SECTION 00400**  
**SCOPE OF WORK**  
**ARTICLE 2**  
**SUMMARY OF AE SERVICES**

**2.1 Overview - Project Development/Scope:**

**Project Construction Costs:** The Project Construction Costs (or Design-to-Dollar (DTD) amount) are those funds available for the construction of the Project inclusive of all GC construction costs exclusive of hazardous material abatement, and associated A/E fees. The DTD amount for this project is six million, five hundred thousand dollars. (\$6,500,000). The A/E is obligated to design the Project within this specified amount.

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

The design of the Towson University Bikeway Loop conforming to all requirements specified in this solicitation, and in accordance with the UMB - Facilities Management - Architecture Engineering and Construction the University's Procedure Manual for A/E Services dated July 15, 2011, and 2016 TU Design Guidelines and Construction . All work accomplished under this contract shall also be done in accordance with applicable regulations, codes, design standards, and jurisdictional requirements. These include but are not limited to MDOT/SHA Bicycle Policy and Design Guidelines, Maryland Manual on Uniform Traffic Control Devices (MUTCD), 2011 Edition, AASHTO Guide for Development of Bicycle Facilities, MDOT/SHA Accessibility Policy & Guidelines for Pedestrian Facilities along State Highways, Federal ADA Standards for Accessible Design, Association of Pedestrian and Bicycle Professional Bicycle Parking Guideline, Baltimore County, Baltimore Gas & Electric (BGE), Maryland Department of the Environment (MDE), and Army Corps of Engineers (ACOE) requirements. The A/E design team is responsible for thoroughly investigating the proposed bikeway/shared-use path loop (see exhibit A) to determine existing utility locations, infrastructure, environmental features, and existing conditions that may be detrimental to the proposed work. The A/E design team shall contract with a private locator service to verify existing utility services in the area of construction as needed. The Design Team shall not assume that existing reference drawings are 100% accurate and shall field verify as necessary.

A/E design team shall provide all necessary materials, equipment and services to complete required construction documents, specifications, miscellaneous tasks and associated components in the timeframe indicated in the schedule above, as depicted on the narrative, scope of work, and exhibits. A/E design team is responsible for all quantities and measurements to accomplish this work including site investigation, surveys, locating utilities, test borings, etc.

The work under the contract includes, but is not limited to:

1. Project review and exploration including review of existing drawings and supporting documents, field survey, utility exploration and identification. The A/E design team and any sub-contractors are fully responsible for the ongoing safety of the public at all times. A/E design team shall coordinate these activities with Towson University Project Manager.
2. Full design including bid-ready construction documents and specifications for the bikeway/shared-use path loop and associated intersection improvements. The designer to note opportunities for construction phasing in documents. The bikeway is to include associated pavement markings, graphics, signage, landscaping, lighting, and any other structural features required to meet bikeway design requirements and to create an inviting, safe, and functional bikeway loop. The intersections include York Road and Burke Avenue, York Road and Cross Campus Drive, Burke Avenue and Towsontown Boulevard, Towsontown Boulevard and University Avenue, Towsontown Boulevard and Osler Drive, Osler Drive and Emerson Drive, Osler Drive and Cross Campus Drive. All intersection improvements must be approved by the governing agency and jurisdiction (e.g. SHA, Baltimore County). For the purposes of defining scope, anticipated intersection improvements include a combination of signal timing improvements, curb ramps, signage, and pavement markings to enhance pedestrian and bicyclist safety and connectivity. The appropriate and feasible improvements will be determined on an intersection by intersection basis as part of the design process.

There will be a meeting and site visit at the Program Verification/Concept Design phase. There will be internal and external review of submittals at the SD/DD, 50% CD, 95% CD, and 100% CD design plan phases. Review agencies may include, but are not limited to MDOT/SHA, MDE, ACOE, Baltimore County, BGE, and Towson University. A/E design team should include time and effort for appropriate review meetings with applicable agencies at each submission phase. Perspectives and renderings of up to five high profile/visibility locations along the bikeway/shared-use path are to be provided at the SD/DD submittal for use by the university at internal meetings and stakeholder events. In addition to agency review meetings, the A/E design team should be prepared to attend and present at up to two campus and community stakeholder events. Construction documents and specifications should be prepared in a manner that allows phased construction of different segments of the bikeway/shared-use path should the university choose to phase construction. The TU bikeway should include stormwater friendly measures and will meet stormwater management requirements.

3. The A/E design team shall prepare a construction cost estimate at the 50% CD design phase.
4. Agreements and waivers necessary for design approval and for construction shall be prepared and submitted by the A/E design team, including any plans, sketches, or supporting documents, for any applicable work requiring an agreement or waiver. These include but are not limited to ROW dedication or acquisition agreements, ROW easement agreements, Maintenance of Traffic agreements, utility agreements, maintenance agreements, and SHA design waivers.
5. The A/E design team is responsible for preparing and securing all necessary permits and approvals to enable construction document approval.
6. A/E design team shall provide the university with all submittals necessary for approval of 100% construction documents.

The design time frame is twelve (12) months from the issuance of the Notice to Proceed for Program Verification. The design time frame includes two (2) weeks for the University review/value engineering time frames and an additional succeeding one (1) week for the cost/scope reconciliation for a total of three (3) weeks duration following the submittal of each of the following design deliverables: Combined 100% SD/DD, 50% CD, 95% CD, and final 100% CD. The design time frame includes review by all applicable regulatory and permitting agencies and any necessary signed agreements from any applicable property owners, utility owners and government agencies to get approval of final construction documents.

The construction time frame is to-be-determined and may be sequenced depending upon funding availability. Designs are to take this into account and clearly illustrate phasing opportunities.

The University desires to improve upon this schedule wherever possible within the limits of funding availability.

All design services necessary to implement the goals of the Project inclusive of, but not limited to, the following: architectural, electrical, structural, civil, geotechnical, and cost estimators, as required for the Project.

## 2.2 Meetings:

Design Phase (Concept/Program Verification through CD): The following meetings are anticipated during the design phase which shall be conducted by the A/E with notes issued within three (3) business days of each meeting:

**Design Progress Meetings** to be held every four (4) weeks unless agreed to otherwise by the University.

**Design Review Meetings** to be held with TU at each design phase including Program Verification/Concept Design, Combined 100% SD/DD, 50% CD, 95% CD, and final 100% CD. The core members of the A/E team will be prepared to meet with all applicable review and approval agencies after submittals to resolve any design issues. Towson University will attempt to consolidate these meetings to include applicable review agencies; however, individual meetings with different permitting and approval agencies will likely be required in order to resolve design issues.

**Community Meetings:** A/E project manager shall be prepared to attend and present at up to two evening community meetings with Towson University campus community and surrounding Towson community.

**Bidding Phase:** Not applicable.

**Construction Phase Meetings:** Not applicable.

- 2.3 **Value Engineering:** The A/E's Cost Estimator will lead the value engineering efforts throughout the design as necessary with the major VE session anticipated at the 50% CD phase.
- 2.4. **Cost Estimates:** The AE shall engage a professional cost estimator to provide full scale cost estimates at 50% Construction Documents. The cost estimate format is to be approved by the University. All Design Development estimates shall be formatted in a manner
- 2.5 **Codes and Standards:** All Codes and Standards listed on the Maryland Code Administration Website shall be applied. It is the A/E's responsibility to apply all codes correctly. The most restrictive requirement shall apply in case of conflicting requirements between these codes and standards. The following shall also apply:
- MDOT/SHA Bicycle Policy and Design Guidelines
  - Maryland Manual on Uniform Traffic Control Devices (MUTCD), 2011 Edition
  - AASHTO Guide for Development of Bicycle Facilities
  - MDOT/SHA Accessibility Policy & Guidelines for Pedestrian Facilities along State Highways
  - Federal ADA Standards for Accessible Design
  - Association of Pedestrian and Bicycle Professional Bicycle Parking Guideline



- 2.6     **AutoCAD Documents.** Provide AutoCAD and other electronic files of all documents for all disciplines at the conclusion and acceptance of the Final Construction Documents and as requested by the University for the purposes of equipment and furniture purchase, and other purposes.

- 2.7 **Set of Deliverables.** The A/E shall submit to the university, seven sets of all drawings and Specifications required for review and approval by the university, and the Maryland State agencies for combined 100% SD/DD, 50% CD, 95% CD, and final 100% CD phases of the project. Each submission should consist of two full size drawing sets and five half-size sets unless otherwise stipulated by the university.

**END OF SECTION 00400, ARTICLE 2**  
**END OF SECTION 00400**

# **ATTACHMENTS**

**A/E SOLICITATION #19-012 AE-CB**

**FOR**

**TOWSON UNIVERSITY BIKEWAY LOOP**

# ATTACHMENT A

- H-1A, MBE Utilization and Fair Solicitation Affidavit (Form Found in Attachment H)
- Bid/Proposal Affidavit
- Professional Liability Insurance Form
- Registration Documentation Form
- vii) Acknowledgement of Receipt of Addenda Form (if applicable)
- viii) Certificate of Investment Activities in Iran
- ix) Current Workload Form (Second Phase Only)
- x) Reference Forms (Second Phase Only)

## **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)

**PROFESSIONAL LIABILITY INSURANCE FORM  
INITIAL TECHNICAL PROPOSAL**

AE FIRM: \_\_\_\_\_

Firm's statement of professional liability insurance coverage including current and/or proposed additional coverage to be guaranteed if awarded the project must be inserted below. The firm recommended for appointment will be required to submit evidence of \$2M professional liability insurance coverage prior to execution of the contract. Failure to complete the insurance information may result in your firm being disqualified from further consideration for this project.

Dollar Value: \$ \_\_\_\_\_

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

Insurance Company: \_\_\_\_\_

Comments (if any): \_\_\_\_\_

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Note: Please include information on current and/or proposed additional coverage to be guaranteed if awarded the contract. Should an A/E firm not provide confirmation of the required professional liability insurance coverage during the technical phase of this procurement, it will be disqualified from further consideration.

**AE SOLICITATION RFP #19-012 AE-CB  
REGISTRATION DOCUMENTATION**

**Towson University Bikeway Loop  
INITIAL TECHNICAL PROPOSAL**

AE FIRM: \_\_\_\_\_

All individuals practicing occupations requiring registration or licensure must be currently registered with the appropriate State of Maryland Registration Board. It is, therefore, important that the Architect/Engineer address himself/herself to the disciplines of registration required for this project.

Disciplines required for this project are listed below and marked with an asterisk(\*). For each marked discipline, insert name of the individual, and where required, date of Maryland registration, and Maryland registration number. Every individual named on this attachment should be represented in the U.S. Standard Form 330, Section E, "Resumes of Key Persons."

<u>Discipline Required</u>	<u>Name of Individual</u>	<u>Date of Md. Registration</u>	<u>Md. Reg. Number</u>
(*) Principal	_____	_____	_____
(*) A/E Project Architect or Engineer	_____	_____	_____
(*) Site Civil Engineer	_____	_____	_____
(*) Landscape Architect	_____	_____	_____
(*) Structural Engineer	_____	_____	_____
(*) Electrical Engineer	_____	_____	_____

**Note: Failure to complete the requested information on this form shall result in being disqualified from further consideration for this project.**

The foregoing is a statement of facts.

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

Typed Name & Title: \_\_\_\_\_

Date: \_\_\_\_\_ Name of Firm: \_\_\_\_\_

**AE RFP: #19-012 AE-CB**

**RFP FOR: AE SERVICES FOR TOWSON UNIVERSITY BIKEWAY LOOP**

**DUE DATE: TUESDAY, FEBRUARY 12, 2019 ON OR BEFORE 2:00 PM**

**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 \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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"

**KEY PERSONNEL WORKLOAD FORM**

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

**Page 1 of 1**

Below please provide the current workload for each of the Key Personnel; that is, identify what other jobs, if any, on which the person will be working during the University project inclusive of the following:

- Person's role on the project (s);
- Percentage (%) time commitment to the project(s); and,
- anticipated completion date for the person's work assignment for the project(s).
- 

<b>Position</b>	<b>% Available to UM's Project</b>	<b>Other Projects Assigned during the UM Project Schedule; person's role on the project, % of time commitment to the project, and anticipated completion date of the person's work assignment</b>
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Principal in Charge		
A/E Project Manager		
A/E Project Architect or Engineer		
Site Civil Engineer		
Landscape Architect		
Structural Engineer		
Electrical Engineer		
Cost Estimator		



KEY PERSONNEL REFERENCES PROPOSING FIRM: \_\_\_\_\_

KEY PERSON/POSITION: \_\_\_\_\_ / \_\_\_\_\_

FIRM EMPLOYED BY: \_\_\_\_\_

Three (3) project references are requested. Such references are to be **project references not employment references**; that is, the University is interested in speaking to a Project Owner regarding the person's performance on a particular project. These references are to be from either (i) the projects submitted by the applicable firm in the initial technical proposal, if applicable, and/or (ii) from the similar jobs listed with the person's resume. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **person's performance in the role to be assigned on this project.**

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

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

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

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, PERSON'S ROLE, AND PROJECT COMPLETION DATE) DONE: \_\_\_\_\_

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

2. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_

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

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

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, PERSON'S ROLE, AND PROJECT COMPLETION DATE) DONE: \_\_\_\_\_

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

3. CONTACT PERSON: \_\_\_\_\_TITLE: \_\_\_\_\_

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

COMPANY NAME:

\_\_\_\_\_

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, PERSON'S ROLE, AND PROJECT COMPLETION DATE) DONE:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## PRIME A/E FIRM REFERENCES

### PROPOSING PRIME A/E FIRM

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

Prime Proposing A/E Firm: Provide three (3) firm references based on the four (4) submitted projects as well as one (1) additional references as requested (00300, Article 3) (one additional reference per JV partner). Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. Two (2) of these references are to be from the projects submitted by the AE firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

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

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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2. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

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

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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## PRIME A/E FIRM REFERENCES

PROPOSING A/E FIRM NAME: \_\_\_\_\_

3. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME:

\_\_\_\_\_

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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

## Additional References

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME:

\_\_\_\_\_

DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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

PROPOSING Site Civil Engineering Firm

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

Site Civil Engineering Firm: Provide two (2) firm references based on the two (2) submitted projects as well as one (1) additional references as requested (00300, Article 3). Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. These references are to be from the projects submitted by the A/E firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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2. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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Additional References

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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PROPOSING Landscape Architecture Firm

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

Structural Engineering Firm: Provide two (2) firm references based on the two (2) submitted projects as well as one (1) additional references as requested (00300, Article 3). Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. These references are to be from the projects submitted by the A/E firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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2. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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Additional References

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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PROPOSING Structural Engineering Firm

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

Structural Engineering Firm: Provide two (2) firm references based on the two (2) submitted projects as well as one (1) additional references as requested (00300, Article 3). Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. These references are to be from the projects submitted by the A/E firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

3. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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4. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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Additional References

2. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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PROPOSING Electrical Engineering Firm

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

Electrical Engineering Firm: Provide one (1) firm reference based on the one (1) submitted projects as well as one (1) additional references as requested (00300, Article 3). Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. These references are to be from the projects submitted by the A/E firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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Additional References

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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PROPOSING Cost Estimating Firm

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

Cost Estimating Firm: Provide one (1) firm reference based on the one (1) submitted project as well as one (1) additional references as requested (00300, Article 3). Such references are to be **project references**; that is, the University is interested in speaking to a Project Owner regarding the firm's performance on a particular project. These references are to be from the projects submitted by the A/E firm in the initial technical proposal. Such references are to be from different projects; that is, only one reference per project is allowed. Such references will be held in strictest confidence by the University. Please insure that the information is accurate and that the reference named can speak to the **firm's performance on the project**.

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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Additional References

1. CONTACT PERSON: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE # \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_  
DESCRIPTION OF PROJECT (INCLUSIVE OF CONSTRUCTION COSTS, NAME OF PROJECT, AND PROJECT COMPLETION DATE):

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## **ATTACHMENT B**

- Contract Affidavit Form
- MBE Participation Schedule/MBE Attachment H-1B/MBE Attachment H1-C/MBE Attachment H-2/MBE H-3A/MBE H-3B (Form Found in Attachment H)
- University's Standard Form of Agreement with Architects and Engineers

## CONTRACT AFFIDAVIT

### A. AUTHORITY

I HEREBY AFFIRM THAT:

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

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

I FURTHER AFFIRM THAT:

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

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

and is registered or qualified as required under Maryland Law.

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

Name and Department ID

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

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

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

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

### C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more

shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

#### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person

receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
  - (i) The dangers of drug and alcohol abuse in the workplace;
  - (ii) The business's policy of maintaining a drug and alcohol free workplace;
  - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
  - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), of this regulation;
- (h) Notify its employees in the statement required by §E(2)(b), of this regulation, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), of this regulation.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
  - (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
  - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

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

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

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



UNIVERSITY of MARYLAND  
THE FOUNDING CAMPUS

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**UNIVERSITY OF MARYLAND, BALTIMORE**

CONSTRUCTION SERVICE CENTER  
DEPARTMENT OF PROCUREMENT SERVICES

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**STANDARD FORM OF AGREEMENT  
WITH  
ARCHITECTS & ENGINEERS**

*Revised 2011*

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<b><i>Project No.</i></b>	<b><i>Contract No.</i></b>	<b><i>Client University</i></b>
19-012 AE-CB	C-_____	Towson University

## STANDARD FORM OF AGREEMENT WITH ARCHITECTS & ENGINEERS

**THIS AGREEMENT** is made effective as of the date set forth on the signature page between University System of Maryland, a public corporation and an instrumentality of the State of Maryland (“USM”), acting through University of Maryland, Baltimore, one of its constituent institutions (“University”), and \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_ (the “A/E”), EIN # \_\_\_\_\_.

### RECITALS

A/E acknowledges that it (i) has been informed of the scope and nature of the Project, (ii) has read, examined and understood the Program, and (iii) has submitted the Proposal to University. By executing this Agreement and by submitting the Proposal, A/E represents and has represented to University that A/E is qualified to perform the Work, and to execute the same satisfactorily, within the times specified. (All capitalized terms in this paragraph are defined below)

A/E by this Agreement acknowledges that University has relied upon and is entitled to rely upon A/E’s representations set forth in this Agreement. In reliance upon those representations, University hereby engages A/E to perform the Work on the terms and conditions set forth in this Agreement. A/E hereby accepts that engagement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree as follows:

### ARTICLE I DEFINITIONS

1.1 **Definitions:** The following terms, as used in this Agreement shall have the following meanings:

“Additional Services” has the meaning set forth in Section 2.1.2.

“Additional Work” has the same meaning as “Additional Services.”

“A/E Commencement Date” means that date indicated in the NTP.

“A/E Construction Commencement Date” means that date indicated in the Construction NTP.

“Agreement” means collectively the following: (i) this Agreement; (ii) any and all documents and materials attached hereto; (iii) the Program, (iv) any and all drawings, models, specifications and other documents (including electronic versions) developed or prepared by A/E in performance of the Agreement and approved by University, (v) any and all documents and materials referenced herein or made part hereof (including without limitation the Program and its components); (vi) any and all amendments of any of these; and (vii) any and all Change Orders.

“Change Order” means any orders which is or is deemed to be a change order in accordance with Section 3.10.

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

“Concept Documents” has the meaning set forth in Section 4.4.

“Construction Manager” or “CM” means the person or entity designated from time to time by University to carry out the function of construction manager (with provision of guaranteed maximum price) for the Project. University shall identify CM to A/E upon the selection of CM. During the term of this Agreement, a substitute CM may be designated by University from time to time with notification of such substitution provided in writing to A/E.

“Construction Documents” has the meaning set forth in Section 7.3.



“Construction Phase” has the meaning set forth in Section 2.1(c).

“Construction NTP” means that Notice to Proceed issued by the Owner’s Representative authorizing A/E to commence the Construction Services.

“Construction Services” means that portion of the Work to be performed during the Construction Phase.

“Contract Documents” means collectively the following: (i) the agreement between the University and the CM, (ii) the conditions of the contract (general, supplementary, and other conditions), (iii) the drawings, (iv) the specifications, and (v) all addenda issued prior to, and all modifications issued after, execution of the agreement between the University and the CM.

“Design Development Documents” has the meaning set forth in Section 6.3.

“Design Phase” has the meaning set forth in Section 2.1(c).

“Design Services” means that portion of the Work to be performed during the Design Phase.

“Design NTP” means the Notice to Proceed issued by the Owner’s Representative authorizing A/E to commence the Design Services.

“Design Standards” means the design standards established by University’s or Client University’s Architectural and Engineering Design Standards Manual (or comparable standards), as amended from time to time.

“Master Specifications” means the UMB Master Specifications (or of Client University, if applicable), as amended from time to time.

“Owner’s Representative” has the same meaning as “Project Manager.”

“Phases” state shall have the definition attributed in Section 2.1(c) and shall also refer to as the context requires the time assigned for the performance of that portion of the Services, in the Schedule or otherwise in the Agreement. As used in the Agreement, the designations assigned to the several Phases in Section 2.1(c) shall mean the part of the Services to be performed in each of the Phases respectively as well as the time assigned for the performance of that portion of the Services in the Schedule or otherwise in the Agreement.

“Probable Construction Cost” means the total amount (but not including contingencies) determined under any construction cost estimate to be the total hard construction cost for the Project in accordance with the Program.

“Procedure Manual” means the University’s Procedure Manual for Professional Architectural/Engineering Services for UMB Construction and UMB Service Center Projects, as amended from time to time.

“Procurement Officer” means an individual designated from time to time by University’s Department of Procurement Services to function as the Procurement Officer and to administer State procurement law and regulations for the Agreement. During the term of this Agreement, a substitute Procurement Officer may be designated by University with notification of such substitution provided in writing to A/E.

“Project Program” means the Project Program for a Capital Improvement Project entitled “N/A,” dated N/A, 20  , as amended from time to time.

“Program” means collectively the following: the Project Program; the Proposal; the RFP; the Procedure Manual; the Master Specifications; and the Design Standards.

"Project" means one or more particular portions of right of way and/or property for a Bikeway Loop to be located at Towson University, as more fully described severally and collectively in the Program.

"Project Amendment" has the meaning set forth in Section 2.1(d).

"Project Construction Costs" is the amount of six million, five hundred thousand dollars (\$6,500,000). These are the maximum hard construction costs for construction of the Project for the Phases designated, exclusive only of A/E fees, CM's pre-construction fees, hazardous material abatement, and University's construction contingency. The Project Construction Costs include all CM construction costs (i.e., CM construction fee, on-site staff reimbursables, non-personnel General Conditions, and CM/GMP contingency).

"Project Manager" means the individual designated from time to time by University's Office of Facilities Management to serve as University's representative with respect to matters relating to this Agreement, other than those matters which are the responsibility of the Procurement Officer or CM. The Project Manager shall be designated by University. During the term of this Agreement, a substitute Project Manager, may be designated by University with notification of such substitution provided in writing to A/E.

"Project Team" means the representatives of University, A/E, CM, and project consultants assigned to the Project.

"Proposal" means the Price Proposal and the Technical Proposal submitted by the A/E dated \_\_\_\_\_, inclusive of the organizational chart which denotes the key team firms and the key personnel to be assigned for the duration of the Project.

"RFP" means the University's Request for Proposal # \_\_\_\_\_, dated \_\_\_\_\_, titled \_\_\_\_\_, together with all addenda and responses to questions from bidders.

"Schedule" means the timetable for completion of the Services. Unless otherwise modified as provided in this Agreement, the Schedule shall be the timetable set forth in the Proposal. The Schedule requires that the Design Phase shall be completed in no longer than \_\_\_\_\_ ( ) months, and the Construction Phase shall be completed in no longer than \_\_\_\_\_ ( ) months. A/E's obligation in connection with bidding will be set forth on the Schedule and will not necessarily be included in the Design Phase.

"Schematic Design Documents" has the meaning set forth in Section 5.4.

"Services" means the professional services to be provided by or caused to be provided by A/E and its agents and consultants under and in compliance with this Agreement, as set forth in the Agreement or which are appropriate or necessary to the implementation, performance, or completion of A/E's engagement set forth in the Program. Notwithstanding anything herein to the contrary, the Services shall include additional work and matters included in Change Orders.

"State" means the State of Maryland.

"Work" has the same meaning as the term "Services."

1.2 Applicability of Definitions. Any definition set forth in this Agreement shall apply in all of its provisions unless otherwise indicated. Any definitions set forth in the Procedure Manual or in the CM's solicitation documents shall apply throughout the Agreement unless (i) otherwise indicated, or (ii) another definition has been set forth.

1.3 Construction if Documents Conflict. If the provisions of the several parts of the Agreement are in conflict or are contradictory, the following in order of priority will be the order of precedence in construing and interpreting the Agreement (unless explicitly stated otherwise in any of the following): the Agreement, the Procedure Manual, the Design Standards, the Project Program, then the Proposal.

## ARTICLE II GENERAL OBLIGATIONS OF A/E SCOPE OF ENGAGEMENT

### 2.1 Engagement.

a. A/E is engaged generally to provide professional services in accordance with and subject to the provisions of the Agreement. It is the intent of the parties to set forth in the Agreement the terms and conditions in effect for: (i) the Design Phase from and after the date hereof; and (ii) the Construction Phase from and after the effective date of the Project Amendment with respect to the Construction Phase.

b. In addition to the scope of engagement set forth above and the Services required by the Agreement, A/E shall undertake, as University may direct in writing, studies or special consulting work not identified originally in the Agreement. Such Services shall be “**Additional Services**,” and shall be subject to University’s prior approval of the price and services. In such case, A/E shall engage appropriate consultants or specialists as directed by University. Compensation for any Additional Services and any such consultants or specialists will be determined pursuant to the provisions of this Agreement governing Change Orders.

c. The Services shall be divided into the following parts, referred to collectively as “**Phases**” and each Phase respectively by the designation set forth below:

**Design Phase**, which includes the following:

- (1) Concept Phase, if applicable
- (2) Schematic Design Phase
- (3) Design Development Phase
- (4) Construction Documents Phase
- (5) Bidding Phase

**Construction Phase**, which includes the following:

- (6) Construction Administration Phase
- (7) Post-Construction Phase

Provisions of the Agreement applicable to Phases generally shall be applicable specifically to each Phase designated herein.

d. Until the Agreement is amended to reflect the availability of funds for the \_\_\_\_\_ *[list Phases]*; and the approval of any of such amendment by the Board of Public Works, if any (each, a “**Project Amendment**”), the Agreement shall be in effect only as to the Schematic Design Phase and to the obligations of the parties to effectuate any subsequent Project Amendment. Upon execution of any subsequent Project Amendment as provided in the Agreement and the approval of such subsequent Project Amendment by the Board of Public Works, if any, the Agreement shall be effective as to all of the Phases, so that the parties also shall be bound by the provisions set forth in the Agreement in connection with all subsequent Phases.

e. If and when funds are available to University for a particular Phase, University at its sole discretion will execute the applicable Project Amendment. Not later than five (5) business days after receipt of a written request from University, A/E shall execute that Project Amendment. Failure of A/E to do so shall be a material breach of the Agreement. The Project Amendment shall take effect upon approval by the Board of Public Works, if any. University shall not be obligated in any way whatsoever under the Agreement to seek the availability of funds for any particular Phase.

### 2.2 Standard of Performance

a. A/E shall provide the Services as required by the Agreement completely and adequately in every detail. A/E solely shall be responsible for the technical completeness, sufficiency, and accuracy of the performance of the Services and any material of any nature whatsoever produced by A/E and delivered to University.

b. A/E shall perform the Services in all respects in accordance with those usual and customary standards of professional aptitude, skill, and diligence which, at the time of performance of the Services, commonly are followed by architects and engineers of the highest quality and stature in the performance of the same or similar services.

c. A/E shall be responsible for the provision of all Services, whether provided by A/E or its consultants, agents, representatives, employees, or others on behalf of A/E.

d. The Contract Documents shall be carefully coordinated by A/E so as not to conflict one with the other; and as appropriate for each respective Phase, so that they are clear, accurate, and precise in such detail as may be necessary to delineate what is to be furnished, where, and the final results to be obtained, as to architectural detail, structural strength, clearances, mechanical and electrical sufficiency and dimensional accuracy (as appropriate.)

e. The approval of Contract Documents, any material produced by A/E, and any construction installed in connection with the Project by University or the State in no way relieves A/E of its responsibility for: the accuracy and completeness of such Contract Documents; compliance with required law, standards, codes, ordinances or other applicable regulations; or compliance with the Agreement.

### 2.3 Timeliness of Performance.

a. Upon issuance of the Design NTP or the Construction NTP, University shall re-establish the dates in the Schedule with reference to the start date set forth in the Design NTP or the Construction NTP.

b. A/E shall perform the Services as expeditiously as is consistent with good professional skill and care and the orderly progress of the Services and the Project.

c. A/E shall perform the Services and the portions thereof each within the times established in the Schedule. If dates set on the Schedule are not met (either because portions of the Work are performed earlier or later than the date set forth), then University at its sole discretion reserves the right to modify the Schedule. Any such modification shall not be, or be deemed to be, a waiver of any rights University or A/E may have in connection with a party's failure to comply with the Schedule from time to time. A modification of the Schedule by University shall provide an extension of the various deadlines identified in the Schedule and shall not allow any new intervening time gaps dividing the period covered by the Schedule.

2.4 Consultants. A/E shall engage (i) those consultants identified in the Proposal only for the purposes identified in the Program, or (ii) other consultants not identified in the Proposal only with the prior written approval of University. The names of all consultants not identified in the Proposal, shall be submitted to University by A/E for approval before any Services are performed by such persons. A/E shall provide University any and all material and information requested about any proposed consultant. A/E may rely only upon approval issued by University in writing. Such engagement shall not constitute an engagement of a consultant by University. A/E shall be responsible to University for any and all Services performed by a consultant. In all instances, the term "A/E" as used in the Agreement includes action by consultants, as appropriate. A/E shall cause all consultants engaged by A/E to be bound by the applicable terms of the Agreement.

### 2.5 Meetings.

a. A/E shall (i) attend conferences and meetings with the Project Manager, CM, the Procurement Officer, and the Project Team, as provided in the Program and as necessary to execute the various Phases of the Services; (ii) present to University documents required under the Phases of the Services for review and approval; and (iii) present documents to the State Board of Architectural Review as requested by University or as required in the Procedure Manual.

b. A/E shall prepare concise minutes of any and all conferences held which A/E is required to attend as contemplated in Section 2.5(a). These minutes shall state all decisions reached and who made them. The original shall be addressed to the Project Manager, with copies as required for persons concerned.

c. A/E shall notify the Project Manager of all meetings desired by or anticipated by A/E sufficiently in advance of the meeting to permit the attendance of all concerned parties. As a general rule, such meetings will be held at University's Office of Facilities Management.

d. Presentations before the Board of Architectural Review shall be in compliance the Procedure Manual.

e. A/E shall fully participate in all value engineering workshops or sessions conducted by CM during the Design Phase.

## 2.6 Design Criteria

a. A/E shall prepare, design, and provide Services in connection toward the following objectives:

1. That the Project shall be attractive and functional and have an efficient utilization of space;

2. That the Project shall be economically and environmentally sustainable to construct, operate and maintain, and at the minimum possible cost consistent with the Program;

3. That the Project shall be of sound structure of conventional shape or shapes, which avoid extraneous features and excessive perimeter walls;

4. That the Project achieve economy in construction by simplification in design, by standardization in materials, by minimizing architectural embellishment, and the like, where appropriate.

b. A/E shall give special attention to the economics of the interrelationship of architectural, structural, mechanical, and electrical systems.

## 2.7 Project Coordination

a. A/E shall serve as a member of the "**Project Team.**" The Project Team shall be led by University or its designee. The Project Manager will act as coordinator between University, CM, and A/E.

b. A/E shall direct copies of all correspondence, drawings, specifications, estimates, and other matters to the Project Manager, who will furnish such information as necessary to others. Direct contact or communication by A/E shall be made only with the prior knowledge and concurrence of the Project Manager in each instance.

c. A/E's professional team for the Project shall be the same persons identified as stated in the team data submitted in response to the solicitation, unless a change is requested and approved in advance in writing by University via the issuance of a contract amendment by UMB's Department of Procurement Services.

d. During each Phase, A/E shall (i) present its work on an ongoing basis to University and to CM, and (ii) be responsive to their comments, suggestions, and remarks.

e. A/E shall provide University with the monthly progress schedule, in compliance with the Procedure Manual.

## 2.8 Documents

a. The Provisions of this Section 2.8 apply to all documents which A/E is required to produce under the Agreement.

b. A/E shall develop all of the documents required under the Agreement in a timely manner and in accordance with the Agreement. All documents shall anticipate a complete Project contemplated in the Program ready for efficient and continued use. A/E shall be responsible directly to University and more particularly to the Project Manager, to whom A/E shall direct all communications and submit all documents for approval and from whom A/E shall receive directions concerning the Project and approval of or comments on all documents.

c. If documents submitted by A/E in satisfaction of the Design Phase are not approved in the form submitted, A/E at its own expense shall revise the same until approved by University. If any revision required to be made by A/E is caused by revising previously approved drawings and/or specifications to accomplish changes not initiated by A/E, A/E may be compensated for effecting such revisions only as set forth below, provided, that A/E shall not commence such revisions without written authorization of University.

d. A/E shall file with the Project Manager a certificate in a form prescribed by University before award of any construction contracts or commencement of any construction work, certifying that said contract documents are in compliance with the Building Code of the State of Maryland. After certificates have been filed with University, contract documents shall not be changed in any respect, except with the written consent of University.

e. All Contract Documents shall bear the seal and signature of A/E and of each of A/E's consultants.

f. A/E is responsible to care for, protect, and know the whereabouts of the documents until they are finally delivered to University, fully corrected as "as built" drawings.

2.9 Press Releases. A/E shall not issue any press release to any publication, including newspaper or media, without first clearing the text with University and obtaining the prior written approval of University in each instance.

2.10 Project Number. The project number assigned to the Program must be used on all correspondence, drawings, specifications, estimates, shop drawings, and all other matters relative to the Project.

2.11 Construction Cost Estimates.

a. The provisions of this Section shall apply in each instance that A/E is required under the Agreement to provide construction cost estimates.

b. Construction cost estimates must be furnished by A/E at each of the following Phases, as more particularly set forth in Articles IV through VII:

1. Concept Phase (if applicable)
2. 100% Schematic Design Phase
3. 100% Design Development Phase
4. Construction Document Phase, where the construction documents are approximately 50% complete and submitted for review. A/E shall review and comment on the estimate prepared by CM.

c. Notwithstanding anything herein to the contrary, the construction cost estimate prepared by A/E shall be reconciled with CM's construction cost estimate at the designated intervals noted above with the exception of the 50% Construction Document estimate. The cost estimate format must be developed between A/E and CM and approved by University prior to the 100% SD submittal. The provisions of Section 6.4 shall govern the content of A/E's review.

d. University may require revision or restudy of any of the construction cost estimates as may be necessary to keep the Project within the budget or to require more realistic figures.

e. Unless otherwise provided in the Program, each and every construction cost estimate delivered to University by A/E shall be prepared by a professional cost estimator retained by A/E, at A/E's cost.

f. Each construction cost estimate shall show the cost as of its respective submission dates, escalated to the anticipated bid-due date as set forth on the Schedule, with contingencies, fees, etc. so that each estimate reflects a total project estimate of cost.

g. Revised estimates may be further required by University, particularly when a delay occurs between the time of submission and bidding.

h. All estimates shall reflect all additions and deletions during the Design Phase.

2.12 Compliance. A/E shall be responsible to ensure that all Services are performed according to and in compliance with: the Master Specifications; Design Standards; Procedure Manual; those matters identified in the Program; all applicable laws, rules, regulations, and codes; and other requirements of University.

2.13 Procedure Manual and Design Standards. In particular, shall be responsible to ensure that the following Services are performed according to and in compliance with the Procedure Manual and/or Design Standards, as applicable:

- a. Sub-Surface Investigation and Evaluation
- b. Sediment Control
- c. Sanitary Facilities
- d. Value Engineering
- e. Life Cycle Cost Accounting and Energy Conservations
- f. Sustainability
- g. Measurements

2.14 Procedure Memoranda. From time to time as may be appropriate, University may issue standards or regulations relative to design and/or construction of improvements. These regulations will be issued in the form of numbered Procedure Memoranda (“PM”) and A/E shall be obligated to perform the services in accordance therewith. In the event compliance with a PM issued after the date of the Agreement directly results in a change in the scope of the Services, such changes shall be incorporated, at A/E’s request, in a Change Order. The PMs in effect as of the date of the Agreement are set forth in Division III of the Procedure Manual.

2.15 Professional Liability Insurance. A/E shall obtain and maintain professional liability insurance specifically covering A/E’s obligations performed or to be performed under the Agreement, in the amounts, for the time(s), and under the conditions set forth in the RFP. Failure to do so shall be a material breach of A/E’s obligations under the Agreement. If A/E terminates as a business entity for any reason whatsoever or in any manner whatsoever, A/E shall obtain and provide for the maintenance of professional liability insurance specifically covering A/E’s obligations performed or to be performed under the Agreement, in the amount set forth in the RFP, for the remainder of the time set forth in the RFP. A/E shall have delivered to University, prior to the A/E Commencement Date and as a condition of the Agreement, a copy of any and all policies obtained in accordance with the Agreement and a certificate of insurance setting forth that the stated insurance is then in effect thirty (30) days prior to the expiration or termination of any insurance policy obtained by A/E pursuant to the Agreement, A/E shall deliver to University an insurance binder evidencing continued insurance coverage as required hereunder and a certificate of insurance on the effective date of the replacement policy. The insurance policy and any certificate shall be endorsed to provide that the insurance obtained shall not be terminated and shall not expire unless the Procurement Officer has received not less than thirty (30) days prior written notice.

2.16 Change in Personnel. A/E must notify University immediately of any major changes in its organization or personnel. A major change includes a change of the personnel identified in the Program or in any or all of those persons being unavailable to perform the services as indicated in the Program. A change in personnel identified in the Program requires the written approval by University via the issuance of an amendment to this Agreement.

### **ARTICLE III**

#### **AVAILABILITY OF FUNDS, FEES, AND PAYMENT**

3.1 Funds are available to be used for the Services during the Concept Phase (if any) and Schematic Design Phase in an amount equal to the fees and reimbursable amounts, if any, set forth in Exhibit A attached hereto and made part hereof. The fees and reimbursable amounts, if any, to be paid to A/E in connection with future Phases of the design (Design Development, Construction Documents, Bidding, Construction Administration, and Post-Construction) shall be subject to the availability of funds. A/E understands that the funds available under the Agreement (and if amended by a Project Amendment with respect to a Phase) are to include all fees and expenses payable to and incurred by A/E under the Agreement.

3.2 The amount of the funds originally available under the Agreement shall be set forth in Exhibit A. Any and all amendments to that amount specifically shall be stated as such in Change Orders, agreements for Additional Services, the subsequent Phase Amendment, or orders from University to A/E.

3.3 The compensation to be paid to A/E for the Services (including all fees and expenses) shall be in a total amount as set forth in Exhibit B, attached hereto and made part hereof, payable only from funds available for the Services as stated in and subject to the Agreement. A/E's fees allocated to each Phase shall be payable at the completion of the applicable Phase with no retainage held.

3.4 Notwithstanding anything in Section 3.3 to the contrary, A/E may apply to University by submitting invoices for payments on account against the fee allocated to each Phase respectively at intervals not more frequently than monthly. A/E will indicate the percentage of the Services in each Phase for which payment is requested. University will grant the application for payment only if University agrees that A/E has performed the indicated percentage of the Services. When required by University, A/E shall substantiate the degree of completion claimed in any such application for periodic payments, and furnish University with copies of the documents evidencing the degree of completion claimed.

3.5 A/E may request reimbursements only for those matters identified in the Program as reimbursables. Reimbursements in the aggregate shall not exceed the amount set forth in Exhibit B as allocated among the various Phases. There shall be no mark-up on reimbursement of actual costs.

3.6 The granting of A/E's application for periodic payments by University and remittance shall not constitute in any sense approval by University for the percentage of Services completed for a Phase or any part thereof, such approval being expressly reserved to University upon the completion of each Phase.

3.7 The compensation payable to A/E under the Agreement may be reduced by reason of additional costs of constructing the Project incurred by University or the Client University, as a result of A/E's errors in, or improper coordination of, the Construction Documents. The amount of such reduction in compensation, if any, shall not exceed the amount of such additional costs incurred in connection with constructing the Project. Reduction of the compensation to A/E as contemplated in this Section shall not be deemed to be a waiver by A/E of any rights and remedies it may have in connection with such reduction.

3.8 If the Project is abandoned or curtailed, or if University cancels the Agreement at any time for reasons other than default by A/E, A/E shall be paid a proportionate part of the compensation due and payable to A/E at the completion of the Phase wherein said abandonment, curtailment or cancellation occurs. Notice of abandonment, curtailment or cancellation may be oral, but shall be confirmed in writing within thirty (30) days by University, at which time A/E shall immediately file with University documents substantiating the status of the Services performed to the date of such action.

3.9 Requests for Payment.

a. Upon all applications for periodic payments of compensation (except the first such application), A/E shall certify in writing to University that all consultants whose work comprised a portion of the prior applications for periodic payment were paid in full to the extent paid by University to A/E within ten (10) days from receipt. All A/E invoices to University shall set forth A/E's Federal Employer Identification Number.

b. A/E shall submit each request for payment on the form provided by University.

c. A/E request for payment shall include one copy of the current monthly progress schedule.

d. All Services set forth in connection with a Phase and each prior Phase must be completed prior to payment in full for the fees allocated to each Phase (except for rendering(s) and 3-D model which are typically part of the Design Development Documents and shall be delivered during the Construction Document Phase as contemplated in Article VI).

e. University has the right to request substantiation to its satisfaction for all requests for payment.



### 3.10 Changes in the Work; Change Orders.

a. The Procurement Officer, may at any time, by written order, make unilateral changes within the general scope of this Agreement in any one or more of the following:

- (1) Description of services to be performed.
- (2) Time of performance (i.e., hours of the day, days of the week, etc.).
- (3) Place of performance.
- (4) Drawings, designs, or specifications when any supplies to be furnished are to be specially manufactured for the University in accordance with the drawings, designs, or specifications.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery

b. Section 3.11 prohibits the A/E from making charges or claims for damages for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Agreement. If a change, as allowed above, causes an increase or decrease in the cost of the work which is not time-related, the University shall make an equitable adjustment in the Agreement price and shall modify the Agreement.

### 3.11 Delays and Extensions; Liquidated Damages.

a. A/E agrees to prosecute the work continuously and diligently. 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 Work as specified in this Agreement.

b. Time extensions will be granted by the Procurement Officer only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of A/E, including without limitation acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with University, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors, consultants, or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of A/E or its subcontractors, consultants, or suppliers.

c. For each day that the Services or any portion thereof remain uncompleted beyond the times specified in the Agreement, A/E shall be liable for liquidated damages of **\$750.00** per day (which shall apply with respect to each Phase), or any other amount if stated elsewhere in the Agreement; *provided, however*, that due account shall be taken of any adjustment of specified completion time(s) for completion of the Services or any portion thereof as provided by University-approved Change Orders or Project Amendments. Time is of the essence in the Agreement.

## **ARTICLE IV CONCEPT PHASE**

4.1 This Article IV applies specifically to the Concept Phase, but is in addition to and not instead of any and all provisions of the Agreement applicable to the Concept Phase or all Phases.

4.2 The Concept Phase shall commence on the A/E Commencement Date, and shall terminate on the date of acceptance by University of the Concept Documents (but no later than the applicable date set forth in the Schedule). Acceptance of the Concept Documents shall be effective upon A/E's receipt of University's written approval.

4.3 In rendering professional services for preparation and furnishing of the Concept Phase requirements, in addition to any other matters A/E deems appropriate or necessary, A/E shall (i) visit the site of the Project, (ii) become familiar with the use, operational conditions, and limitations of the site, and (iii) obtain measurements and other information relative to existing improvements as required in the Program.

4.4 In accordance with the Schedule, A/E shall prepare and submit for University's approval concept documents ("**Concept Documents**") per the Procedure Manual for Professional A/E Services to illustrate the size and relationship of the Project components for each design alternate (minimum of 3),

## **ARTICLE V SCHEMATIC DESIGN PHASE**

5.1 This Article V applies specifically to the Schematic Design Phase, but is in addition to and not instead of any and all provisions of the Agreement applicable to the Schematic Design Phase or all Phases.

5.2 The Schematic Design Phase shall commence on the A/E Commencement Date, and terminate on the date of acceptance by University of the Schematic Design Documents (but no later than the applicable date set forth in the Schedule). Acceptance of the Schematic Design Documents shall be effective upon A/E's receipt of University's written approval.

5.3 In rendering professional Services for preparation and furnishing of the Schematic Design Phase requirements, in addition to any other matters A/E deems appropriate or necessary, A/E shall (i) visit the site of the Project, (ii) become familiar with the use, operational conditions, and limitations of the site, and (iii) obtain measurements and other information relative to existing improvements as required in the Program.

5.4 In accordance with the Schedule, A/E shall prepare and submit documents ("**Schematic Design Documents**") per the Procedure Manual for Professional A/E Services for University's approval.

5.5 As part of the Schematic Design Documents, A/E shall provide to University a construction cost estimate, wherein the Probable Construction Cost shall not exceed the Project Construction Cost. If it does, A/E, without additional compensation, in conjunction with CM and University, shall re-design the Project as necessary to maintain the Project Construction Cost.

5.6 When directed by University, the data generated by A/E in this Phase shall be reviewed by the State Board of Architectural Review prior to acceptance by University.

## **ARTICLE VI DESIGN DEVELOPMENT PHASE**

6.1 This Article VI applies specifically to the Design Development Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Design Development Phase or all Phases.

6.2 The Design Development Phase will commence with the acceptance of the Schematic Design Documents, and will terminate upon acceptance by University of the Design Development documents (saving and excepting the rendering and model), but no later than the applicable date indicated on the Schedule. Acceptance of the Design Development Documents shall be effective upon A/E's receipt of University's written approval.

6.3 Upon commencement of the Design Development Phase, A/E shall prepare and submit documents ("**Design Development Documents**") per the Procedure Manual for Professional A/E Services for University's approval

a. Professionally prepared color perspective rendering(s) per the final Fee Proposal in a suitable medium when required by the Program. The rendering shall include related existing improvements which may have an aesthetic bearing on the project. This rendering, approved by University, shall be delivered to University not later than completion of 50% of the Construction Documents Phase.

b. A professionally prepared computer model to be used as a public relations tool by University, as required by the Program. This computer model, approved by University, shall be delivered to University not later than completion of 50% of the Construction Documents Phase.

6.4 As part of the Design Development Documents, A/E shall prepare a construction cost estimate based upon a labor and material take-off. A/E shall make this take-off from the other Design Development

Documents, applying costs currently prevailing in the jurisdiction where the Project is located. The Probable Construction Cost shall not exceed the Project Construction Cost for each Phase of a multi-phase project. If it does, A/E, without additional compensation, in conjunction with CM and University, shall re-design as necessary to maintain the Project Construction Cost.

6.5 When directed by University, the materials generated by A/E in this Phase shall be reviewed by the State Board of Architectural Review prior to acceptance by University.

## **ARTICLE VII CONSTRUCTION DOCUMENTS PHASE**

7.1 This Article VII applies specifically to the Construction Documents Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Construction Documents Phase or all Phases.

7.2 The Construction Documents Phase will commence with the acceptance of the Design Development Documents (except for the professional rendering(s) and professional computer model, each of which shall be delivered as required in Section 6.3) and will terminate upon acceptance by University of 100% Construction Documents (but not later than the applicable date indicated on the Schedule). Acceptance of 100% Construction Documents shall be effective upon A/E's receipt of University's written approval.

7.3 Upon commencement of the Construction Documents Phase, A/E shall prepare the required set of drawings and specifications ("**Construction Documents**"), per the Procedure Manual for Professional A/E Services for University's approval, including without limitation to architectural, site, structural, mechanical, and electrical.

7.4 As part of the Construction Documents, A/E shall prepare for University's approval a statement of review of CM's construction cost estimate updates as required in Section 2.11 of this Agreement. A professional cost estimator shall be retained by A/E for this purpose and shall use costs and area/volume calculations prevailing where the Project is located. A/E shall prepare a detailed written review which will state if A/E accepts or rejects CM's cost model updates under review and shall include in detail: (i) the reasons that CM's cost model update was rejected or accepted; (ii) a summary of the significant differences between CM's current cost model and the next previous CM's cost model and A/E's construction cost estimates provided in the Design Development Phase; and (iii) such other matters as A/E deems appropriate. A/E must reject CM's cost model update if it exceeds the Project Construction Cost. The statement of review and supporting documentation shall be provided to University.

7.5 If, in the exercise of A/E's professional judgment, A/E finds that such Probable Construction Costs set forth in the cost model update prepared by CM will exceed the Project Construction Costs, and if A/E is unable to effect cost reduction revisions in the Construction Documents without deviating from the design and intent of the previously approved documents, A/E: (1) shall advise University in writing; and (2) shall await instructions which University shall issue to A/E concerning future action to be taken under the Agreement. The instructions issued by University at its sole discretion shall include redesign of the Project as necessary in conjunction with CM and University to meet the Project Construction Cost without additional compensation.

7.6 A/E will utilize the standard Construction Specifications Institute (CSI) specification layout and numbering system. The specification must be consistent with University General Conditions for Construction (or GMP) as applicable, which University will provide to the A/E.

7.7 Upon completion of Construction Documents for each bid package in multi-phase or fast track projects, A/E will submit one (1) electronic copy (and paper copies as required) of the documents to University for review and approval. The Construction Documents will be provided in one package.

7.8 When directed by University, the data generated by A/E in this Phase shall be presented and reviewed by the State Board of Architectural Review, State Fire Marshall, and any other agencies as required by the Program, prior to acceptance by University.

## **ARTICLE VIII BIDDING PHASE**

8.1 This Article VII applies specifically to the Bidding Phase, which at University's discretion may be broken into separate sub-phases (or "packages"), but is in addition to and not instead of any and all provisions in the Agreement applicable to the Bidding Phase or all Phases.

8.2 a. The Bidding Phase will commence with University's acceptance of the Construction Documents and will terminate upon acceptance of the Guaranteed Maximum Price (as defined below) by University, but no later than the applicable date as indicated on the Schedule.

b. Notwithstanding anything herein to the contrary, at University's sole discretion, the Bidding Phase shall commence (i) solely in connection with the work referred to in the "first project phase package" (separated by building and utilities), upon University's acceptance of the "first project phase package," and (ii) in connection with the work referred to in the "second project phase package" (separated by building and utilities) upon University's acceptance of the "second project phase package."

c. Commencement of the Bidding Phase as contemplated in this Section, if authorized by University, shall not relieve A/E in any manner whatsoever from its obligations to comply with Section 7.4 and 7.5 at the times designated, determined in reference to all Construction Documents.

8.3 At the commencement of the Bidding Phase, A/E shall provide University, for bidding and construction purposes, one electronic copy of the 100% Construction Documents.

8.4 The CM will request bids for the Construction of the Project in those bidding packages identified in the Program.

8.5 A/E shall interpret documents during the Bidding Phase and shall attend a pre-bid conference for each bidding package.

8.6 At University's request, A/E shall attend the opening of the bids received by CM in connection with the Project. A/E shall attend the Scope Reviews of all major trade work.

8.7 If the Guaranteed Maximum Price ("GMP") proposed by CM exceeds either (i) the Project Construction Costs or (ii) either the funds appropriated by the State Legislature or allocated by the Client University or USM for the construction of the Project, A/E shall analyze the bids or proposals and make recommendations to University as to ways and methods to reduce the costs of constructing the Project to a sum which does not exceed said appropriation or allocation, except as agreed to or directed in writing by University. Such recommendations shall not include any deletions which render the Project incomplete (except to the extent contemplated by the Program) except as agreed to or directed by University. In addition, A/E, after consultation with University, shall alter or redraft the Construction Documents as necessary to accomplish the necessary reduction in cost and shall repeat as necessary or appropriate the services provided in this or other Phases.

8.8 If the GMP exceeds the funds appropriated by the State Legislature or allocated by the Client University or USM, University, for the construction of the Project due to a delay in the bidding of the project, the services A/E is required to perform as contemplated in Section 8.7 may be submitted by A/E for consideration in a Change Order. However, if CM's GMP Amount exceeds the funds appropriated or allocated for construction of the Project, no adjustment shall be made to A/E's compensation to perform its obligations under this Agreement.

## **ARTICLE IX CONSTRUCTION ADMINISTRATION PHASE**

9.1 This Article IX applies specifically to the Construction Administration Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Construction Administration Phase or all Phases.

9.2 The Construction Administration Phase will commence on the Construction Commencement Date, and terminate on the date of final acceptance by University of the construction of the Project (but no later than the applicable date indicated on the Schedule).

9.3 Upon commencement of the Construction Administration Phase, A/E shall undertake the Services as set forth in the Program and the Procedure Manual for Professional A/E Services required during the Construction Administration Phase.

9.4 A/E shall consult with University as the construction of the Project progresses. All of University's and A/E's instructions to CM shall be issued by University, through the Project Manager, or by another designated representative of University.

9.5 A/E shall make periodic visits to the Project as required by the progress of the construction work or as requested by University and shall attend progress meetings to attain familiarity with the progress and quality of the construction and to determine in general if the construction of the Project is proceeding in accordance with the Construction Documents. In making such periodic visits to the site and on the basis of such on-site observations, A/E shall guard University against defects and deficiencies in the construction work and shall report to University any observed defect or observed deficiency.

9.6 A/E shall not be responsible for: (i) construction means, methods, techniques, sequences and procedures, or for safety precautions and programs in connection with the construction; (ii) CM's failure to carry out the construction in accordance with the Construction Documents; or (iii) and the acts or omissions of CM or any subcontractors, or any of CM's or subcontractors' agents or employees, or any persons performing any of the construction; saving and excepting to the extent A/E has approved the same or has knowledge of the same and has not made a report thereof to University.

9.7 A/E shall assist University, as it may request, in interpreting the requirements of the Construction Documents, in making decisions on all claims of University or CM relating to the execution and progress of the construction, and on all other matters or questions related thereto.

9.8 A/E shall recommend to University rejection of construction which, in A/E's reasonable opinion, does not conform to the Construction Documents. A/E shall recommend that University require CM to stop the construction whenever, in A/E's reasonable opinion, it may be necessary for the proper performance of the construction. In discharging the foregoing responsibility, A/E shall act through University and issue such recommendations to University.

9.9 A/E shall review and take other appropriate action upon CM's submittals such as shop drawings, product data, and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. A/E's action shall be taken promptly (within two (2) weeks of receipt) so as to cause no delay in the work, while allowing sufficient time in A/E's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining accuracy and completeness or other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractors, all of which remain the responsibility of the CM to the extent required by the Construction Documents except as may be grossly different from the Construction Documents. A/E's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by A/E, of construction means, methods, techniques, sequences or procedures. A/E's acceptance of a specific item shall not indicate acceptance of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Construction Documents, A/E shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Construction Documents.

9.10 A/E shall assist University in reviewing requests for Change Order for the construction of the Project with regard to scope only.

9.11 A/E shall provide drawings as may be necessary to explain construction details.

9.12 A/E shall be responsible for the preparation (including University comments for review), review, and resolution of punch list items. Upon completion of the punch list, A/E shall verify work completed.

9.13 A/E shall prepare a full set of record drawings showing the “as-built” condition of the Project (including without limitation the locations of all utilities) based on A/E’s own records of Change Orders and upon as-built information supplied by CM. University will require CM to keep up-to-date marked prints of the as-built conditions upon CM’s copy of the Construction Documents, with all notations necessary to form the basis of the record drawings prepared by A/E. A/E will notify University in writing not later than four (4) weeks after substantial completion of the Project of any information required to prepare the record drawings that has not been supplied by CM. Record drawings shall be turned over to University within four (4) months of substantial completion of the Project or, if A/E has given University the notice contemplated above, within four (4) months after receipt of all information from CM. In addition to the reproducible manual record drawings, A/E shall supply record drawings in accordance with the Procedure Manual.

## **ARTICLE X POST-CONSTRUCTION PHASE**

10.1 This Article X applies specifically to the Post-Construction Phase, but is in addition to and not instead of any and all provisions in the Agreement applicable to the Post-Construction Phase or all Phases.

10.2 The Post Construction Phase shall commence upon the termination of the Construction Administration Phase, and shall terminate upon complete performance of all obligations on the part of A/E under this Agreement.

10.3 During the the prescribed warranty period applicable to CM’s work, A/E’s representative shall make visits to Project for as required in the Program and the Procedure Manual for Professional A/E Services on a date or dates specified by University. The purpose and intent of such visits is to aid University in resolution of warranty claims. University at its sole discretion may request A/E’s advice concerning corrective any actions to be taken by University and by CM or both, and A/E shall provide University with a written report of any visits.

10.4 A/E shall provide the insurance required in Section 2.16 throughout the Post-Construction Phase.

## **ARTICLE XI ASSISTANCE BY UNIVERSITY**

11.1 Unless otherwise specifically stated in the Program or the Agreement, University will furnish to A/E in a timely fashion, or at University’s sole discretion reimburse A/E for the cost of furnishing:

- a. A complete and comprehensive written Project Program.
- b. All necessary survey and topographic information, including pertinent data concerning all applicable rights of way, easements, restrictions, etc.
- c. Laboratory or other tests required by University to obtain basic data.
- d. All standard forms (including without limitation payment request contract, bond, and Change Order) to be used by A/E in performing the Services. Notwithstanding anything herein to the contrary, University shall provide A/E with a sample of those standardized forms and A/E shall make copies for its use from time to time as necessary. In the event a standard form is not provided, A/E shall use its own forms, provided the same are reasonably satisfactory to University.
- e. All necessary approvals for the orderly progress of Services in accordance with the Schedule.

11.2 University will prepare for execution and transmit to A/E, CM, and other parties concerned all contract forms and Change Order forms, when approved.

## ARTICLE XII OWNERSHIP OF DOCUMENTS; COPYRIGHTS

12.1 All drawings, models, specifications and other documents (including electronic versions) prepared by A/E pursuant to the Agreement are the property of University, and shall be delivered to University at the required intervals and upon completion of the Project. In addition, all drawings, models, specifications and other documents (including electronic versions) in progress are the property of University and shall be delivered to University promptly in the event of termination of the Agreement prior to completion of the Project. A/E shall be responsible for the protection and/or replacement of any Construction Documents or other drawings, models, specifications and other documents (including electronic versions) in its possession, as described in the various Phases. University shall receive all original drawings, models, specifications and other documents (including electronic versions) per University's CAD and other standards, and A/E shall retain a reproducible copy.

12.2 The drawings, models, specifications and other documents (including electronic versions) prepared by A/E pursuant to the Agreement shall not be used by University or others on other projects, for additions to the Project or for completion of the Project by others, unless A/E is adjudged to be in default under the Agreement, except by agreement in writing and with appropriate compensation to A/E.

12.3 If the Agreement is in connection with one or more Phases but less than the entire Project, and notwithstanding anything herein to the contrary, the drawings, models, specifications and other documents (including electronic versions) shall be used in University's sole discretion without the consent of and without additional compensation to A/E, for design and/or construction of the portion of the Project not covered by the Agreement.

12.4 a. A/E hereby waives for the benefit of UMB and hereby transfers fully to UMB free and clear of any and all restrictions, liens and limitations whatsoever, any and all ownership rights and copyright rights and rights appurtenant thereto in any architectural works (as defined in the Architectural Works Copyright Protection Act, as amended from time to time) produced within the scope of the Agreement ("**Architectural Rights**"). A/E shall cause the Architect of Record, each and every person employed by it, each of its officers, each and every consultant engaged by it, and each and every contractor engaged by it, all in connection to the Agreement who respectfully may have enjoyed or may in the future enjoy Architectural Rights to waive in writing for the benefit of UMB and to transfer fully to UMB free and clear of any and all restrictions, liens and limitations whatsoever any and all Architectural Rights that they, their employees, consultants, officers and agents may enjoy. A/E, as a condition of payment from time to time, shall deliver to UMB the waivers and transfers executed as contemplated herein and a representation of A/E that such writings have been obtained from each Architectural Rights Person. A/E shall include a provision substantially like this Section in its agreement with each consultant and contractor engaged by it in connection with the Agreement.

b. In addition, A/E hereby waives its rights under the Architectural Works Copyright Protection Act or other sections of the United States copyright laws, as now in effect or as amended from time to time, with respect to UMB's use of the architectural works produced pursuant to the Agreement. This waiver shall be effective if it is determined that the transfer of ownership of copyright is invalid or limited in scope so as to apply only to a portion of the architectural works.

c. To the extent permitted by law, the work product required by the Agreement shall be considered a "work made for hire" under the copyright laws of the United States and applicable common law. UMB shall have sole right and authority to seek statutory copyright protection and to enjoy the benefits of ownership of the title and interest in and to the Work.

## **ARTICLE XIII DISPUTES**

13.1 Except as may otherwise be provided by law, all disputes arising under or as a result of a breach of the Agreement which are not resolved by mutual agreement shall be resolved in accordance with the USM Procurement Policies & Procedures and this Article XIII.

13.2 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 the Agreement. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, where the submission is subsequently not acted upon in a reasonable time, or disputed as to either liability or amount, it may be converted to a claim for the purpose of this clause.

13.3 A claim shall be made in writing and submitted to the Procurement Officer for decision in consultation with the Office of the Attorney General within thirty (30) days of when the basis of the claim was known or should have been known, whichever is earlier.

13.4 When a claim cannot be resolved by mutual agreement, A/E shall submit a written request for final decision to the Procurement Officer. The written request shall set forth all the facts surrounding the controversy.

13.5 At the direction of the Procurement Officer, A/E may be afforded an opportunity to be heard and to offer further evidence in support of its claim.

13.6 The Procurement Officer shall render a written decision on all claims within one hundred eighty (180) days of receipt of the A/E's written claim, unless the Procurement Officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within one hundred eighty (180) days, the Procurement Officer shall notify the contractor of the time within which a decision shall be rendered and the reasons for such time extension. The 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.

13.7 The Procurement Officer's decision shall be final and conclusive, unless A/E files a written appeal with the Maryland State Board of Contract Appeals within thirty (30) days of receipt of the decision.

13.8 Pending resolution of a claim, A/E shall proceed diligently with the performance of the Agreement in accordance with the Procurement Officer's decision.

## **ARTICLE XIV SUSPENSION; TERMINATION**

### **14.1 Suspension of the Services.**

The Procurement Officer may suspend, delay, or interrupt all or any part of the Services for such period of time as the Procurement Officer determines to be appropriate for the convenience of the University.

### **14.2 Termination by University.**

a. The performance of the Services may be terminated by 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 A/E of a Notice of Termination issued by the Procurement Officer specifying the extent to which performance of work under the Agreement is terminated and the date upon which such termination becomes effective.

b. University will pay all reasonable costs associated with the Agreement that A/E has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However,



A/E shall not be reimbursed for any anticipatory profits or fees which have not been earned up to the date of termination.

#### 14.3 Termination for Default.

a. If A/E fails to fulfill its obligations under the Agreement properly and on time, or otherwise violates any provision of the Agreement, University may terminate the Agreement by written notice to A/E. The notice shall specify the acts or omissions relied on as cause for termination. In this event, the University may take over the Services and prosecute it to completion, by contract or otherwise, and all finished or unfinished documents, supplies and services prepared or provided by A/E shall be University's property.

b. University shall pay A/E fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by A/E's breach. However, A/E shall not be reimbursed for any anticipatory profits or fees which have not been earned up to the date of termination. If the damages are more than the compensation payable to A/E, A/E will remain liable after termination and University can affirmatively collect damages. Termination of the Agreement as contemplated in this Section shall not be deemed to be a waiver by A/E of any rights and remedies it may have.

#### 14.4 Multiyear Contracts Contingent Upon Appropriations

a. If the General Assembly fails to appropriate funds or if funds are not otherwise made available by University for continued performance for any fiscal period of the Agreement (including any extensions hereof) succeeding the first fiscal period, the Agreement 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 University's rights or A/E's rights under any termination clause in the Agreement.

b. The effect of termination of the Agreement hereunder will be to discharge both A/E and University from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. A/E shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. University shall notify A/E as soon as it has knowledge that funds may not be available for the continuation of the Agreement for each succeeding fiscal period beyond the first.

### ARTICLE XV MISCELLANEOUS

15.1 Governing Law; Jurisdiction; Waiver of Trial by Jury. The provisions of the Agreement shall be governed by the laws of the State of Maryland (without regard to the principles of conflicts of laws that would require the application of any other law).

15.2 USM Procurement Policies & Procedures. The regulations set forth in USM Procurement Policies and Procedures in effect on the date of execution of the Agreement are applicable to the Agreement.

15.3 Transfer of A/E's Responsibilities. A/E may not assign the Agreement or transfer any interest in the Agreement except with the written approval of University.

15.4 Substitution. If any cause or reason whatsoever necessitates substitution by University of another person or firm in place of A/E hereto in order to complete the Services, University in its sole discretion shall determine the division of the fee between the substitute and A/E.

15.5 Waiver. University in its sole discretion may but is not obligated to waive specific minor provisions of this Agreement on specific request by A/E, in the interest of expediting the Project. Any such waiver shall be in writing and shall not constitute justification for A/E preparing an incomplete design or constitute a waiver of any liability ensuing therefrom. A/E shall not be entitled to any waiver granted in any individual instance as evidence that a waiver is available or has been granted in any other instance, or all instances.

15.6 Crimes Related to Procurement of the Work. If A/E, or any of its officers, partners, principals or employees, is convicted of a crime arising out of or in connection with the procurement of work to be done or payment to be made under the Agreement, the Agreement, in the discretion of University, may be terminated. Upon such termination A/E shall be paid only the earned value of work performed to the date of termination and shall refund any and all profits, or fixed fee, realized under the Agreement, and A/E shall be liable to University for any costs incurred by it over and above the maximum amount payable to A/E as set forth in the Agreement, in completing the work undertaken by A/E in the Agreement. The sanctions provided hereunder shall be applicable, as appropriate in the discretion of University, to any such conviction after the expiration of the term of the Agreement as well. The rights and remedies set forth herein shall be in addition to, and the exercise thereof shall in no way be considered or construed as a waiver of, any other rights or remedies granted or available to University.

15.7 Covenant Against Employment of State Personnel. No employee of University or any department, commission, agency or branch of the State of Maryland, whose duties as such employee include matters relating to or affecting the subject matter of the Agreement, shall, while so employed, become or be an employee of the party or parties hereby contracting with University.

15.8 Non-Discrimination. A/E agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, sexual orientation, national origin, ancestry, or physical or mental disability unrelated in nature and extent so as not reasonably to preclude the performance of such employment. A/E shall include a similar provision in any subcontract. A/E shall post, and shall cause subcontractors to post, notices setting forth the substance of this paragraph in conspicuous places available to employees and applicants for employment.

15.9 Audit and Retention of Records. A/E shall retain and maintain all records and documents relating to this Agreement for three (3) years after final payment by University hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of University, including the procurement officer or designee, at all reasonable times.

15.10 Contract Affidavit. A/E shall execute University's standard form of Contract Affidavit as part of the Agreement, prior to the award of the contract.

15.11 Financial Disclosure. A/E shall comply with §13-221 of the State Finance and Procurement Article, Ann. Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its units or both, under which it receives a total of \$100,000 or more during a calendar year shall file with the Maryland Secretary of State a list containing the names and addresses of its resident agent, each of its officers, and any individual who is a beneficial owner of 5% or more of A/E.

15.12 Reports of Political Contributions. A/E shall comply with, and shall require its officers, directors, and employees to comply with, § 14-101 *et seq.* of the Election Law Article, Ann. 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.

15.13 Observance of Rules. Employees and agents of A/E shall comply with all rules and regulations of University or the Client University while on the premises of University or the Client University respectively. A/E shall not interfere with University, or the Client University's operations or stop, delay or interfere with use of any of University's facilities without prior approval.

15.14 Avoidance of Labor Disputes. In performance of the Agreement, A/E shall not knowingly employ any person or persons, or use any equipment or materials, or allow any condition to exist, if any such, in the opinion of University, may cause or be conducive to any labor complaints, trouble, dispute or controversy at University or in any other respect may be objectionable to University. University's determination shall be

conclusive on A/E and upon notice from University A/E shall immediately withdraw from University property as required in the notice all persons, equipment or materials specified in the notice, shall replace them with unobjectionable persons, equipment and materials, and shall immediately rectify whatever condition or conditions may be specified in the notice.

15.15 Payments. Payments to A/E pursuant to the Agreement shall be made no later than thirty (30) days after University's receipt of a proper invoice from A/E. Charges for late payment of invoices are prohibited, other than as prescribed by Title 15, Subtitle 1, of the State Finance Article and Procurement Article, Ann. Code of Maryland.

15.16 A/E Representations and Warranties. A/E hereby represents and warrants that:

a. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

b. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Agreement;

c. It shall comply with all documented federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under the Agreement; and,

d. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under the Agreement.

15.17 Truth in Negotiation Certification. A/E, by submitting cost or price information (including without limitation wage rates or other factual unit costs), certifies to the best of its knowledge, information, and belief, that:

a. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the Proposal, are accurate, complete and current as of the date of execution of the Agreement.

b. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete, or noncurrent wage rates or other units of costs, University is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. University's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual consultant or subcontractor.

c. If additions are made to the original price of the Agreement, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete, or noncurrent wage rates and other factual costs.

15.18 Contractual Relationship. Nothing contained herein shall be deemed to create any contractual relationship between A/E and CM or any of its Contractors, Subcontractors, or material suppliers on the Project; nor shall anything contained in the Agreement be deemed to give any third party any claim or right of action against University or A/E which does not otherwise exist without regard to the Agreement.

15.19 Amendments. The Agreement may be amended by agreement of the authorized representatives of the parties. All amendments must be in writing and signed by the parties to the agreement.

15.20 Partnership as Joint Venture. If A/E is a joint venture or a partnership, the following provisions shall apply:

a. The partnership or joint venture agreement shall not be terminated or amended in any material aspect prior to the final acceptance of the Project;

b. There shall be no additions or withdrawals of partners or joint venturer in A/E except for individuals who are admitted to partnership in the ordinary course of business;

c. The insurance required under the Agreement shall be a joint and several obligation of all joint venturers and partners in A/E.

15.21 Indemnification.

a. To the fullest extent permitted by law, A/E shall indemnify and hold harmless USM, University, any Client University, the State of Maryland, and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, or loss or expense: (1) is attributable to bodily injury, sickness, disease, or death 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 A/E, or its consultants, subcontractors, their employees, or anyone directly or indirectly employed by any of them, including without limitation (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 any of them if such giving or failure to give is the primary cause of the injury or damage. 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 of person described in this paragraph

b. The State, USM, University, and any Client University shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this Agreement.

15.22 Minority Business Enterprise (MBE) Participation. A/E hereby agrees to enter into contract(s) with the minority consultants for performance of work under this Agreement set forth on Exhibit C.

*{Signatures on following page}*

**SIGNATURE PAGE TO  
STANDARD FORM OF AGREEMENT WITH ARCHITECTS & ENGINEERS**

IN WITNESS WHEREOF, the Agreement is executed for the parties by their authorized representatives or officers as of \_\_\_\_\_ 20\_\_.

WITNESS:

UNIVERSITY OF MARYLAND, BALTIMORE

\_\_\_\_\_

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

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

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

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

WITNESS/ATTEST:

\_\_\_\_\_  
*Firm Name*

\_\_\_\_\_

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

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

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

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

***Budgetary Data:***

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

*Title* \_\_\_\_\_

***Approved by Board of Public Works:***

*Item No.* \_\_\_\_\_

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

**STANDARD FORM OF AGREEMENT WITH  
ARCHITECTS & ENGINEERS**

**EXHIBIT A**  
**AVAILABILITY OF FUNDS**

---

University has available funds in the total amount of \_\_\_\_\_ (\$ \_\_\_\_\_) provided by capital appropriations funds to be used for architectural services in connection with the Project. It is understood that said funds are to include all fees and expenses of A/E for the Design Phase of the Project. The stated funds may not be added to or supplemented except by appropriate University action.

**STANDARD FORM OF AGREEMENT WITH  
ARCHITECTS & ENGINEERS**

**EXHIBIT B**

**A/E COMPENSATION FOR THE PROJECT**

---

The total fees to be paid to A/E for Services provided for the Project pursuant to the Agreement shall be \_\_\_\_\_ (\$ \_\_\_\_\_), which shall be the total compensation for all Phases of the Project.

It is understood that the total fee amount to be paid shall be divided among each of the Phases as follows: \_\_\_\_\_.

**STANDARD FORM OF AGREEMENT WITH  
ARCHITECTS & ENGINEERS**

**EXHIBIT C**

**MINORITY BUSINESS ENTERPRISE PARTICIPATION**

---

Name of Consultant	MDOT Certif. #	Type of Work(NAICS)	Amount	Contract %
TOTAL OF MBE CONSULTANTS:				



# **ATTACHMENT C**

## **TOWSON UNIVERSITY MAP**

Can be found on website

[www.towson.edu/maps/index](http://www.towson.edu/maps/index)

## **ATTACHMENT D**

Intentionally Omitted

# ATTACHMENT E

## UMB POLICY FOR TRAVEL REIMBURSEMENT AND MILEAGE

PER DIEM RATES FOR MEALS/MILEAGE EFFECTIVE JANUARY 1, 2019:

BREAKFAST	\$ 10.00
LUNCH	\$ 12.00
DINNER	\$ 25.00
TOTAL	\$ 47.00/DAY
MILEAGE RATE FOR PERSONAL VEHICLE	\$ .58/PER MILE

## **ATTACHMENT F**

Intentionally Omitted

# **ATTACHMENT G**

**FEE PROPOSAL FORM**  
(To be furnished to shortlisted firm)

# **ATTACHMENT H**

**MBE Forms and Instructions  
(H-1A through H-6)**

## **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 [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

### Subgoals (if applicable)

Total African American MBE Participation:	<u>6</u>	%
Total Hispanic American MBE Participation:	<u>2</u>	%
Total Women-Owned MBE Participation:	<u>9</u>	%

### Overall Goal

Total MBE Participation (include all categories):	<u>30</u>	%
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## **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. \_\_\_\_\_, I affirm the following:

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

☐ I acknowledge and intend to meet IN FULL both the overall certified Minority Business Enterprise (MBE) participation goal of 30 percent and all of the following subgoals:

9 percent for African American-owned MBE firms

2 percent for Hispanic American-owned MBE firms

6 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.

## **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
	TU Bikeway Loop	19-012 AE-CB

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 <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><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%) <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 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 (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</b></p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)).</b> Total percentage of Supplies/Products _____ % X 60% = _____ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) _____ %</b></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 <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><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%) <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 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 (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</b></p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)).</b> Total percentage of Supplies/Products _____ % X 60% = _____ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) _____ %</b></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 <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><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%) <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 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 (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</b></p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule).</b> Total percentage of Supplies/Products _____ % X 60% = _____ %</p> <p><b>C. Percentage amount of fee where the MBE firm is being used as broker (count reasonable fee/commission only) _____ %</b></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 <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><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%) <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 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 (excluding products/services from suppliers, wholesalers, regular dealers and brokers) _____ %</b></p> <p><b>B. Percentage amount for items of work where the MBE firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule)).</b> 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

**PART 4 – SIGNATURE PAGE**

**To complete Affidavit committing to MBE(s) or requesting waiver,  
bidder/offeror must sign below**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**



# MBE ATTACHMENT H-1B WAIVER GUIDANCE

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

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

### I. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### C. Solicit MBEs

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

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

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

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

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

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

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

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

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

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

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

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

### D. Negotiate With Interested MBE Firms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## E. Assisting Interested MBE Firms

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

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

## III. Other Considerations

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

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

## IV. Documenting Good Faith Efforts

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

### A. Items of Work (Complete Good Faith Efforts Documentation Attachment 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. \_\_\_\_\_  
 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  
 Date

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 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
	TU Bikeway Loop	19-012 AE-CB

**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
	TU Bikeway Loop	19-012 AE-CB

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

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

☐ Please check if Additional Sheets are attached.

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

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

Prime Contractor	Project Description	Solicitation Number
	TU Bikeway Loop	19-012 AE-CB

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 (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Date: <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email	Time of Call: Spoke With: <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
<b>Firm Name:</b> <hr/> <b>MBE Classification (Check only if requesting waiver of MBE subgoal.)</b> <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American-Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		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
	TU Bikeway Loop	19-012 AE-CB

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. 19-012 AE-CB, 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. 19-012 AE-CB, 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 \_\_-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. 19-012 AE-CB, 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:

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

**MBE PRIME CONTRACTOR**

Signature of Representative:

\_\_\_\_\_

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

\_\_\_\_\_

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

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

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

\_\_\_\_\_

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

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

**MBE Attachment H-4A**  
**Procurement Services**  
**Minority Business Enterprise Participation**  
**Prime Contractor Paid/Unpaid MBE Invoice Report**

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

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

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

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

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

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

This form must be completed  
monthly by all MBE subcontractors.

## Sample MBE ATTACHMENT H-5

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

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

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

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



**MBE Attachment H-4B**  
**Procurement Services**  
**Minority Business Enterprise Participation**  
**MBE Prime Contractor Report**

<p>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></p>	<p>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: _____</p>
---	--

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

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

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

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

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

Kathy Bordenski University of Maryland, Baltimore Strategic Sourcing and Acquisition Services 220 Arch Street, Rm. 02-100 Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: kbordenski@umaryland.edu
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**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:	
Subcontractor Services Provided:			
<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> <b>Total Dollars Paid: \$</b> _____         </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> <b>Total Dollars Unpaid: \$</b> _____         </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: \_\_\_\_\_

---

Kathy Bordenski  
University of Maryland, Baltimore  
Strategic Sourcing and Acquisition Services  
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Baltimore, MD 21201 Phone: 410.706.5122 Fax: 410.706.8577 eMail: kbordenski@umaryland.edu

## MBE Attachment H-6

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

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

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

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

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

# **ATTACHMENT I**

## **Schedule SBR**

# ATTACHMENT I: SCHEDULE SBR

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

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

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

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

AND

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

OR

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

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

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