



STATE OF MARYLAND

MDOT MARYLAND DEPARTMENT OF TRANSPORTATION,
MARYLAND PORT ADMINISTRATION
(MDOT MPA)
OFFICE OF PROCUREMENT

REQUEST FOR PROPOSALS (RFP)
PORT OF BALTIMORE MAGAZINE
RFP NUMBER 223016-S

ISSUE DATE: MARCH 7, 2023

NOTICE TO OFFERORS

Prospective Offerors who have received this document from a source other than eMaryland Marketplace Advantage (eMMA) should register on eMMA at emma.maryland.gov. In the event it becomes necessary to revise any part of the RFP, or if additional information is required to enable potential Offerors to interpret the provisions of the RFP, an amendment will be issued by the Procurement Officer and posted on eMMA. **PROSPECTIVE OFFERORS SHOULD REVIEW eMMA PERIODICALLY TO DETERMINE WHETHER OR NOT MDOT MPA HAS ISSUED AN AMENDMENT TO THIS RFP.** MDOT MPA is not responsible for notifying Offerors of amendments to the RFP other than by posting them on eMMA.

The sole point of contact in the State for purposes of the RFP is the Procurement Officer.

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO
RESPOND TO THIS SOLICITATION**

NO PROPOSAL NOTICE/VENDOR FEEDBACK FORM

To help MDOT MPA improve the quality of its solicitations, and to make the procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet for contact information).

Title: Port of Baltimore Magazine
Solicitation No: 223016-S

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:
 - Other commitments preclude our participation at this time.
 - The subject of the solicitation is not something we ordinarily provide.
 - We are inexperienced in the work/services required.
 - Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
 - The scope of work is beyond our present capacity.
 - Doing business with the State is simply too complicated. (Explain in REMARKS section.)
 - We cannot be competitive. (Explain in REMARKS section.)
 - Time allotted for completion of the Proposal is insufficient.
 - Start-up time is insufficient.
 - Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
 - Proposal requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
 - MBE or VSBE requirements. (Explain in REMARKS section.)
 - Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
 - Payment schedule too slow.
 - Other: _____

2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS:

Vendor Name: _____ Date: _____

Contact Person: _____ Phone (____) _____ - _____

Address: _____

Email Address: _____

STATE OF MARYLAND
MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND PORT ADMINISTRATION
KEY INFORMATION SUMMARY SHEET

Request for Proposals	Port of Baltimore Magazine
Solicitation Number:	223016-S
RFP Issue Date:	March 7, 2023
RFP Issuing Office:	Maryland Department of Transportation Maryland Port Administration (MDOT MPA)
Procurement Officer:	Trisha O’Neal 401 E. Pratt Street, Suite 1100, Baltimore, MD 21202
Email:	toneal3@marylandports.com
Office Phone:	410-385-4849
Proposals are to be sent to:	toneal3@marylandports.com
Site Visit:	N/A
Pre-Proposal Meeting:	March 14, 2023 at 9:30 AM Local Time Meeting will be held via Microsoft Teams - Join on your computer, mobile app or room device Click here to join the meeting or call +1 667-262-2962 and use Conference ID code: 382 159 538# RSVP to toneal3@marylandports.com no later than March 13, 2023 at 3:30 PM Local Time
Questions Due Date and Time	March 21, 2023 by 11:00 am Local Time
Proposal Due (Closing) Date and Time:	April 5, 2023 by 2:00 pm Local Time Offerors are reminded that a completed No Proposal Notice/Vendor Feedback Form is requested if a no-proposal decision is made.
MBE Subcontracting Goal:	25% with 7% African American and 12% Woman-owned subgoals.
VSBE Subcontracting Goal:	0%
Contract Type:	Firm Fixed Price
Contract Duration:	Three (3) year initial term with one two-year renewal option, beginning January 1, 2024 through December 31, 2026.
Primary Place of Performance:	Maryland Department of Transportation Maryland Port Administration (MDOT MPA)
SBR Designation:	No
Federal Funding:	No

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1 Minimum & Preferred Qualifications

1.1 Offeror's Minimum Qualification

As part of the determination to be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that the following Minimum Qualification has been met:

- 1.1.1 The Offeror shall have five (5) years of experience, obtained within the past five (5) years, working on publications with similar scope of services as the Port of Baltimore Magazine. Proposed Staff and/or Subcontractor's experience may not be used to meet the Offeror's minimum qualification.

Required Documentation: As proof of meeting the minimum qualification requirement, the Offeror shall provide with its Proposal Attachment C - Offeror's Company Profile and References (include three or more references from the past five (5) years that collectively are able to attest to the Offeror's required years of experience).

1.2 Preferred Qualification

- 1.2.1 The Offeror's publication is a recipient of a Platinum or Gold MarCom Award in the Print Media, Publications – Magazine category within the last five (5) years.

If the Offeror meets the preferred qualification, a copy of the Magazine that received the MarCom Award and a copy of the award must be included with the technical proposal.

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2 Contractor Requirements: Scope of Work

2.1 Summary Statement

- 2.1.1 The Maryland Department of Transportation Maryland Port Administration (MDOT MPA) is issuing this Request for Proposals (RFP) in order to procure the services to produce and distribute the Port of Baltimore Magazine for the MDOT MPA.
- 2.1.2 It is the MDOT MPA's intention to obtain goods and services, as specified in this RFP, from a Contract between the selected Offeror and the MDOT MPA.
- 2.1.3 The MDOT MPA intends to make a single award as a result of this RFP. See RFP **Section 4.8 Award Basis** for more Contract award information.
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5 This Contract shall be performed in accordance with the MDOT MPA's Terms and Conditions – Contracts for Services, attached hereto as **Attachment H**, and incorporated herein by reference.
- 2.1.6 The term of this Contract is for a period of three (3) years with one two-year renewal option, beginning January 1, 2024 through December 31, 2026, unless terminated earlier in accordance with the terms of this Contract.

2.2 Background, Purpose, and Goals

The MDOT MPA desires to obtain the services to produce and distribute the Port of Baltimore Magazine.

Offeror shall furnish all labor, materials, equipment, supervision and expertise required to produce and distribute the MDOT MPA's bimonthly publication known as the Port of Baltimore Magazine and/or its successors. This shall include editorial supervision; art direction for design; layout; photography and illustrations; staff and/or freelance writers to produce articles for the magazine; paper, printing, and pre-press work; mailing; postage and shipping; advertising sales; marketing and a project supervisor who will serve as liaison to the MDOT MPA. This magazine is designed to market the Port of Baltimore to local, regional, national and international audiences.

In addition to delivering hard copy print format editions of the magazine to and for MDOT MPA, the Contractor shall deliver to MDOT MPA an electronic version of each edition suitable for distribution via the internet. The MDOT MPA reserves to itself all rights with respect to both the hard copy and electronic editions of the magazine, including the right to distribute each edition, or any portion thereof, in any manner that it chooses.

All work shall be performed in accordance with this RFP and to the full satisfaction and approval of the MDOT MPA Director of Communications or designee. No advertising or editorial material relating to other U.S. Ports shall be used without prior express MDOT MPA written approval.

MDOT MPA shall have the unilateral right to order, in writing, changes in the work within the scope of the Contract in accordance with the provisions of this RFP.

2.3 Responsibilities and Tasks

2.3.1 Magazine Specifications

- A. Number of issues a year – Six (6)
- B. Number of copies per issue – approximately 3,500. Issues may vary and exact run quantity shall be determined by the MDOT MPA Director of Communications or Designee.

The MDOT MPA Director of Communications or Designee will determine the number of issues that shall have postal indicia for domestic single mailing and the number of issues for foreign single and bulk mailing and local distribution.

- C. Size – 8-1/2" X 11" trimmed.
- D. Page – 40 pages per issue. Issues may vary and exact run quantity shall be determined by the MDOT MPA Director of Communications or Designee.
- E. Stock – 70-pound enamel or comparable grade.
- F. Contractor will produce, if requested by MDOT MPA, MDOT MPA house ads up to one full page (4 per year) at no extra cost.
- G. Contractor will provide an electronic version of each issue to be posted on the MDOT MPA website.

2.3.2 Review Schedule

The Contractor and the MDOT MPA will attempt to set mutually agreeable review schedules and dates for various materials. If agreement cannot be reached, the MDOT MPA will establish the schedules and dates.

2.3.3 MDOT MPA Approvals

The Contractor shall submit the following to the MDOT MPA Director of Communications or designee and must receive prior approval two (2) weeks before publication:

- A. All editorial content;
- B. All advertising content;
- C. All photography;
- D. Any change in the design or layout of the magazine;
- E. The inclusion of new feature sections;
- F. Changes in the printing or design process; and
- G. Selection of new paper.

2.3.4 Mailing List Restrictions

The Contractor will maintain the MDOT MPA mailing list. MDOT MPA will advise the Contractor on adding to/removing from the list. The Contractor is prohibited from selling the MDOT MPA mailing list, either current or as amended, without the prior express written permission of the MDOT MPA. In the event that such permission is given by the MDOT MPA it will be after mutual agreement to a reasonable compensation to the MDOT MPA for said mailing list.

2.3.5 Delivery and Production Schedule

The final delivery of the finished product is to be made to distribution points determined by the MDOT MPA by the last working day of the month previous to the month of issue or within five (5) working days of final approval of the blue line by the MDOT MPA Director of Communications or designee whichever comes later. Contractor and MDOT MPA will develop a production schedule to accomplish this goal allowing for approximately two (2) weeks from the time Contractor delivers copy for typesetting until final delivery. It is the responsibility of the Contractor to comply with this schedule. If agreement cannot be reached, the MDOT MPA will establish the schedules and dates.

2.3.6 Contractor Performance

The Contractor is expected to provide a high-quality publication on a regular basis. The Contractor's performance will be judged by the following criteria:

- A. Accuracy and proficiency of work.
- B. Timely completion of all work. / TIME IS OF THE ESSENCE.
- C. Quality of final product as compared to the other top port magazines in the USA.

If the Contractor should fail to meet the performance standards acceptable to the MDOT MPA, it may result in an early termination of the Contract by MDOT MPA, for default or for convenience.

2.3.7 Inspection and Acceptance

- A. The MDOT MPA Director of Communications (or designee) is the only authorized representative in all matters relating to acceptance and inspection of the work. The MDOT MPA Director or designee will advise the Contractor if the Contractor's performance fails to meet MDOT MPA's standards.
- B. Contractor's Performance Rating: The Contractor's chief operating officer shall be directly responsible for responding to all MDOT MPA complaints of late, poor and/or non-performance. MDOT MPA will address any complaints of late, poor or non-performance in writing to the Contractor's chief operating officer. The Contractor will be required to respond, in writing and within 3 business days, to each complaint of poor or nonperformance. Contractor's prompt response to MDOT MPA complaints is required. Furthermore, if requested, by the Director of Communications or designee, the Contractor's chief operating officer shall be required to attend a meeting on MDOT MPA premises, within 24 hours of Contractor's receipt of the written complaint, in order to discuss remedial action.
- C. Late completion, uncorrected copy or inaccurate copy placement, may be considered as a breach of contract and may result in an early termination of the Contract by MDOT MPA.

2.3.8 Quantities

The MDOT MPA reserves the right to increase or decrease quantity requirements as necessary. Quantities are approximate and unit prices bid shall apply regardless of any increase or decrease in the estimated quantities shown herein.

2.3.9 Transition

The incumbent contractor shall assist with the transition to a new contractor for the subsequent solicitation of this contract if the incumbent contractor is not the successful offeror in the subsequent solicitation. Within two weeks of the end of the contract term, the incumbent contractor shall:

- A. Provide to the new contractor all original photographs obtained during the contract term.
- B. Provide to the new contractor all original advertisements and advertisement agreements obtained during the contract term.
- C. Provide the MDOT MPA's Director of Communications or designee with copies of all photographs, advertisements and advertisement agreements.

2.3.10 Space Reserved for MDOT MPA's Use

- A. The MDOT MPA reserves the right to use up to four (4) pages per issue for its own purposes, to include, but not be limited to, in-house advertising, promotional materials and special editorial content. There will be no additional cost to the MDOT MPA for this.
- B. The MDOT MPA has the option to provide all of the information or MDOT MPA may ask the vendor to have a reporter/photographer provide the information at MDOT MPA's direction.
- C. The MDOT MPA reserves the right to turn back any portion of or all its four guaranteed pages in any or all monthly issues at its sole discretion prior to the established copy deadline.

2.3.11 Rights

- A. All rights to the graphic, video graphic, audio, analogue, and records obtained or made by the Contractor pursuant to this Contract shall be vested in the MDOT MPA, except to the extent that those rights were held by third parties before the Contractor obtained the records.
- B. All rights to photographic and digital images obtained or made by the Contractor pursuant to this Contract shall be shared with the MDOT MPA for public information use (i.e. social media, etc.).

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3 Contractor Requirements: General

3.1 Invoicing

3.1.1 General

- A. Subject to the provisions of the contracted services and acceptance by the MDOT MPA, the Contractor may submit a monthly invoice for all appropriate charges for services provided. All such charges shall be derived in accordance with prices originally proposed on the Financial Proposal Spreadsheet. The Contractor shall email the original of each invoice to MDOT MPA Accounts Payable at the email address: mpainvoices@marylandports.com or mail to: MDOT MPA Accounts Payable, 401 East Pratt Street, Suite 1100, Baltimore, MD 21202.
- B. Invoices shall be submitted by the Contractor on a monthly basis by the 15th business day of each month for all work completed in the previous month.
- A. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
- B. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
 - 1) Contractor's name and address;
 - 2) Remittance address;
 - 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
 - 4) Invoice period (i.e. time period during which services covered by invoice were performed, location of leased suite, name of tenant, and a Contractor point of contact with telephone number);
 - 5) Invoice date;
 - 6) Invoice number;
 - 7) MDOT MPA assigned Contract number;
 - 8) MDOT MPA assigned (Blanket) Purchase Order number(s);
 - 9) Goods or services provided;
 - 10) Amount due; and
 - 11) Any additional documentation required by regulation or the Contract.
- C. Invoices shall include an itemized breakdown of totals for each lease year.
- D. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- E. Invoices for final payment shall be clearly marked as "FINAL" and submitted when all work requirements have been completed and no further charges are to be

incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

3.2 Insurance Requirements

The requiring of any and all insurance as set forth in these specifications, or elsewhere, shall be in addition to and not in any way in substitution for all the other protection provided under the Contract Documents.

No acceptance and/or approval of any insurance by MDOT MPA, shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon them by the provisions of the Contract Documents.

The Contractor shall at all times during the term of this Contract, and until it has received Notice of Final Acceptance by MDOT MPA, maintain in full force and effect the policies of insurance required by this Section. The Contractor shall provide MDOT MPA with evidence that the required insurance has been obtained. Insurance companies must be rated A-VIII or better by AM Best and should be lawfully authorized to do business in the State of Maryland or in the jurisdiction where the work is being performed. The Contractor shall name MDOT MPA, MDOT, and the State of Maryland as additional insureds on each of the policies (except Workers' Compensation) listed in Paragraph B. The commercial general liability additional insured endorsement should include "on-going operations" and "completed operations" coverage for the additional insured and a copy should be attached to the certificate of insurance. The Contractor shall provide certificates of insurance or other evidence that it has complied with this provision before commencement of work under this Contract. Certificates shall indicate effective dates and dates of expiration of policies. However, the Contractor, if requested by MDOT MPA, shall provide certified true copies of any and all of the policies of insurance to MDOT MPA.

The Contractor shall not commence work under this Contract until all the insurance required under this Section has been obtained and approved by MDOT MPA, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until the insurance required of the Subcontractor has been so obtained and approved. Contractors of every tier should waive (and require their insurers to waive by endorsement) subrogation rights against the State for losses and damages incurred under the insurance policies required by the agreement. Contractors' general liability and automobile liability insurance should be endorsed to include MDOT MPA, MDOT, and the State of Maryland as additional insureds and provide that such additional insured coverage will be primary and no contributions shall be permitted from any insurance or self-insurance maintained by MDOT MPA, MDOT, or the State of Maryland.

All insurance policies required by this Section, or elsewhere in the Contract Documents, shall be so endorsed as to provide that the insurance carrier will be responsible for giving immediate and positive notice to MDOT MPA in the event of cancellation or modification of the insurance policy by either the insurance carrier or the Contractor, at least sixty (60) days prior to any such cancellation or modification. A copy of the endorsement for each insurance policy shall be submitted to MDOT MPA before any work under this Contract commences.

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract:

- A. Worker's Compensation
 - 1) The Contractor shall maintain Worker's Compensation insurance as required by the laws for the State of Maryland, which shall include

Employer's Liability coverage with a minimum limit for each accident, disease policy limit, and disease – each employee.

- 2) Such policy or policies of insurance mentioned above shall also include coverage for the benefits as set forth under the U.S. Longshoreman and Harborworkers Compensation Act, the Jones Act and other Federal laws where applicable.

B. Liability Insurance

Occurrence forms of commercial general liability insurance covering the full scope of this Contract with limits not less than \$1,000,000 each occurrence limit for bodily injury/property damage, \$2,000,000 general aggregate limit per project, \$300,000 for Damage to Rented Premises, and \$10,000 medical payments to others. The commercial general liability coverage should include blanket contractual liability covering indemnity obligations. Such insurance shall include, but shall not be limited to the following:

- 1) *Commercial* general liability insurance including and covering: a) premises and operations liability; b) products and completed operations liability; c) independent Contractors; d) blanket contractual liability; e) employees as additional insureds; f) notice of occurrence; g) knowledge of occurrence by specified official; h) unintentional errors and omissions; i) bodily injury or property damage for contamination by pollutants arising from the completed work; k) extended definition of bodily injury; l) personal and advertising injury coverage (hazards A and B) with no exclusions for liability assumed contractually or injury sustained by *employees* of Contractor; and m) coverage for damage to property of MDOT MPA, as well as other third parties resulting from negligence in the completion of the Contractor's services.
- 2) *Automobile* liability insurance. Coverage use of any company owned motor vehicle to be used in conjunction with this Contract, including owned, hired automobiles, and non-owned automobiles with limits not less than \$1,000,000 combined single limit.
- 3) *Umbrella* Liability Insurance

Contractor shall also purchase and maintain an occurrence "umbrella" form of excess liability insurance containing coverage in excess of the underlying policies specified above. The required primary insurance shall be listed as underlying coverage in the first layer umbrella policy. The umbrella policies shall contain a minimum each occurrence limit and aggregate limit of \$5,000,000.

It is the sole responsibility of the Contractor to see that any and all of its Subcontractors or their Subcontractors carry insurance required herein to the extent Contractor wishes to impose on its Subcontractor such liability insurance. Automobile liability insurance required herein shall be provided by each Subcontractor. The Contractor shall be held responsible for compliance and enforcement of MDOT MPA's insurance requirements and its own requirements and for any modifications or waivers of these insurance requirements as they apply to Subcontractors.

The MDOT MPA shall have the right to require that the limits of liability set forth in the above paragraphs hereof be raised if in its judgment economic or insurance market conditions warrant. If

additional costs are incurred because of raised limits, the pre-approved additional cost shall be added to the Contract Sum.

Without limitation of any other provisions of this Contract, if; (a) the Contractor's agreement herein to insure or to name as an additional insured MDOT MPA, MDOT, and the State of Maryland with respect to contractual liability assumed by the Contractor under the terms of the Contract Documents or otherwise, or; (b) any Contract of insurance between the Contractor or any Subcontractor and its insurance company, shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that such circumstances shall not otherwise affect the validity or enforceability of Contractor's agreements and obligations under the Contract Documents nor the validity or enforceability of such contract of insurance, each of which shall be enforced to the fullest extent permitted by law.

The furnishing of evidence of insurance by certificate or policy copy that is not in conformance with the requirements shall not constitute a waiver of or amendment to, the aforementioned requirements. Any modification or waiver of the requirements must be provided by MDOT MPA in writing to the Contractor and agreed to by signature of any authorized Officer of the Contractor.

3.3 Additional Clauses

The Offeror shall be subject to the requirements in this Section.

3.3.1 Parking at the World Trade Center (WTC), Baltimore

This provision applies to all contracts requiring the provision of services to the WTC or the pickup or delivery of goods or equipment at the WTC.

MDOT MPA will only allow vendors and contractors **temporary** access to the loading dock of the WTC for purposes of **loading** and **unloading** of goods or equipment required for providing services. Upon completion of loading or unloading, a vehicle must be removed from the loading dock and parked elsewhere, even if a vendor or the Contractor still has business in the WTC. Parking expenses shall be the responsibility of all vendors and the Contractor.

3.3.2 No-Cost Extensions

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

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4 Procurement Instructions

4.1 Site Visit

There will not be a site visit for this solicitation.

4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The RFP, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMMA.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to emma.maryland.gov, click on "New Vendor? Register Now" to begin the process, and then follow the prompts.

4.3 Questions

- 4.3.1 All questions shall identify in the subject line the Solicitation Number and Title (223016-S – Port of Baltimore Magazine) and shall be submitted in writing via email to the Procurement Officer no later than the date and time specified on the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.
- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments and posted on eMMA.
- 4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on MDOT MPA unless it issues an amendment in writing.

4.4 Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

4.5 Proposal Due (Closing) Date and Time

- 4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2 Requests for extension of this date or time shall not be granted.
- 4.5.3 Offerors must submit Technical Proposals and Price Proposals by email to the Procurement Officer at toneal3@marylandports.com and both Technical and Price Proposals must be received by the Procurement Officer **on or before the date and time listed in the Key Information Summary Sheet at the beginning of this RFP.** Proposals not received in the Procurement Officer's email inbox by this time and date are late and will not be considered except as otherwise provided by State law. Proposals may be modified or withdrawn by

written notice received by the Procurement Officer before the time and date set forth on the Key Information Summary Sheet for receipt of Proposals.

- 4.5.4** Offerors are solely responsible for assuring that their proposals are received in the Procurement Officer’s email inbox on or before the scheduled time and date for receipt of proposals. Proposals will not be opened publicly. The date and time of the email submission is determined by the date and time of arrival of all required files in the Procurement Officer’s email inbox.
- 4.5.5** Technical Proposals and Price Proposals must be emailed in two or more separate emails to the Procurement Officer. Both emails must be received in the Procurement Officer’s in box by the due date and time specified on the Information Summary Sheet or the proposals will be rejected. Evidence that the email was sent prior to the deadline is NOT evidence of receipt by the Procurement Officer prior to the deadline. The offeror is solely responsible for ensuring that the Procurement Officer receives the emails by the deadline.
- 4.5.6** Proposals may not be submitted by facsimile and are not being accepted via eMMA. Proposals will not be opened publicly.
- 4.5.7** Potential Offerors not responding to this solicitation are requested to submit the “No Proposal Notice/Vendor Feedback Form”, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

4.6 Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted.

4.7 Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

4.8 Award Basis

A Contract shall be awarded to the responsible Offeror submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. See RFP **Section 6** for further award information.

4.9 Oral Presentation

Offerors may be required to make oral presentations to MDOT MPA representatives. Oral presentations are considered part of the Technical Proposal. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror’s Proposal. The Procurement Officer will notify Offerors of the time and place of oral presentations.

4.10 Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer’s request only with the Offeror’s written agreement.

4.11 Revisions to the RFP

- 4.11.1 If the RFP is revised before the due date for Proposals, MDOT MPA shall post any addenda to the RFP on eMMA and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any addenda issued prior to the submission of Proposals.
- 4.11.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal.
- 4.11.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4.11.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.
- 4.11.5 Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

4.12 Cancellations

- 4.12.1 The MDOT MPA reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.
- 4.12.2 The MDOT MPA reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.12.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled, and the award processed in accordance with COMAR 21.01.03.01.A(4).
- 4.12.4 If the services that are the subject of the RFP are currently being provided under an interagency agreement with a public institution of higher education and MDOT MPA determines that the services can be provided more cost effectively by the public institution of higher education, then the RFP may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

4.13 Incurred Expenses

The MDOT MPA will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

4.14 Protest/Disputes

Any protest or dispute related to this solicitation or the Contract award shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

4.15 Offeror Responsibilities

- 4.15.1 Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.
- 4.15.2 All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal.
- 4.15.3 If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.15.4 A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which MDOT MPA determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent's participation as determined by MDOT MPA.

4.16 Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and MDOT MPA's Terms and Conditions, attached hereto as **Attachment H**. Any exceptions to this RFP or MDOT MPA's Terms and Conditions shall be clearly identified in the Cover Letter of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror's Proposal. Acceptance or rejection of exceptions is within the sole discretion of the MDOT MPA. Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**

4.17 Bid/Proposal Affidavit

A Proposal submitted by the Offeror must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment B** of this RFP.

4.18 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment I** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

4.19 Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit <https://www.egov.maryland.gov/businessexpress>.

It is strongly recommended that any potential Offeror complete registration prior to the Proposal due date and time. The Offeror’s failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

4.20 False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

- 4.20.1** In connection with a procurement contract a person may not willfully:
 - A. Falsify, conceal, or suppress a material fact by any scheme or device.
 - B. Make a false or fraudulent statement or representation of a material fact.
 - C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
- 4.20.2** A person may not aid or conspire with another person to commit an act under **Section 4.20.1**.
- 4.20.3** A person who violates any provision of this Section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

4.21 Living Wage Requirements

- A. Maryland law requires that Contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a Contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, the Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. The Contractor understands that failure of the Contractor to provide such documents is a material breach of the terms and conditions and may

result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.

- C. Additional information regarding the State's living wage requirement is contained in **Attachment D**. Offerors must complete and submit the Maryland Living Wage Affidavit of Agreement for Service Contracts with their Proposals. If the Offeror fails to complete and submit the required documentation, the MDOT MPA may determine the Offeror to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State.
 - 1. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier 1 Contract.
 - 2. The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
 - 3. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
 - 4. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
- E. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
- F. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change.

4.22 Conflict of Interest Affidavit and Disclosure

- 4.22.1 The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment E**) and submit it with its Proposal.
- 4.22.2 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.

- 4.22.3** Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.22.4** Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

4.23 Non-Disclosure Agreement

4.23.1 Non-Disclosure Agreement (Contractor)

All Offerors are advised that this solicitation and any Contract are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment F**. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

4.24 Small Business Reserve (SBR) Procurement

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

4.25 Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

4.26 Minority Business Enterprise Participation Goal

4.26.1 Establishment of Goal and Subgoals

An overall MBE subcontractor participation goal and subgoals as identified on the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

Offerors must attempt in good faith to achieve the stated goals. **For further instructions and forms see: Attachment C**; Title 14, Subtitle 3 of the Annotated Code of Maryland; and COMAR 21.11.03.

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.maryland.gov/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.**

4.27 Liquidated Damages

4.27.1 MBE Liquidated Damages

- a) The Contract that will result from the solicitation will require 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 and that liquidated damages present a fair, reasonable, and appropriate estimation of damages.
- b) 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 and without the State being required to present any evidence of the amount or character of actual damages sustained, the Contractor agrees to pay liquidated damages to the State at the rates set forth below. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty. 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.
 - 1) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$25.79 per day until the monthly report is submitted as required.
 - 2) 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): \$90.25 per MBE subcontractor.
 - 3) 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.
 - 4) 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.
 - 5) Applicable to non-construction contracts only: Failure to promptly pay all undisputed amounts to a subcontractor in full compliance with the prompt payment provisions of this Contract: \$97.94 per day until the undisputed amount due to the subcontractor is paid.

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.

5 Proposal Format

5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

- Volume I – Technical Proposal
- Volume II – Financial Proposal

5.2 Proposal Delivery and Packaging

5.2.1 Proposals delivered by facsimile or submitted on eMMA shall not be considered.

5.2.2 Provide no pricing information in the Technical Proposal.

5.2.3 Offerors may submit Proposals by electronic means as described.

A. Electronic means includes email to the Procurement Officer address listed on the Key Information Summary Sheet.

F. Any Offeror wishing to deliver a hard copy (paper) Proposal shall contact the Procurement Officer for instructions.

5.2.4 Email submissions

A. Offerors shall provide their Proposals in two separate emails and the email submission subject line shall state; “RFP No. 223016-S Technical” and “RFP No. 223016-S Financial”.

B. Financial Proposal emails shall be sent with password protection. The State has established the following procedure to restrict access to Financial Proposals received electronically: all Financial Proposal emails must be password protected. Offerors will provide the password to MDOT MPA upon request or their Proposal will be deemed not susceptible for award. Subsequent submissions of Proposal content will not be allowed.

C. Proposals submitted via email must not exceed Eight (8) Mb. If a submission exceeds this size, split the submission into two or more parts and include the appropriate part number in the subject (e.g., part 1 of 2) after the subject line information below.

D. Both emails must be received in the Procurement Officer’s in box by the due date and time specified on the Information Summary Sheet or the proposals will be rejected. Evidence that the email was sent prior to the deadline is NOT evidence of receipt by the Procurement Officer prior to the deadline. The offeror is solely responsible for ensuring that the Procurement Officer receives the emails by the deadline.

5.2.5 Two Part Submission:

A. Technical Proposal consisting of:

- 1) One attachment labeled “RFP No. 223016-S Technical Proposal” in Microsoft Word format, version 2010 or later; and
- 2) One attachment labeled “RFP No. 223016-S Technical Attachments”, signed and in Adobe PDF format.

- G. Financial Proposal consisting of:
- 3) Financial Proposal shall be password protected. The MDOT MPA will contact Offerors for the password to open each file. Each file shall be encrypted with the same password. The Procurement Officer will only contact those Offerors with Technical Proposals that are reasonably susceptible for award. Offerors that are unable to provide a password that opens the Financial Proposal documents will be deemed not susceptible for award.
 - 4) One attachment labeled “RFP No. 223016-S Financial” containing Financial Proposal and all supporting material in Adobe PDF format.

5.3 Volume I - Technical Proposal

NOTE: Omit all **pricing information** from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

- 5.3.1** A Cover Letter shall accompany the Technical Proposal. The purpose of this Cover Letter is to transmit the Proposal, acknowledge the receipt of any addenda to the RFP issued before the Proposal due date and time, and shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization (see **Section 4.15 “Offeror Responsibilities”**). The Cover Letter shall also identify any exceptions the Offeror has taken to the requirements of this RFP or the MDOT MPA’s Terms and Conditions – Contracts for Services. The Cover Letter should be signed by the individual who is authorized to commit the Offeror to its Proposal and the requirements, as stated in the RFP.
- 5.3.2** The Technical Proposal shall include the following documents and information in the order specified as follows:
- A. Offeror’s Technical Response to RFP Requirements.
- 1) A statement demonstrating an understanding of the specifications and responsibilities in this RFP.
- B. Offeror Qualifications and Capabilities
- 1) The number of years the Offeror has provided the similar goods and services.
 - 2) Names, classifications, and resumes of each individual proposed staff.
 - 3) Minimum Qualification Documentation (Offeror’s Company Profile, References - **Attachment C**). Proposed Staff and/or Subcontractor’s experience may not be used to meet the Offeror’s minimum qualification.
 - a. At least three (3) references are requested from customers who are capable of documenting the Offeror’s ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP **Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years that are similar in scope.

The MDOT MPA reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror's performance.

- C. Copy of a Magazine, similar in scope, that was published within the last five years by the Offeror.
- D. Preferred Qualification Documentation (copy of the Magazine that received the MarCom Award) and a copy of the MarCom award.
- E. Economic Benefits
 - a. The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland's economy specifically offered. See COMAR 21.05.03.03A (3).
- F. Technical Proposal - Required Forms and Certifications
 - a. All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal.

5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in **Attachment A-2**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by MDOT MPA.

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6 Evaluation and Selection Process

6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The MDOT MPA reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

6.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.

6.2.1 Offeror's Technical Response to Requirements (See RFP § 5.3.2A)

The Offeror's Technical Proposal shall illustrate a comprehensive understanding of work requirements and mastery of the subject matter.

Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

6.2.2 Experience, Qualifications and Capabilities of Offeror, Offeror's Proposed Staff, including subcontractors. This will include successes in similar projects and may include the results of reference checks. (See RFP § 5.3.2.B).

6.2.3 Offeror's submission of a magazine, similar in scope., that was published within the last five years. (See RFP § 5.3.2.C)

6.2.4 Offeror's submission of a magazine that received a MARCOM award that was published in the last five years and a copy of the award. This is a preferred qualification and not required. (See RFP § 5.3.2.D)

6.2.5 Economic Benefit to State of Maryland (See RFP § 5.3.2.E)

6.3 Financial Proposal Evaluation Criteria

All Qualified Offerors (see Section 6.5.2.C) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Commission Percentage Rates within the stated guidelines set forth in this RFP and as submitted on **Attachment A--2** - Financial Proposal Form.

6.4 Reciprocal Preference

6.4.1 Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:

A. The Maryland resident business is a responsible Offeror;

- G. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
 - H. The other state gives a preference to its resident businesses through law, policy, or practice; and
 - I. The preference does not conflict with a federal law or grant affecting the procurement Contract.
- 6.4.2** The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

6.5 Selection Procedures

6.5.1 General

- A. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the MDOT MPA may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the MDOT MPA reserves the right to make an award without holding discussions.
- J. With or without discussions, the MDOT MPA may determine the Offeror to be not responsible or the Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

6.5.2 Selection Process Sequence

- A. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of MDOT MPA's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by MDOT MPA as soon as any discussions are scheduled.
- B. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- C. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Technical Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee and Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- D. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The MDOT MPA may make an award without issuing a request for a BAFO.

6.5.3 Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive greater weight than financial factors.

6.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – RFP Attachments**.

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7 RFP ATTACHMENTS

Instructions Page

A Proposal submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as “with Proposal” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Proposal:

1. For email submissions, submit one (1) copy of each with signatures.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided are described in Table 1 below in the “When to Submit” column.

For documents required after award, submit one (1) copy of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

Table 1: RFP ATTACHMENTS

Applies?	When to Submit	Label	Attachment Name
Y	With Proposal	A	Financial Proposal Instructions and Form
Y	With Proposal	B	Bid/Proposal Affidavit
Y	With Proposal	C	Offeror’s Company Profile and References
Y	With Proposal	D D-1	Maryland Living Wage Affidavit of Agreement for Service Contracts
Y	With Proposal	E	Conflict of Interest Affidavit and Disclosure
Y	5 Business Days after recommended award – However, suggested with Proposal	F F-1 F-2	Non-Disclosure Agreement (Contractor)
Y	5 Business Days after recommended award	G	Sample Service Agreement (Contract)
Y	N/A	H	MDOT MPA’s Terms and Conditions – Contracts for Services
Y	5 Business Days after recommended award	I	Contract Affidavit
Y	N/A	J	MBE Participation Factors
Y	With Proposal	K	MBE Forms A and B

Applies?	When to Submit	Label	Attachment Name
Y	5 Business Days after recommended award	K	MBE Forms C and D
Y	With Proposal	L	Corporate Diversity Addendum -Affidavit (I) and (II)
Additional Submissions			
Y	5 Business Days after recommended award	N/A	Evidence of meeting insurance requirements (see Section 3.3); 1 copy
Y	With Proposal	N/A	Copy of Magazine that won the MarCom Award if applicable
Y	With Proposal	N/A	Copy of MarCom Award if applicable
Y	With Proposal	N/A	Copy of Magazine that was Published by Offeror within the past five years
Y	With Proposal	N/A	Resumes for proposed staff

Attachment A. Financial Proposal Instructions & Form

A-1 Financial Proposal Instructions

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not amend, alter, or leave blank any items on the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

Follow these instructions carefully when completing your Financial Proposal Form:

- A) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- B) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, travel, marketing, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor.
- C) **A-2 Financial Proposal Form must be submitted as required in Section 5 of the RFP.**
- D) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

A-2 Financial Proposal Form

See separate Attachment A-2 in excel format.

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Attachment B. Bid/Proposal Affidavit

A. AUTHORITY

I hereby affirm that I, _____ (name of affiant), am the _____ (title) and duly authorized representative of _____ (name of business entity), possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all Bids/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, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test, 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/Proposal submitted by the Bidder/Offeror on this project, and terminate any Contract awarded based on the Bid/Offeror. As part of its Bid/Proposal, the Bidder/Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror 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/Offeror 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/Offeror 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/Proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority Bid/Proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the Contract of its inclusion in 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.

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/Proposal submitted by the Bidder/Offeror on this project, and terminate any Contract awarded based on the Bid/Proposal.

B-2. CERTIFICATION REGARDING VETERAN-OWNED SMALL BUSINESS ENTERPRISES.

The undersigned Bidder/Offeror hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/Proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.14; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1)-(5) of this regulation.

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): _____

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/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;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

(a) §7201, Attempt to Evade or Defeat Tax;

(b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax;

(c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;

(d) §7206, Fraud and False Statements; or

(e) §7207 Fraudulent Returns, Statements, or Other Documents.

(10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review.

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review.

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review; or

(15) 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)—(14) of this regulation, 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): _____

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). _____

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): _____

G. SUBCONTRACT 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/Proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/Proposal price of the Bidder/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/Offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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, State Department of Assessments and Taxation, and Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. 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.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance & Procurement Article, §17-705, Annotated Code of Maryland:

- (a) 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; and
- (b) It is not engaging in investment activities in Iran as described in State Finance & Procurement Article, §17-702, Annotated Code of Maryland.

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

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

In preparing its Bid/Proposal on this project, the Bidder/Offeror has considered all Bid/Proposals submitted from qualified, potential subcontractors and suppliers, and has not, in the solicitation, selection, or commercial treatment of any subcontractor, vendor, or supplier, refused to transact or terminated business activities, or taken other actions intended to limit commercial relations, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel and its territories. The Bidder/Offeror also has not retaliated against any person or other entity for reporting such refusal, termination, or commercially limiting actions. Without limiting any other provision of the solicitation for Bids/Proposals for this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the Bid/Proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/Proposal.

N. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the Bid/Proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

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/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.

By: _____ Date: _____
Signature of Authorized Representative and Affiant

Printed name: _____
Printed Name of Authorized Representative and Affiant

Title: _____
Title of Authorized Representative and Affiant

SUBMIT THIS DOCUMENT WITH PROPOSAL

Attachment C. Offeror's Company Profile and References

- 1. **FAILURE TO PROVIDE ALL INFORMATION ON THIS DOCUMENT MAY RESULT IN YOUR PROPOSAL BEING DETERMINED TO BE NOT REASONABLY SUSCEPTIBLE OF BEING SELECTED FOR AWARD AND REJECTED BY MDOT MPA.**
- 2. **OFFERORS SHALL HAVE AT LEAST FIVE (5) YEARS EXPERIENCE, WITHIN THE PAST FIVE (5) YEARS, IN PROVIDING SIMILAR TYPE WORK AS SPECIFIED IN THIS RFP.**

Information furnished on this Offeror's Company Profile and References document and any verification made by MDOT MPA shall be part of the determination of the Offeror being considered reasonably susceptible of being selected for award. In the event that references are deemed insufficient by the MDOT MPA, the MDOT MPA reserves the right to determine the Offeror as not being susceptible of award.

Company Name: _____ Contact Person: _____

Address of Parent Company (if applicable): _____

FEIN#: _____ Phone #: _____ Fax #: _____

Date of Incorporation: _____

Number of Years in Business Under the Present Name: _____

Other/Former Names under which your Business has operated: _____

References: List at least three (3) or more references that collectively are able to attest to the Offeror's required years of experience in providing Contractor services. Each reference shall be from a client for whom the Offeror has provided similar scope of services as specified in the RFP within the past five (5) years. Provide the following information for references:

1. Client Name: _____ Client Contact/Title: _____

Phone No.:(____) _____ Email: _____

Contract Duration: _____ Contract Value \$ _____

Address _____ City/Town _____ State _____ Zip _____

Description of Services provided: _____

2. Client Name: _____ Client Contact/Title: _____

Phone No.:() _____ Email: _____

Contract Duration: _____ Contract Value \$ _____

Address _____ City/Town _____ State _____ Zip _____

Description of Services provided: _____

3. Client Name: _____ Client Contact/Title: _____

Phone No.:() _____ Email: _____

Contract Duration: _____ Contract Value \$ _____

Address _____ City/Town _____ State _____ Zip _____

Description of Services provided: _____

4. Client Name: _____ Client Contact/Title: _____

Phone No.:() _____ Email: _____

Contract Duration: _____ Contract Value \$ _____

Address _____ City/Town _____ State _____ Zip _____

Description of Services provided: _____

5. Client Name: _____ Client Contact/Title: _____

Phone No.:() _____ Email: _____

Contract Duration: _____ Contract Value \$ _____

Address _____ City/Town _____ State _____ Zip _____

Description of Services provided: _____

SUBMIT THIS DOCUMENT WITH PROPOSAL

Attachment D. Maryland Living Wage Affidavit of Agreement for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
 - (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
 - (2) A subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
 - (3) Service contracts for the following:
 - (a) Services with a Public Service Company;
 - (b) Services with a nonprofit organization;
 - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
 - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must

comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.

D-1 Maryland Living Wage Affidavit of Agreement for Service Contracts

Contract No. _____
Name of Contractor _____
Address _____
City _____ State _____ Zip Code _____

If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland’s Living Wage Law for the following reasons: (check all that apply).

- Offeror is a nonprofit organization
- Offeror is a public service company
- Offeror employs 10 or fewer employees and the proposed Contract value is less than \$500,000
- Offeror employs more than 10 employees and the proposed Contract value is less than \$100,000

If the Contract is a Living Wage Contract

A. The Undersigned, being an authorized representative of the above-named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated Contract. The Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on MDOT MPA Contract activities, and to ensure that its subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a MDOT MPA Contract for services. The Contractor agrees to comply with, and ensure its subcontractors comply with, the rate requirements during the initial term of the Contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.

B. _____ (initial here if applicable) The Offeror affirms it has no covered employees for the following reasons: (check all that apply)

- All employee(s) proposed to work on the MDOT MPA Contract will spend less than one-half of the employee’s time during every work week on the MDOT MPA Contract;
- All employee(s) proposed to work on the MDOT MPA Contract will be 17 years of age or younger during the duration of the MDOT MPA Contract; or
- All employee(s) proposed to work on the MDOT MPA Contract will work less than 13 consecutive weeks on the MDOT MPA Contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: _____
Signature of Authorized Representative: _____
Date: _____ Title: _____
Witness Name (Typed or Printed): _____
Witness Signature & Date: _____

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

Attachment E. Conflict of Interest Affidavit and Disclosure

Reference COMAR 21.05.08.08

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The Bidder or Offeror warrants that, except as disclosed in §D below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail--attach additional sheets if necessary):

E. The Bidder or Offeror agrees that if an actual or potential conflict of interest arises after the date of this Affidavit, the Bidder or Offeror will immediately make a full disclosure in writing to the Procurement Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder or Offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the Contract has been awarded and performance of the Contract has begun, the Contractor shall continue performance until notified by the Procurement Officer of any contrary action to be taken.

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)

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

Attachment F. Non-Disclosure Agreement (Contractor)

THIS NON-DISCLOSURE AGREEMENT (“Agreement”) is made by and between the State of Maryland (the “State”), acting by and through the Maryland Department of Transportation Maryland Port Administration (the “MDOT MPA”), and _____ (the “Contractor”).

RECITALS

WHEREAS, the Contractor has been awarded a contract (the “Contract”) following the Request for Proposals No. 223016-S; and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the MDOT MPA at times to provide the Contractor and the Contractor’s employees, agents, and subcontractors (collectively the “Contractor’s Personnel”) with access to certain information the MDOT MPA deems confidential information (the “Confidential Information”).

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the solicitation and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such, “Confidential Information” means; (1) any and all information provided by or made available by the MDOT MPA to the Contractor in connection with the Contract, and (2) any and all personally identifiable information (PII) (including, but not limited to personal information as defined in Md. Ann. Code, General Provisions §4-101(h) and Md. Ann. Code, State Govt. § 10-1301(c)) and protected health information (PHI) as defined in 45 CFR 160.103 that is provided by a person or entity to the Contractor in connection with this Contract. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the MDOT MPA agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the MDOT MPA in relation to the Contract.
2. The Contractor shall not, without the MDOT MPA’s prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information except for the sole and exclusive purpose of performing under the Contract. The Contractor shall limit access to the Confidential Information to the Contractor’s Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who are bound by confidentiality obligations at least as restrictive as those set forth in this Agreement. The Contractor shall provide copies of such agreements to the MDOT MPA. The names of such personnel are attached hereto and made a part hereof as **Attachment F-2**. Contractor shall update **Attachment F-2** by adding additional names (whether Contractor’s Personnel or a subcontractor’s personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor’s performance of the Contract or will otherwise have a role in performing any aspect of the Contract, the Contractor shall first obtain the written consent of the MDOT MPA to any such dissemination. The MDOT MPA may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. The Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, adopt or establish operating procedures and physical security measures, and take all other measures

necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. The Contractor shall promptly advise the MDOT MPA in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. The Contractor shall, at its own expense, cooperate with the MDOT MPA in seeking injunctive or other equitable relief against any such person(s).

6. The Contractor shall, at its own expense, return to the MDOT MPA all Confidential Information in its care, custody, control or possession upon request of the MDOT MPA or on termination of the Contract.

7. A breach of this Agreement by the Contractor or the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the MDOT MPA.

8. The Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the MDOT MPA and that monetary damages may be inadequate to compensate the MDOT MPA for such breach. Accordingly, the Contractor agrees that the MDOT MPA may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The MDOT MPA's rights and remedies hereunder are cumulative and the MDOT MPA expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the MDOT MPA suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the MDOT MPA from and against any such losses, damages, liabilities, expenses, and costs.

9. The parties further agree that:

a. This Agreement shall be governed by the laws of the State of Maryland;

b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the MDOT MPA;

c. The MDOT MPA makes no representations or warranties as to the accuracy or completeness of any Confidential Information;

d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;

e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures;

f. The Recitals are not merely prefatory but are an integral part hereof; and

g. The effective date of this Agreement shall be the same as the effective date of the Agreement entered into by the parties.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives, executed this Agreement as of the day and year first above written.

Contractor: _____

Maryland Department of Transportation
Maryland Port Administration

By:
(seal)

By:

Printed Name

Printed Name

Title

Title

Date

Date

F-2 NON-DISCLOSURE AGREEMENT
LIST OF CONTRACTOR'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN
ACCESS TO THE CONFIDENTIAL INFORMATION

Printed Name and Address of Individual/Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
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_____	_____	_____	_____
_____	_____	_____	_____

**F-3 NON-DISCLOSURE AGREEMENT
CERTIFICATION TO ACCOMPANY RETURN OR DELETION OF CONFIDENTIAL
INFORMATION**

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Non-Disclosure Agreement by and between the MDOT MPA and _____ (“Contractor”) dated _____, 202__ (“Agreement”) is attached hereto and is hereby returned to the MDOT MPA in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Contractor to this affirmation. Any and all Confidential Information that was stored electronically by me has been permanently deleted from all of my systems or electronic storage devices where such Confidential Information may have been stored.

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, HAVING MADE DUE INQUIRY.

DATE: _____

NAME OF CONTRACTOR: _____

BY: _____

(Signature)

TITLE: _____

(Authorized Representative and Affiant)

Attachment G. Sample Service Agreement (Contract)



MARYLAND PORT ADMINISTRATION

**SERVICE AGREEMENT
CONTRACT NO. 223016-S
PORT OF BALTIMORE MAGAZINE**

THIS SERVICE AGREEMENT (hereinafter the “Agreement”), entered into this ____ day of _____, 2023, by and between the

**MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND PORT ADMINISTRATION**

Office of Procurement, Suite 1100
401 E. Pratt Street
Baltimore, Maryland 21202
(hereinafter "MDOT MPA")

and

CONTRACTOR
(hereinafter "Contractor")

WHEREAS, the MDOT MPA has chosen the Contractor and the Contractor has agreed to supply the services and perform the work described herein and to be bound by the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained the MDOT MPA and the Contractor promise and agree as follows:

A. ARTICLE 1 – SERVICES TO BE PROVIDED BY THE CONTRACTOR

1.1 Scope of Work

The Contractor shall provide Contractor Services for the Port of Baltimore as set forth in the Contract Documents defined in Section 1.2 of this Agreement.

1.2 Contract Documents

The Contract between the parties (also sometimes referred to herein as the “Agreement”) shall consist of the following documents (“Contract Documents”), which are hereby incorporated into and expressly made a part of this Agreement herein.

- A. This Agreement;
- B. The MDOT MPA’s Request for Proposals (“RFP”) No. 223016-S, dated _____, as amended by Amendment No. ____ dated _____, and eMaryland Marketplace Advantage Solicitation No. _____;
- C. The Contractor’s Technical Proposal dated _____;
- D. The Contractor’s Financial Proposal dated _____;
- E. The Contractor’s executed Bid/Proposal Affidavit dated _____;
- F. The Contractor’s executed Contract Affidavit dated _____;

- G. The Contractor's executed Conflict of Interest Affidavit dated _____;
- H. The Contractor's executed Non-Disclosure Agreements (Contractor) dated _____;
a copy attached hereto;
- I. The Contractor's executed Living Wage Affidavit dated _____; and
- J. The Contractor's executed Corporate Diversity Addendum dated _____.

B. ARTICLE 2 - COMPENSATION AND METHOD OF PAYMENT

2.1 Contract Price

The MDOT MPA shall reimburse the Contractor for the services provided and performed hereunder at the rates and compensation as provided in the Contract Documents at a Not to Exceed value of \$600,000.

2.2 Invoices/Manner of Payment

The Contractor shall submit a monthly invoice to the MDOT MPA for the services provided. A standard billing format shall be followed including, but not limited to; the Contractor's Federal Tax Identification Number of _____, Contract Number 223016-S and the MDOT MPA's Blanket Purchase Order No. _____. The MDOT MPA shall cause said billing to be promptly paid, provided that the Contractor is not in default of this Agreement.

C. ARTICLE 3 – TERM

The Term of the Agreement shall be for three (3) years commencing on January 1, 2024, ending at the end of the day on December 31, 2026, with one unilateral two-year renewal option, unless terminated earlier pursuant to the terms of this Agreement.

D. ARTICLE 4 – CONTRACT REPRESENTATIVES

The following individuals are designated as Contract Representatives for their respective parties:

MDOT MPA:	Contract Monitor
	Maryland Department of Transportation
	Maryland Port Administration
	401 E. Pratt Street
	20th Floor
	Baltimore, MD 21202
Phone:	410-
Email:	xxxx@marylandports.com

Contractor:

Phone:
Email:

The Contractor's Contract Representative as identified in this Agreement shall be deemed to have authority to render any decision and take any action required under the Agreement. The MDOT MPA's Contract Representative, as identified in this Agreement, is the person to be contacted by the Contractor for the purposes of communicating routine information, requesting assistance, or making routine inquiries with

respect to the Agreement. An authorized MDOT MPA official or employee acting in the capacity of Procurement Officer is the only official authorized to authorize changes to the Scope of Work or to issue modifications to this Agreement.

Except as otherwise required by law, service of any notice required by this Agreement shall be complete upon receipt of such notice, postage prepaid, to the appropriate Contract Representative at the address indicated in the Agreement. If no Contract Representative is named, then the person executing the Agreement for a party shall be the Contract Representative for purposes of notice. To the extent that applicable law requires that a notice or document be sent to, filed with, or served on the Procurement Officer, nothing in the Agreement shall authorize the sending, filing, or service of any such notice or document to a person other than the Procurement Officer.

E. ARTICLE 5 – INDEPENDENT CONTRACTOR

The Contractor is not an employee of the MDOT MPA but is an independent contractor as that term is normally defined. The Contractor shall be responsible for providing all equipment and related services necessary for performance of all obligations under the Contract, and for withholding any taxes and Social Security payments due in relation to the Contract. The Contractor is not an agent of the MDOT MPA or the State of Maryland and cannot commit the MDOT MPA or the State to any expenditure of funds or enter into any contractual obligation on behalf of the MDOT MPA or the State.

F. ARTICLE 6 – INSURANCE

The Contractor shall provide and maintain during the term of this Agreement the insurance coverage required by the RFP.

G. ARTICLE 7 – SUBCONTRACTORS/PERSONNEL EMPLOYED

7.1 Subcontractors

A. The Contractor shall not subcontract any of the work to be performed under this Agreement, including subcontracts of any tier, without the prior written approval of the MDOT MPA. All work subcontracted for under this Agreement shall be based upon a written agreement between the Contractor and subcontractor incorporating the provisions of this Contract except where expressly waived by the Procurement Officer.

B. The Contractor shall comply with all applicable laws, regulations, and procedures of the MDOT MPA in the procurement of all subcontractors, and the approval of a subcontract by the MDOT MPA shall not operate as a waiver of this requirement or an acknowledgement that it has been satisfied.

7.2 Contractor/Subcontractor Personnel

7.2.1 The Contractor represents that it has, or will secure, all personnel, subcontractors (if permitted by the MDOT MPA), and experts required to perform the work under this Agreement.

7.2.2 The Contractor shall submit to the MDOT MPA the name, classification, and resume of each such individual proposed for assignment to the Project. Any modification to the originally proposed staff will require submission of the above required information and will be subject to MDOT MPA's approval.

7.2.3 The MDOT MPA's Contract Representative, at her or his sole discretion, may require the Contractor to replace an employee of the Contractor or a subcontractor for sufficient cause. Such cause may include, but

is not necessarily limited to: deficient performance, lack of responsiveness, illegal or immoral acts, negligence, incompetence or inefficiency. Should a replacement be requested, the Contractor shall submit to the MDOT MPA’s Contract Representative for approval the information specified in subparagraph 7.2.2 above for the proposed replacement. The MDOT MPA’s Contract Representative shall have the right to interview the proposed replacement before rendering a decision.

H. ARTICLE 8 – EXCLUSIVE AGREEMENT

This Agreement is the exclusive statement of the agreement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations, proposals, and awards, written and oral, relating to its subject matter. Any changes, alterations, and modifications in the services of this Agreement may only be made by an agreement in writing executed by both parties and approved by the MDOT MPA and, if required, the Maryland Port Commission and the Maryland Board of Public Works.

I. ARTICLE 9 – WARRANTY OF AUTHORITY TO EXECUTE CONTRACT

The person signing this Agreement on behalf of the Contractor represents and warrants that the Contractor is duly organized and validly existing and that this Agreement has been authorized by all necessary parties, is validly executed by an authorized officer or agent of the Contractor having authority to bind the Contractor, and is binding upon and enforceable against the Contractor in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

ATTEST: _____ **CONTRACTOR**
By: _____
President

WITNESS: _____ **MARYLAND DEPARTMENT OF TRANSPORTATION**
MARYLAND PORT ADMINISTRATION
By: _____
Procurement Officer

Approved for form and legal sufficiency
this ___ day of _____, ____.

Assistant Attorney General

APPROVED BY BPW: _____ **(Date)** _____ **(BPW Item #)**

Attachment H. MDOT MPA’s Terms and Conditions – Contracts for Services

**MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND PORT ADMINISTRATION**

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**MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND PORT ADMINISTRATION
TERMS AND CONDITIONS – CONTRACTS FOR SERVICES**

1. DEFINITIONS

Wherever in these Terms and Conditions or in other Contract documents the following terms or abbreviations are used, the meaning shall be as follows.

A. Definitions of State Procurement Law

Definitions set forth in Division II of the State Finance and Procurement Article, Annotated Code of Maryland and COMAR Title 2 are incorporated into these Terms and Conditions.

B. Other Definitions

- (1) "Administration" means the Maryland Port Administration.
- (2) "COMAR" means the Code of Maryland Regulations.
- (3) "Department" and "MDOT" mean the Maryland Department of Transportation.
- (4) "MDOT MPA" means the Maryland Department of Transportation Maryland Port Administration.
- (5) "Offeror" means a person or business submitting an offer or proposal in procurement by competitive sealed proposals or other negotiated procurement process.
- (6) "Secretary" means the Secretary of MDOT.
- (7) "Subcontractor" means any person or business, including a supplier, undertaking to provide a part of the scope of work, services, materials or supplies required under the terms of the Contract.

2. PREPARATION OF A BID OR PROPOSAL

Bids or proposals shall be submitted on the forms or in the format provided by MDOT MPA.

3. PUBLIC INFORMATION ACT NOTICE

Bidders and offerors should give specific attention to the identification of those portions of bids or proposals which they deem to be confidential, proprietary information or trade secrets. The bidder or offeror should provide any justification why such materials, upon request, should not be disclosed by MDOT MPA under the Maryland Public Information Act, Section 4-101 *et seq.* of the General Provisions Article of the Annotated Code of Maryland. MDOT MPA will make the final determination of whether a document must be disclosed.

4. SANCTIONS UPON IMPROPER ACTS

- A. In the event the Contractor 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 or service to be done or payment to be made under this Contract, the Contract may, in the discretion of MDOT MPA, be terminated.
- B. Section 16-203 of State Finance and Procurement Article of the Annotated Code, and COMAR 21.08.01, which relate to Contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated in this Contract by reference.
- C. Section 11-205 of State Finance and Procurement Article and COMAR 21.08.03 relating to collusion for purposes of defrauding of the State are incorporated into this Contract by reference.
- D. Subtitle 08 of Title 21 of COMAR, "Disqualification, Suspension, Debarment, Reinstatement, and Sanctions" is incorporated into this Contract by reference.

5. COMPLIANCE WITH LAWS; ARREARAGES; ETC.

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, state and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

6. NONDISCRIMINATION IN EMPLOYMENT

A. The Contractor agrees:

- (1) To comply with all applicable State and Federal law pertaining to nondiscrimination in employment;
- (2) Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability of a qualified individual with a disability;

- (3) To include a provision similar to that contained in subsection (a) above, and in any subcontract except a subcontract for standard commercial supplies or raw materials; and
 - (4) To post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- B. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, MDOT MPA shall impose such sanctions as it may determine to be appropriate, including but not limited to:
- (1) Withholding of payment to the Contractor under the Contract until the Contractor complies, and/or
 - (2) Cancellation, termination or suspension of the Contract in whole or in part.

7. DISSEMINATION OF INFORMATION

During the term of this Contract the Contractor shall not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of MDOT MPA.

8. NONHIRING OF EMPLOYEES

No official or employee of the State of Maryland, as defined under State Government Article, 15-102, Annotated Code of Maryland, whose duties as such official or employee includes matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

9. CONTINGENT FEE PROHIBITION

- A. The Contractor warrants that it 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 Contractor, architect, or engineer, to solicit or secure this Contract, and that he has not paid or agreed to pay any person, partnership, a corporation, or other entity, other than a *bona fide* salesperson, or commercial selling agency, any fee or other consideration contingent on the making of the Contract.
- B. For breach or violation of this warranty MDOT MPA shall have the right to terminate this Contract without liability, or, at MDOT MPA discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10. CONFLICT OF INTEREST LAW

It is unlawful for any State officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any Contract or other matter in which he, his spouse, parent, minor child, brother or sister, has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a part, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, Subsection 3-101 *et seq.* of the Annotated Code of Maryland.

11. FINANCIAL DISCLOSURE

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into Contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more, shall, within 30 days of the time when the aggregate value of these Contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

12. POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: http://www.elections.state.md.us/campaign_finance/index.html.

13. PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon MDOT MPA's Procurement Officer, officials, employees, and other representatives, either personally or as officials of the State, it being understood that in all such matters the above act solely as agents and representatives of the State.

14. COST AND PRICE CERTIFICATION

A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

- (1) A negotiated Contract, if the total Contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or
- (2) A change order or Contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

15. CONTRACT ADMINISTRATION

This Contract will be administered on behalf of MDOT MPA by the Procurement Officer and/or by the responsible Contract Administrator(s).

16. AUTHORITY OF THE PROCUREMENT OFFICER

- A. The Procurement Officer and/or responsible Contract Administrator(s) shall decide all questions which may arise as to the quality and acceptability of work performed and as to the rate of progress of said work; all questions which may arise as to the interpretation of any or all plans and/or specifications; and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor.
- B. The Procurement Officer and/or responsible Contract Administrator(s) shall determine the amount of work performed to be paid for under the Contract.
- C. The Procurement Officer shall have the authority to suspend the work wholly or in part due to the failure of the Contractor to carry out provisions of the Contract.
- D. The Procurement Officer and/or responsible Contract Administrator(s) may authorize progress payments for work satisfactorily completed, subject to such retainage that the solicitation specifies as appropriate.

17. CORPORATE REGISTRATION AND TAX PAYMENT CERTIFICATION

Businesses are required to execute a Certification of Corporation Registration and Tax Payment (contained in the Contract Affidavit).

18. NOTICE TO PROCEED; PROSECUTION OF WORK

- A. Except as provided in B, after the Contract has been executed, MDOT MPA will issue to the Contractor a Notice to Proceed and this notice will stipulate the date on or before which the Contractor is expected to begin work. Any preliminary work started before receipt of the Notice to Proceed shall be at the risk of the Contractor.
- B. A Notice to Proceed shall not be required if the Contract or solicitation provides the Contractor to commence performance of the Contract on a date stated in the Contract or solicitation.
- C. The Contractor shall begin work promptly at or within the time specified in the Contract. The work shall be prosecuted diligently until the entire Contract is complete.

19. DISCREPANCIES IN DOCUMENTS

In the event the Contractor discovers any discrepancies in the Contract or other relevant documents, the Contractor shall immediately notify the Procurement Officer. The Procurement Officer will then make such corrections and interpretations as maybe deemed necessary in the best interest of MDOT MPA and for fulfilling the intent of the Contract.

20. CONTRACTOR'S INSURANCE

- A. Prior to the start of work on any Contract, the Contractor shall submit to the Procurement Officer one or more certificates of insurance indicating that the Contractor carries insurance against the risks and in the amounts specified elsewhere in the Contract.
- B. The Contractor shall maintain property and casualty insurance with minimum limits sufficient to replace, at the then current value, State of Maryland and using entity equipment, components, software, etc. which is destroyed, damaged, lost, or stolen while in the custody of the Contractor, its agents, servants, employees, or subcontractors.
- C. The Contractor shall maintain a policy of general liability insurance that is of the proper type and of sufficient limits so that the State, its officials, employees, agents, servants, guests and other contractors and subcontractors are reasonably covered in the event of injury or death. The Contractor shall assure that any subcontractors used by Contractor in connection with this Contract also carry such coverage.
- D. MDOT MPA and the State of Maryland shall be named as additional insureds on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage, and certificates of insurance evidencing this coverage will be provided prior to the commencement of any activities. All insurance policies must be with a company licensed to do business in Maryland.
- E. The Contractor may be required by the solicitation to provide additional insurance coverage.

21. RESPONSIBILITY FOR CLAIMS AND LIABILITY

- A. The Contractor shall indemnify and hold harmless MDOT MPA, MDOT, and the State of Maryland and their officers, agents, and employees, from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, arising out of or resulting from errors or omissions in performance, and negligent, reckless, or intentional performance or nonperformance of the services of the Contractor or those of its subcontractors, agents, or employees under this Contract, or arising from or based on the violation of any federal, State or local law, ordinance, regulation, order, or decree, whether by itself or its employees or subcontractors.
- B. MDOT MPA, DMOT, and the State of Maryland have no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- C. The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

22. MINORITY BUSINESS ENTERPRISE COMPLIANCE

This Contract is subject to the applicable provisions of Title 14, Subtitle 3 of the State Finance and Procurement Article, Annotated Code of Maryland; COMAR 21.11.03 (Minority Business Enterprise Policies); and COMAR 11.01.10, which incorporates by reference the Minority Business Enterprise Program Manual. Copies of the Minority Business Enterprise Program Manual may be requested from the Maryland Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. This Contract is also subject to all applicable federal and State law and regulations pertaining to Minority Business Enterprise and Affirmative Action.

23. COOPERATION BY CONTRACTOR

The Contractor shall give the work and/or services the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Procurement Officer in every way possible.

24. COOPERATION BETWEEN CONTRACTORS

The Contractor agrees in the event of dispute as to cooperation between Contractors, the Procurement Officer and/or Contract Administrator(s) will act as referee and decisions made by the Procurement Officer and/or Contract Administrator(s) will be binding. The Contractor agrees to make no claims against MDOT MPA for any inconvenience, delay or loss experienced because of the presence and operations of other contractors.

25. SUBCONTRACTING; ASSIGNMENT; NOVATION OR CHANGE OF NAME

- A. This Contract is subject to COMAR 21.05.02.24.
- B. The Contractor shall not subcontract, transfer, or assign the whole or any part of this Contract without the prior written consent of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a Contract after due notice to MDOT MPA. In case the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument of assignment shall contain a clause providing that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract. MDOT MPA is not responsible to Contractor's assignees for the fulfillment of the Contractor's obligations to subcontractors.

26. CHANGES OR MODIFICATIONS IN THE SERVICES; WORK ORDERS

- A. Changes.
 - (1) The Procurement Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be an order, make any change in the work within the general scope of the Contract, including but not limited to changes:
 - (a) In the specifications (including drawings and designs);
 - (b) In the method or manner of performance of the work;
 - (c) In the State-furnished facilities, equipment, materials, services, or site; or
 - (d) Directing acceleration in performance or delivery.
 - (2) Any other written order or an oral order, including a direction, instruction, interpretation, or determination from the Procurement Officer that causes or constitutes any such change shall be treated as a change order under this clause provided that the contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.
 - (3) Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the contractor to an equitable adjustment hereunder.
 - (4) Subject to paragraph (6) of this subsection, if any change under this clause causes an increase or decrease in the contractor's cost of, or the time required for, the performance of any part of the work under the Contract, whether or not changed by an order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any order under (2) above shall be allowed for any costs incurred more than twenty

- (20) days before the contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with such defective specifications.
- (5) If the contractor intends to assert a claim for an equitable adjustment under this section, he shall do so in accordance with and subject to the disputes procedures of the Contract.
- (6) Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the contract budget or total cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the contract is adjusted to permit its completion within the project budget.
- (7) No claim by the contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment is made under this Contract.
- (8) As used in this section, “work” means any and all commodities, supplies, goods, materials, labor, services, manner or time of delivery or performance, or other elements of performance required to be furnished or supplied by the contractor under this Contract.

B. Miscellaneous.

- (1) In the event of a dispute between MDOT MPA and the contractor as to whether any work is included in the scope of the Contract such that the contractor would be obligated to provide that work at no additional cost to the State, the Procurement Officer may order the contractor under this section to perform or provide the work (a “Work Order”). If the contractor considers such an order to be a change in the scope of the Contract entitling the contractor to additional compensation, a time extension, or other relief, the contractor must provide the notice required by this section and initiate a claim therefore in accordance with Contract requirements. An order of the Procurement Officer, by virtue of being called or referred to as a “change order,” does not necessarily constitute a change in the scope of the Contract or in the work required under the Contract. The contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Procurement Officer if the Contract otherwise requires the contractor to perform as stated in the order.
- (2) Upon receipt of a signed written order of the Procurement Officer under this section, the contractor shall comply with the order promptly, within the requirements of the required completion or delivery time, whether or not the contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a

- breach of the Contract and grounds for termination for default or any other remedy available to MDOT MPA.
- (3) MDOT MPA may issue a unilateral order on MDOT MPA's terms (including a promise to pay the contractor a "not to exceed" ("NTE") amount) which the contractor may then dispute in accordance with the disputes procedures of the Contract. Pending resolution of such a dispute, contractor must proceed diligently with performance of the Contract as ordered by the Procurement Officer.
 - (4) The terms "not to exceed" and "NTE" when used in a change order mean that the amount of the change order (whether an increase or a decrease in the contract amount) will be a reasonable amount not to exceed the amount stated.

27. APPROVAL AUTHORITY

This Contract, including any change order or amendment thereto, is subject to approval requirements established by law, the Board of Public Works, the Secretary, the Maryland Port Commission, the Executive Director of MDOT MPA, and other applicable control authorities.

28. OWNERSHIP OF DOCUMENTS

- A. The Contractor agrees that all data and material including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, dyes, prints, diskettes and computations prepared by or for him under the terms of this Contract shall at any time during the performance of the services be made available to MDOT MPA upon request and shall become and remain the property of MDOT MPA upon termination or completion of the services. MDOT MPA shall have the right to use same without restriction or limitation and without compensation to the Contractor other than what's provided for in the Contract.
- B. The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for MDOT MPA, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

29. MULTIYEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not

affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. MDOT MPA shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of the Contract for each succeeding fiscal period beyond the first.

30. OCCUPATIONAL SAFETY & HEALTH ACT (OSHA)

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

31. DISPUTES; NO ELECTRONIC NOTICES OF CLAIM OR CLAIMS

- A. This procurement and the Contract shall be subject to the provisions of Title 15, Subtitle 2 of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR.21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- B. In accordance with COMAR 21.10.02.02 MDOT MPA will **not** accept notices of claim or claims by any electronic means (including by facsimile or email).

32. REMEDIES AND TERMINATION

A. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the Contract, MDOT MPA may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Contractor shall, at MDOT MPA's option, become MDOT MPA's property. MDOT MPA shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR, Title 21.07.01.11.B.

B. Termination for Convenience

The performance of work under this Contract may be terminated by MDOT MPA in accordance with this clause in whole, or from time to time in part, wherever MDOT MPA shall determine that such termination is in the best interest of the State. MDOT MPA will pay all reasonable

costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR, Title 21.07.01.12.A(2).

C. Obligations of Contractor Upon Termination

Upon notice of termination as provided in A or B above, the Contractor shall:

- (1) Take immediate action to discontinue its work and demobilize its work force in an orderly manner so as to minimize the incurrence of costs.
- (2) Take such action as may be necessary to protect the property of the State of Maryland, place no further orders or subcontracts, assign to MDOT MPA in the manner and to the extent directed by MDOT MPA all of the rights, title and, if ordered by MDOT MPA, possession and interest of Contractor under the orders or subcontracts terminated.
- (3) Transfer title to MDOT MPA of all materials, equipment, data, drawings, specifications, reports, estimates and such other information accumulated by the Contractor in performing this Contract, for the cost of which the Contractor has been or will be reimbursed under the terms of the Contract.

D. Remedies Not Exclusive

The rights and remedies contained in these Terms and Conditions are in addition to any other right or remedy provided by law, and the exercise thereof is not a waiver of any other right or remedy provided by law.

33. DELAYS AND EXTENSIONS OF TIME

A. The Contractor agrees to prosecute the scope of work or services continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever during the progress of any portion of the work specified in this Contract.

B. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or Contractual capacity, acts of another Contractor in the performance of a Contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

34. OBLIGATION TO CORRECT DEFECTIVE PERFORMANCE

Neither the final acceptance of any work or payment therefore nor any provision in the Contract documents nor partial or entire use of any work by MDOT MPA shall constitute an acceptance of work not performed in accordance with the Contract documents or relieve the Contractor of liability for any express warranties or responsibility for faulty performance, materials, or workmanship.

35. PATENT INDEMNITY

- A. If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit MDOT MPA to use such item or items.
- B. The Contractor will defend or settle, at its own expense, any claim or suit against MDOT MPA alleging that any such item furnished by the Contractor infringes any patent, trademark, copyright, or trade secret. If a third party claims that a Product infringes that party's patent or copyright, the Contractor will defend MDOT MPA against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided MDOT MPA (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations.
- C. If any products furnished by the Contractor become, or in the Contractor's or MDOT MPA's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense:
 - (1) Procure for MDOT MPA the right to continue using the applicable item;
 - (2) Replace the product with a non-infringing product substantially complying with the item's specifications; or
 - (3) Modify the item so that it becomes noninfringing and performs in a substantially similar manner to the original item.
- D. Options C(1), (2) and (3) are collectively referred to herein as the "Options". The Contractor may elect which Option it pursues provided, however, that:
 - (1) Any Option shall be implemented by the Contractor using its best efforts; and
 - (2) MDOT MPA shall have the right to direct the Contractor to select and implement a specific Option to the extent that MDOT MPA believes, in its sole judgment, that the selection and implementation of that particular Option is necessary to prevent or mitigate service-affecting interruptions to MDOT MPA's operations.

36. TERMS AND CONDITIONS PREVAILING

In event of a conflict between these Terms and Conditions and any other provision of the Contract documents, these Terms and Conditions shall prevail unless such other provision expressly provides to the contrary.

37. MARYLAND LAW PREVAILS

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

38. RESIDENT BUSINESS PREFERENCE

- A. This procurement is subject to the applicable provisions of COMAR Title 25.01.01.04, which authorizes that when awarding a Contract by competitive bidding, MDOT MPA may give a preference to the lowest responsive and responsible bid from a Maryland firm over that of a nonresident firm if the State in which the nonresident firm is located gives a resident business preference.
- B. The preference given under this Section shall be identical to the preference, through law, policy or practice, given to its residents by the State in which the non-resident firm is located.
- C. This provision shall not apply if it conflicts with any federal grant or regulation affecting this Contract.

39. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Contractor shall comply with the ADA, 42 USC 12101 *et seq.* and applicable regulations. To the extent required by the ADA, Contractor's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under the Contract conform to the ADA. Contractor shall indemnify and hold harmless MDOT MPA, MDOT, and the State in any administrative proceeding or other action brought pursuant to the ADA for all damages, attorney fees, litigation expenses and costs, if such action or proceeding arises from the acts of Contractor and Contractor's employees, agents or subcontractors.

40. PAYMENT OF STATE OBLIGATIONS

- A. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.
- B. A proper invoice shall include a description of the items or services provided; the date the goods were received or the inclusive dates the services were rendered; the Contract price(s); retention, if any; the basis for the billing; the Contract or purchase order number; the Contractor's

Federal Tax Identification Number or Social Security Number; the name and address of the proper invoice recipient.

C. In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest within 30 calendar days after the payment date of the amount on which the interest is claimed to have accrued. Interest may not be claimed for more than one (1) year following the 31st calendar day after the date that a proper invoice was received, or on amounts representing unpaid interest, or if a claim has been filed under State Finance and Procurement Article Title 15, Subtitle 2 of the Annotated Code of Maryland.

D. For the purposes of this Contract an invoice amount will not be deemed due and payable if:

- (1) The amount invoiced is inconsistent with the Contract.
- (2) The proper invoice has not been received by the person or location specified in the Contract.
- (3) The invoice or performance under the Contract is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- (4) The item or services have not been accepted;
- (5) The quantity of items delivered is less than the quantity ordered;
- (6) The items or services do not meet the quality requirements of the Contract;
- (7) The proper invoice for the progress payment, if applicable has not been submitted according to the schedule contained in the agreement;
- (8) All stipulated conditions for release of the retainage, if applicable, have not been met; and
- (9) Satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract Administrator(s) concerning performance under the Contract has been submitted by the Contractor.

E. Payment by Electronic Funds Transfer

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

<http://compnet.comp.state.md.us/gad>

F. Unless otherwise provided in the solicitation, invoices are to be sent by email to mpainvoices@marylandports.com or mailed to MDOT MPA Accounts Payable, 401 East Pratt Street, Suite 1100, Baltimore, MD 21202.

41. SUSPENSION OF WORK

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the State.

42. PRE-EXISTING REGULATIONS

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

43. RETENTION OF RECORDS

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract close out and final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, the Contract Manager or the Contract Manager's designee at all reasonable times. The Contractor shall, upon request by the department, surrender all and every copy of documents needed by the State, including such documents as, but not limited to itemized billing documentation containing the dates, hours spent and work performed by Contractor and its subcontractors under the Contract. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

44. INSOLVENCY

If the Contractor becomes insolvent, files for bankruptcy petition in any court, becomes the subject of an involuntary bankruptcy petition, makes a general assignment for the benefit of creditors, has a receiver appointed for assets, or ceases to conduct business, the Contractor shall be considered in default of the Contract. If any of these events occurs, the Contractor must immediately notify the Procurement Officer or designee.

45. COMMERCIAL NONDISCRIMINATION

- A. As a condition of entering into this Contract, Contractor represents and warrants that it will comply 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. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors,

suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- B. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Maryland Department of Transportation, in all subcontracts.
- C. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

46. RIGHTS TO RECORDS

- A. The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, solely for purposes of this Contract with MDOT MPA shall be the sole property of MDOT MPA and shall be available to MDOT MPA at any time. MDOT MPA shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- B. The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property

rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- C. The Contractor shall report to the Contract Officer, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this agreement.
- D. The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

47. CONFIDENTIALITY

- A. Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law.
- B. The provisions of this Section shall not apply to information that:
 - (1) Is lawfully in the public domain;
 - (2) Has been independently developed by the other party without violation of this Contract;
 - (3) Was already in the possession of such party;
 - (4) Was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or
 - (5) Which such party is required to disclose by law.

48. PROMPT PAYMENT OF SUBCONTRACTORS

- A. If a contractor withholds payment of an undisputed amount to its subcontractor, MDOT MPA, at its option and in its sole discretion, may take one or more of the following actions:
 - (1) Not process further payments to the contractor until payment to the subcontractor is verified;
 - (2) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;

- (3) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - (4) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (5) Take other or further actions as appropriate to resolve the withheld payment.
- B. An “undisputed amount” means an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- C. An act, failure to act, or decision of a Procurement Officer or a representative of MDOT MPA, concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:
- (1) Affect the rights of the contracting parties under any other provision of law;
 - (2) Be used as evidence on the merits of a dispute between MDOT MPA and the contractor in any other proceeding; or
 - (3) Result in liability against or prejudice the rights of MDOT MPA.
- D. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- E. To ensure compliance with certified MBE subcontract participation goals, MDOT MPA may, consistent with COMAR 21.11.03.13, take the following measures:
- (1) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - (2) This verification may include, as appropriate:
 - (a) Inspecting any relevant records of the contractor;
 - (b) Inspecting the jobsite; and
 - (c) Interviewing subcontractors and workers.
 - (3) Verification shall include a review of:
 - (a) The contractor’s monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- F. If MDOT MPA determines that a contractor is in noncompliance with certified MBE participation goals, then MDOT MPA will notify the contractor in writing of its findings, and will require the contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

- G. If MDOT MPA determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that MDOT MPA requires, then MDOT MPA may:
- (1) Terminate the contract for default;
 - (2) Refer the matter to the Office of the Attorney General for appropriate action; or
 - (3) Initiate any other specific remedy identified by the contract, including the contractual remedies required by this section regarding the payment of undisputed amounts.
- H. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

49. SURETY BOND ASSISTANCE PROGRAM

Assistance in obtaining bid, performance, and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDF). Questions regarding the bonding assistance program should be referred to:

Maryland Department of Business and Economic Development
Maryland Small Business Development Financing Authority
401 East Pratt Street
Baltimore, MD 21202
(410) 767-6300

50. ACCESS TO MDOT MPA FACILITIES; MDOT MPA SECURITY; TWIC

- A. As used in this provision, “personnel performing the contract” means the Contractor and its employees, and all subcontractors and suppliers at any tier and their employees, including all individuals delivering goods to MDOT MPA terminals.
- B. Personnel performing the contract, including personnel delivering goods, shall be subject to all policies and procedures of MDOT MPA or applicable to MDOT MPA regarding (1) the security of MDOT MPA facilities, (2) ingress and egress to or from MDOT MPA facilities, and (3) movement within MDOT MPA facilities. **Such policies and procedures include those relating to the Transportation Worker Identification Credential (TWIC).** Applicable policies and procedures can be found at the MDOT MPA website at: <https://mpa.maryland.gov/Pages/port-security.aspx> and at <https://www.tsa.gov/for-industry/twic>. The Contractor shall comply with and be bound by all such policies and procedures, at no additional cost to MDOT MPA.
- C. The Contractor shall not be excused from performance of the contract by the failure of personnel performing the contract to possess a TWIC nor by MDOT MPA’s refusal to allow personnel performing the contract from using on an approved escort company to gain access to MDOT MPA terminals.

- D. Personnel performing the contract must enter and exit Dundalk Marine Terminal (DMT) and Seagirt Marine Terminal (SMT) through the DMT Truck Gate on Broening Highway, and may not enter through the Personally Owned Vehicle (POV) Gate.

51. ELECTRONIC TRANSACTIONS

A. Under COMAR 21.03.05, unless otherwise prohibited by law, MDOT MPA may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

B. Participation in the solicitation process on a procurement contract for which electronic means have been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that contract which are specifically authorized under the solicitation or the contract.

C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMaryland Marketplace Advantage), and electronic data interchange.

D. In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g., Payment by Electronic Funds Transfer) and subject to the exclusions noted in this Section, the following transactions are authorized to be conducted by electronic means on the terms described:

- (1) The Procurement Officer may conduct this procurement using eMaryland Marketplace Advantage, email or facsimile to issue:
 - (a) The solicitation (e.g. the RFP);
 - (b) Any amendments;
 - (c) Prebid or preproposal conference documents;
 - (d) Questions and responses;
 - (e) Communications regarding the solicitation or proposal to any offeror or potential offeror including requests for clarification, explanation, or removal of elements of an offeror’s proposal deemed not acceptable;
 - (f) Submission of bids, if so provided elsewhere in the solicitation;
 - (g) Notices of award selection or nonselection; and

- (h) The Procurement Officer's decision on any protest or contract claim.
- (2) An offeror or potential offeror may use email or facsimile to:
 - (a) Ask questions regarding this solicitation;
 - (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) Request a debriefing; or,
 - (d) Submit a "No Bid Response" to this solicitation.
- (3) The Procurement Officer, the Contract Administrator, and the contractor may conduct day-to-day contract administration, except as stated in subsection E, utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Administrator.
- E. The following transactions related to this procurement and any contract awarded pursuant to it are not authorized to be conducted by electronic means:
 - (1) Submission of initial bids or proposals, except to the extent otherwise expressly provided in the solicitation;
 - (2) Filing of notices of claim and contract claims;
 - (3) Submission of documents determined by MDOT MPA to require original signatures (e.g. contract execution, contract modifications, etc); or
 - (4) Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the contractor, bidder or offeror be provided in writing or hard copy.
- F. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the solicitation, the Contract, or the direction from the Procurement Officer or Contract Administrator.

52. DRUG AND ALCOHOL FREE WORKPLACE

Contractor warrants that the Contractor shall comply with COMAR 21.11.08, Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of the Contract.

53. PURCHASE ORDER AS CONTRACT

- A. This Section 53 applies only when the MDOT MPA has issued a solicitation.

- B. As used in this Section 53, “bid” refers to a bid submitted under competitive sealed bidding, an offer submitted under competitive sealed proposals, and to a bid, offer, or quotation under any other method of procurement.
- C. As used in this provision, “bidder” refers to a bidder under competitive sealed bidding, an offeror under competitive sealed proposals, and to a bidder, offeror, or party submitting a quotation under any other method of procurement.
- D. As used in this provision, “solicitation” means an invitation to bid, a request for proposals, or any other document requesting bids, proposals, or a quotation for procurement by the MDOT MPA.
- E. The bidder’s execution and submission of a responsive bid constitutes a promise by the bidder to perform the contract solicited by the MDOT MPA in accordance with the terms and conditions stated in the solicitation. The bid shall be irrevocable for the period stated in the solicitation or for such longer period as the bidder and the MDOT MPA may agree.
- F. Upon acceptance of a bid, the Procurement Officer may issue a Purchase Order (PO), in a form to be determined by the MDOT MPA, to the bidder accepting the bid and binding the bidder to a contract. The execution and issuance of a PO by the Procurement Officer, subject to all necessary approvals, shall constitute acceptance of the bid and final award of the Contract.
- G. The contract of the parties (the “Contract”) will be embodied in the contract documents, which shall consist of:
 - (1) The executed PO of the Procurement Officer, including all documents, terms, and conditions incorporated into the PO;
 - (2) The solicitation, including all documents, terms, and conditions incorporated into the solicitation; and
 - (3) The bid.
- H. In the event of a conflict between provisions of the contract documents, the controlling provisions shall be, in the following order, those of:
 - (1) The PO; then
 - (2) The solicitation; and then
 - (3) The bid.

54. ESTIMATED QUANTITIES; NOT A REQUIREMENTS CONTRACT

- A. Except as otherwise provided in the solicitation, estimated quantities represented in this solicitation are not warranted or guaranteed by the MDOT MPA. The Contractor will be entitled to no change in Contract price if quantities ordered or delivered are more or less than the quantities estimated in this solicitation. The Contractor will be paid for all services and quantities ordered or delivered under the Contract at the price bid, regardless of services or quantities previously ordered or delivered.
- B. The Contract is not a requirements contract. The MDOT MPA reserves the right to procure the same or similar services from other sources in the absolute discretion of the MDOT MPA.

55. INVESTMENT ACTIVITIES IN IRAN

By submitting a bid or proposal in response to this solicitation, the bidder or offer certifies that the bidder or offeror:

- A. Is not identified on the list created by the Maryland Board of Public Works as a person engaging in investment activities in Iran as described in § 17-702 of the State Finance and Procurement Article, Annotated Code of Maryland, and
- B. Is not engaging in investment activities in Iran as described in § 17-702.

56. CONFLICT MINERALS THAT ORIGINATED IN THE DEMOCRATIC REPUBLIC OF THE CONGO OR NEIGHBORING COUNTRIES

- A. In this section the following words have the meanings indicated.
- B. (1) (a) “Conflict mineral” means a mineral or mineral derivative determined under federal law to be financing human conflict.
 - (b) “Conflict mineral” includes columbite-tantalite (coltan), cassiterite, gold, wolframite, or derivatives of these minerals.
- C. “Noncompliant person” means a person:
 - (1) That is required to disclose under federal law information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries; and
 - (2) For which the disclosure is not filed, is considered under federal law to be an unreliable determination, or contains false information.

- D. By submitting a bid or proposal under this solicitation, the bidder or offeror agrees and certifies that it is not a noncompliant person and that it shall not become a noncompliant person during the term of this Contract.

57. LIVING WAGE

- A. If the solicitation provides that the contract is subject to the Living Wage, the Contractor promises to comply with the Living Wage Law (Title 18, State Finance and Procurement Article, Annotated Code of Maryland) and COMAR 21.11.10, at no additional cost to MDOT MPA, including:

- (1) To pay at least the Living Wage rate required;
- (2) To pay at least the revised Living Wage rate if the Living Wage rate is increased by the Commissioner of Labor and Industry; and
- (3) To file certified payrolls as required.

B. Withholding Contract Funds for Late Payroll Submissions on Living Wage Contracts.

- (1) Pursuant to the Code of Maryland Regulations (COMAR) 21.11.10.05 an employer performing work under a Living Wage contract must submit to the Division of Labor and Industry (DLI) of the Department of Labor, Licensing, and Regulation (DLLR) payroll records for all employees covered under the Living Wage Law within 14 days after the end of each payroll period. To ensure compliance with this regulation, the Governor issued a policy directive in May 2014 directing all agencies to include payroll reporting requirement language in bid solicitations and to withhold payments and retainage if the employer fails to submit required payroll records on time. Contract funds will be withheld for late submission of payroll records according to the following process.
- (2) If, at the conclusion of the 14-day period during which the contractor is required to submit certified payroll records, no payroll records were received by the Living Wage Unit, then a Living Wage investigator will send a written letter notifying the contractor that payroll records were not received as required by regulation. The Procurement Officer assigned to the contract will also receive a copy of this notification letter. In the letter from the Living Wage investigator, the contractor will be given 14 days to submit the required payroll records. During this 14-day period the investigator will attempt to contact the contractor by phone and email to resolve the issue in person as a follow-up to the written notification. The Procurement Officer may also attempt to contact the contractor about submitting payroll information on time.
- (3) In the event that the contractor still fails to submit payroll records, the Living Wage investigator will then issue a final demand for submission of the late payroll. This second letter to the contractor will state that unless the required payroll is received by

the close of business on a specified date, seven days after the period to submit stated in the second notification letter ends, funds will be withheld from contract payments until the payroll records are received by DLLR. The Procurement Officer will also receive a copy of this final demand letter.

- (4) If the contractor remains unwilling to comply and DLLR does not receive the required payroll records, then the Living Wage Unit will send a withholding request to the Procurement Officer the day after the date specified on the demand letter (the second letter). The withholding request will be sent electronically through email, followed by a mailed hard copy. The request to the Procurement Officer will include a letter from the Living Wage Unit formally requesting that payment be withheld from the contractor for failure to submit certified payroll records as required. The request will also include all copies of all documented communication between DLLR and the contractor.
- (5) Upon receipt of the withholding request, the Procurement Officer will determine the amount of money to be withheld from the contractor. It is suggested that Procurement Officers withhold 10% of each future payment due the contractor. The Procurement Officer will notify the contractor that funds will be withheld until the required payroll records are received by DLLR. The Procurement Officer will copy the Living Wage Unit on the withholding notice. The contractor's failure to submit subsequent payroll records will be considered a continuation of the same violation and the Procurement Officer will extend the withholding to subsequent payments. The Procurement Officer will not release the hold until the Living Wage Unit notifies the Procurement Officer that the payroll(s) have been submitted. The Living Wage Unit will notify the Procurement Officer both electronically and by mail.

58. PROTECTION OF PERSONAL INFORMATION

The Contractor hereby represents and warrants that it shall comply with all Federal and State laws and regulations applicable to the protection of personal information including but not limited to, State Government Article, Sections 10-1301 – 10-1308, Annotated Code of Maryland, that takes effect on July 1, 2014 and imposes the following requirements, among others, on Contractors that provide services to a State Unit and that are provided personal information about individuals under a written contract or agreement with the State Unit:

- A. Contractor shall implement and maintain reasonable security procedures and practices that:
 - (1) are appropriate to the nature of the personal information disclosed to the Contractor, and;
 - (2) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction;
- B. Contractor shall conduct reasonable and prompt investigations when the security of a computerized data system that includes personal information is breached or a breach is suspected, and;

- C. Contractor shall provide notices required of the contractor under State Government Article, Sections 10-1301 – 10-1308, Annotated Code of Maryland.

59. COMPLIANCE WITH DOIT INFORMATION SECURITY POLICY

All information technology supplies (hardware, software, and equipment) and information technology services procured under this contract must comply with the most recent version of the Maryland Department of Information Technology (DOIT) Information Security Policy, which may be viewed at:

<https://doit.maryland.gov/Documents/Maryland%20IT%20Security%20Manual%20v1.2.pdf>

60. PERFORMANCE IN THE UNITED STATES – CONTRACTS FOR SERVICES OF \$2 MILLION OR MORE

- A. This section applies if the expected value of this contract is \$2 million or more.
- B. By submission of a bid or offer under this procurement, the bidder or offeror represents and warrants that substantially all of the services to be performed under the contract will be performed within the United States (the “US”).
- C. If substantially all of the services to be performed under this contract will not be performed within the US, the bidder or offeror shall disclose in its bid or offer:
- (1) Where other than in the US a substantial portion the services will be performed; and
 - (2) The reason why it is necessary or advantageous to perform those services outside the US.

61. EIGHT (8) MB LIMIT ON EMAILS AND ATTACHMENTS TO MDOT MPA

Emails to MDOT MPA, including attachments, cannot exceed 8 MB in size. If the total size of an email and attachments to be sent to MDOT MPA exceeds 8 MB, you must break the email or attachments into multiple parts and send them via separate emails not exceeding 8 MB each (including attachments).

62. VETERAN-OWNED SMALL BUSINESS ENTERPRISES

A certified Veteran-Owned Small Business Enterprise (VSBE) must be verified by and registered as a VSBE on the State’s eProcurement platform, eMaryland Marketplace Advantage (eMMA). The listing of VSBEs is available through the “Vendor Search” on eMMA.

63. CORPORATE DIVERSITY

Bidders and offerors for this procurement should review the requirements and restrictions of § 19-106 of Business Regulation Article, Annotated Code of Maryland, § 11-101 of the Tax Property Article, Annotated Code of Maryland, and COMAR 24.01.07. If:

- the expected value of the contract awarded as a result of this solicitation is \$1,000,000 or greater,
- the procurement uses a competitive procurement process to select the contractor, and
- no federal funds will be used to pay for the project,

the bidder or offeror must complete and submit the Corporate Diversity Addendum included in this solicitation or provided by MDOT MPA, or a copy of the Corporate Diversity Addendum completed and filed with the Maryland Department of Assessments and Taxation after April 15, 2023. The information provided in the executed Corporate Diversity Addendum will be used to determine whether or not an otherwise successful bidder or offeror will be eligible

1. DEFINITIONS

Wherever in these Terms and Conditions or in other Contract documents the following terms or abbreviations are used, the meaning shall be as follows.

A. Definitions of State Procurement Law

Definitions set forth in Division II of the State Finance and Procurement Article, Annotated Code of Maryland and COMAR Title 2 are incorporated into these Terms and Conditions.

B. Other Definitions

- (1) "Administration" means the Maryland Port Administration.
- (2) "COMAR" means the Code of Maryland Regulations.
- (3) "Department" and "MDOT" mean the Maryland Department of Transportation.
- (4) "MDOT MPA" means the Maryland Department of Transportation Maryland Port Administration.
- (5) "Offeror" means a person or business submitting an offer or proposal in procurement by competitive sealed proposals or other negotiated procurement process.
- (6) "Secretary" means the Secretary of MDOT.
- (7) "Subcontractor" means any person or business, including a supplier, undertaking to provide a part of the scope of work, services, materials or supplies required under the terms of the Contract.

2. PREPARATION OF A BID OR PROPOSAL

Bids or proposals shall be submitted on the forms or in the format provided by MDOT MPA.

3. PUBLIC INFORMATION ACT NOTICE

Bidders and offerors should give specific attention to the identification of those portions of bids or proposals which they deem to be confidential, proprietary information or trade secrets. The bidder or offeror should provide any justification why such materials, upon request, should not be disclosed by MDOT MPA under the Maryland Public Information Act, Section 4-101 *et seq.* of the General Provisions Article of the Annotated Code of Maryland. MDOT MPA will make the final determination of whether a document must be disclosed.

4. SANCTIONS UPON IMPROPER ACTS

- A. In the event the Contractor 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 or service to be done or payment to be made under this Contract, the Contract may, in the discretion of MDOT MPA, be terminated.
- B. Section 16-203 of State Finance and Procurement Article of the Annotated Code, and COMAR 21.08.01, which relate to Contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe are incorporated in this Contract by reference.
- C. Section 11-205 of State Finance and Procurement Article and COMAR 21.08.03 relating to collusion for purposes of defrauding of the State are incorporated into this Contract by reference.
- D. Subtitle 08 of Title 21 of COMAR, "Disqualification, Suspension, Debarment, Reinstatement, and Sanctions" is incorporated into this Contract by reference.

5. COMPLIANCE WITH LAWS; ARREARAGES; ETC.

The Contractor hereby represents and warrants that:

- A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including, but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, state and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

6. NONDISCRIMINATION IN EMPLOYMENT

- A. The Contractor agrees:
 - (1) To comply with all applicable State and Federal law pertaining to nondiscrimination in employment;

- (2) Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental disability of a qualified individual with a disability;
 - (3) To include a provision similar to that contained in subsection (a) above, and in any subcontract except a subcontract for standard commercial supplies or raw materials; and
 - (4) To post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.
- B. In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, MDOT MPA shall impose such sanctions as it may determine to be appropriate, including but not limited to:
- (1) Withholding of payment to the Contractor under the Contract until the Contractor complies, and/or
 - (2) Cancellation, termination or suspension of the Contract in whole or in part.

7. DISSEMINATION OF INFORMATION

During the term of this Contract the Contractor shall not release any information related to the services or performance of the services under this Contract nor publish any final reports or documents without the prior written approval of MDOT MPA.

8. NONHIRING OF EMPLOYEES

No official or employee of the State of Maryland, as defined under State Government Article, 15-102, Annotated Code of Maryland, whose duties as such official or employee includes matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

9. CONTINGENT FEE PROHIBITION

- A. The Contractor warrants that it 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 Contractor, architect, or engineer, to solicit or secure this Contract, and that he has not paid or agreed to pay any person, partnership, a corporation, or other entity, other than a *bona fide* salesperson, or commercial selling agency, any fee or other consideration contingent on the making of the Contract.
- B. For breach or violation of this warranty MDOT MPA shall have the right to terminate this Contract without liability, or, at MDOT MPA discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, Contractorage fee, gift or contingent fee.

10. CONFLICT OF INTEREST LAW

It is unlawful for any State officer, employee, or agent to participate personally in his official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any Contract or other matter in which he, his spouse, parent, minor child, brother or sister, has a financial interest or to which any firm, corporation, association, or other organization in which he has a financial interest or in which he is serving as an officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, is a part, unless such officer, employee, or agent has previously complied with the provisions of Article 40A, Subsection 3-101 *et seq.* of the Annotated Code of Maryland.

11. FINANCIAL DISCLOSURE

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into Contracts, leases or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more, shall, within 30 days of the time when the aggregate value of these Contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

12. POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website:
http://www.elections.state.md.us/campaign_finance/index.html.

13. PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon MDOT MPA's Procurement Officer, officials, employees, and other representatives, either personally or as officials of the State, it being understood that in all such matters the above act solely as agents and representatives of the State.

14. COST AND PRICE CERTIFICATION

- A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:
- (1) A negotiated Contract, if the total Contract price is expected to exceed \$100,000, or a smaller amount set by the Procurement Officer; or

(2) A change order or Contract modification, expected to exceed \$100,000, or a smaller amount set by the Procurement Officer.

- B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

15. CONTRACT ADMINISTRATION

This Contract will be administered on behalf of MDOT MPA by the Procurement Officer and/or by the responsible Contract Administrator(s).

16. AUTHORITY OF THE PROCUREMENT OFFICER

- A. The Procurement Officer and/or responsible Contract Administrator(s) shall decide all questions which may arise as to the quality and acceptability of work performed and as to the rate of progress of said work; all questions which may arise as to the interpretation of any or all plans and/or specifications; and all questions as to the acceptable fulfillment of the Contract on the part of the Contractor.
- B. The Procurement Officer and/or responsible Contract Administrator(s) shall determine the amount of work performed to be paid for under the Contract.
- C. The Procurement Officer shall have the authority to suspend the work wholly or in part due to the failure of the Contractor to carry out provisions of the Contract.
- D. The Procurement Officer and/or responsible Contract Administrator(s) may authorize progress payments for work satisfactorily completed, subject to such retainage that the solicitation specifies as appropriate.

17. CORPORATE REGISTRATION AND TAX PAYMENT CERTIFICATION

Businesses are required to execute a Certification of Corporation Registration and Tax Payment (contained in the Contract Affidavit).

18. NOTICE TO PROCEED; PROSECUTION OF WORK

- A. Except as provided in B, after the Contract has been executed, MDOT MPA will issue to the Contractor a Notice to Proceed and this notice will stipulate the date on or before which the Contractor is expected to begin work. Any preliminary work started before receipt of the Notice to Proceed shall be at the risk of the Contractor.
- B. A Notice to Proceed shall not be required if the Contract or solicitation provides the Contractor to commence performance of the Contract on a date stated in the Contract or solicitation.
- C. The Contractor shall begin work promptly at or within the time specified in the Contract. The work shall be prosecuted diligently until the entire Contract is complete.

19. DISCREPANCIES IN DOCUMENTS

In the event the Contractor discovers any discrepancies in the Contract or other relevant documents, the Contractor shall immediately notify the Procurement Officer. The Procurement Officer will then make such corrections and interpretations as maybe deemed necessary in the best interest of MDOT MPA and for fulfilling the intent of the Contract.

20. CONTRACTOR'S INSURANCE

- A. Prior to the start of work on any Contract, the Contractor shall submit to the Procurement Officer one or more certificates of insurance indicating that the Contractor carries insurance against the risks and in the amounts specified elsewhere in the Contract.
- B. The Contractor shall maintain property and casualty insurance with minimum limits sufficient to replace, at the then current value, State of Maryland and using entity equipment, components, software, etc. which is destroyed, damaged, lost, or stolen while in the custody of the Contractor, its agents, servants, employees, or subcontractors.
- C. The Contractor shall maintain a policy of general liability insurance that is of the proper type and of sufficient limits so that the State, its officials, employees, agents, servants, guests and other contractors and subcontractors are reasonably covered in the event of injury or death. The Contractor shall assure that any subcontractors used by Contractor in connection with this Contract also carry such coverage.
- D. MDOT MPA and the State of Maryland shall be named as additional insureds on the policies of all property, casualty, liability, and other types of insurance evidencing this coverage, and certificates of insurance evidencing this coverage will be provided prior to the commencement of any activities. All insurance policies must be with a company licensed to do business in Maryland.
- E. The Contractor may be required by the solicitation to provide additional insurance coverage.

21. RESPONSIBILITY FOR CLAIMS AND LIABILITY

- A. The Contractor shall indemnify and hold harmless MDOT MPA, MDOT, and the State of Maryland and their officers, agents, and employees, from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, arising out of or resulting from errors or omissions in performance, and negligent, reckless, or intentional performance or nonperformance of the services of the Contractor or those of its subcontractors, agents, or employees under this Contract, or arising from or based on the violation of any federal, State or local law, ordinance, regulation, order, or decree, whether by itself or its employees or subcontractors.
- B. MDOT MPA, DMOT, and the State of Maryland have no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- C. The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

22. MINORITY BUSINESS ENTERPRISE COMPLIANCE

This Contract is subject to the applicable provisions of Title 14, Subtitle 3 of the State Finance and Procurement Article, Annotated Code of Maryland; COMAR 21.11.03 (Minority Business Enterprise Policies); and COMAR 11.01.10, which incorporates by reference the Minority Business Enterprise Program Manual. Copies of the Minority Business Enterprise Program Manual may be requested from the Maryland Department of Transportation, Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. This Contract is also subject to all applicable federal and State law and regulations pertaining to Minority Business Enterprise and Affirmative Action.

23. COOPERATION BY CONTRACTOR

The Contractor shall give the work and/or services the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Procurement Officer in every way possible.

24. COOPERATION BETWEEN CONTRACTORS

The Contractor agrees in the event of dispute as to cooperation between Contractors, the Procurement Officer and/or Contract Administrator(s) will act as referee and decisions made by the Procurement Officer and/or Contract Administrator(s) will be binding. The Contractor agrees to make no claims against MDOT MPA for any inconvenience, delay or loss experienced because of the presence and operations of other contractors.

25. SUBCONTRACTING; ASSIGNMENT; NOVATION OR CHANGE OF NAME

- A. This Contract is subject to COMAR 21.05.02.24.
- B. The Contractor shall not subcontract, transfer, or assign the whole or any part of this Contract without the prior written consent of the Procurement Officer; provided, however, that a Contractor may assign monies receivable under a Contract after due notice to MDOT MPA. In case the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument of assignment shall contain a clause providing that the right of the assignee in and to any monies due or to become due to the Contractor shall be subject to prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the work called for in this Contract. MDOT MPA is not responsible to Contractor's assignees for the fulfillment of the Contractor's obligations to subcontractors.

26. CHANGES OR MODIFICATIONS IN THE SERVICES; WORK ORDERS

- A. Changes.
 - (1) The Procurement Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be an order, make any change in the work within the general scope of the Contract, including but not limited to changes:
 - (a) In the specifications (including drawings and designs);
 - (b) In the method or manner of performance of the work;
 - (c) In the State-furnished facilities, equipment, materials, services, or site; or
 - (d) Directing acceleration in performance or delivery.

- (2) Any other written order or an oral order, including a direction, instruction, interpretation, or determination from the Procurement Officer that causes or constitutes any such change shall be treated as a change order under this clause provided that the contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.
- (3) Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the contractor to an equitable adjustment hereunder.
- (4) Subject to paragraph (6) of this subsection, if any change under this clause causes an increase or decrease in the contractor's cost of, or the time required for, the performance of any part of the work under the Contract, whether or not changed by an order, an equitable adjustment shall be made and the Contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any order under (2) above shall be allowed for any costs incurred more than twenty (20) days before the contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with such defective specifications.
- (5) If the contractor intends to assert a claim for an equitable adjustment under this section, he shall do so in accordance with and subject to the disputes procedures of the Contract.
- (6) Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the contract budget or total cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the contract is adjusted to permit its completion within the project budget.
- (7) No claim by the contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment is made under this Contract.
- (8) As used in this section, "work" means any and all commodities, supplies, goods, materials, labor, services, manner or time of delivery or performance, or other elements of performance required to be furnished or supplied by the contractor under this Contract.

B. Miscellaneous.

- (1) In the event of a dispute between MDOT MPA and the contractor as to whether any work is included in the scope of the Contract such that the contractor would be obligated to provide that work at no additional cost to the State, the Procurement Officer may order the contractor under this section to perform or provide the work (a "Work Order"). If the contractor considers such an order to be a change in the scope of the Contract entitling the contractor to additional compensation, a time extension, or other relief, the contractor must provide the notice required by this section and initiate a claim therefore in accordance with Contract requirements. An order of the Procurement Officer, by virtue of being called or referred to as

- a “change order,” does not necessarily constitute a change in the scope of the Contract or in the work required under the Contract. The contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Procurement Officer if the Contract otherwise requires the contractor to perform as stated in the order.
- (2) Upon receipt of a signed written order of the Procurement Officer under this section, the contractor shall comply with the order promptly, within the requirements of the required completion or delivery time, whether or not the contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a breach of the Contract and grounds for termination for default or any other remedy available to MDOT MPA.
- (3) MDOT MPA may issue a unilateral order on MDOT MPA’s terms (including a promise to pay the contractor a “not to exceed” (“NTE”) amount) which the contractor may then dispute in accordance with the disputes procedures of the Contract. Pending resolution of such a dispute, contractor must proceed diligently with performance of the Contract as ordered by the Procurement Officer.
- (4) The terms “not to exceed” and “NTE” when used in a change order mean that the amount of the change order (whether an increase or a decrease in the contract amount) will be a reasonable amount not to exceed the amount stated.

27. APPROVAL AUTHORITY

This Contract, including any change order or amendment thereto, is subject to approval requirements established by law, the Board of Public Works, the Secretary, the Maryland Port Commission, the Executive Director of MDOT MPA, and other applicable control authorities.

28. OWNERSHIP OF DOCUMENTS

- A. The Contractor agrees that all data and material including, but not limited to, reports, drawings, studies, specifications, estimates, maps, photographs, dyes, prints, diskettes and computations prepared by or for him under the terms of this Contract shall at any time during the performance of the services be made available to MDOT MPA upon request and shall become and remain the property of MDOT MPA upon termination or completion of the services. MDOT MPA shall have the right to use same without restriction or limitation and without compensation to the Contractor other than what’s provided for in the Contract.
- B. The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for MDOT MPA, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

29. MULTIYEAR CONTRACTS CONTINGENT UPON APPROPRIATIONS

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or

otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. MDOT MPA shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of the Contract for each succeeding fiscal period beyond the first.

30. OCCUPATIONAL SAFETY & HEALTH ACT (OSHA)

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

31. DISPUTES; NO ELECTRONIC NOTICES OF CLAIM OR CLAIMS

- A. This procurement and the Contract shall be subject to the provisions of Title 15, Subtitle 2 of the State Finance and Procurement Article of the Annotated Code of Maryland and COMAR.21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision.
- B. In accordance with COMAR 21.10.02.02 MDOT MPA will **not** accept notices of claim or claims by any electronic means (including by facsimile or email).

32. REMEDIES AND TERMINATION

A. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, fails to provide any required annual and renewable bond 30 days prior to expiration of the current bond then in effect, or otherwise violates any provision of the Contract, MDOT MPA may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the Contractor shall, at MDOT MPA's option, become MDOT MPA's property. MDOT MPA shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR, Title 21.07.01.11.B.

B. Termination for Convenience

The performance of work under this Contract may be terminated by MDOT MPA in accordance with this clause in whole, or from time to time in part, wherever MDOT MPA shall determine that such termination is in the best interest of the State. MDOT MPA will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR, Title 21.07.01.12.A(2).

C. Obligations of Contractor Upon Termination

Upon notice of termination as provided in A or B above, the Contractor shall:

- (1) Take immediate action to discontinue its work and demobilize its work force in an orderly manner so as to minimize the incurrence of costs.
- (2) Take such action as may be necessary to protect the property of the State of Maryland, place no further orders or subcontracts, assign to MDOT MPA in the manner and to the extent directed by MDOT MPA all of the rights, title and, if ordered by MDOT MPA, possession and interest of Contractor under the orders or subcontracts terminated.
- (3) Transfer title to MDOT MPA of all materials, equipment, data, drawings, specifications, reports, estimates and such other information accumulated by the Contractor in performing this Contract, for the cost of which the Contractor has been or will be reimbursed under the terms of the Contract.

D. Remedies Not Exclusive

The rights and remedies contained in these Terms and Conditions are in addition to any other right or remedy provided by law, and the exercise thereof is not a waiver of any other right or remedy provided by law.

33. DELAYS AND EXTENSIONS OF TIME

- A. The Contractor agrees to prosecute the scope of work or services continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- B. Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or Contractual capacity, acts of another Contractor in the performance of a Contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

34. OBLIGATION TO CORRECT DEFECTIVE PERFORMANCE

Neither the final acceptance of any work or payment therefore nor any provision in the Contract documents nor partial or entire use of any work by MDOT MPA shall constitute an acceptance of work not performed in accordance with the Contract documents or relieve the Contractor of liability for any express warranties or responsibility for faulty performance, materials, or workmanship.

35. PATENT INDEMNITY

- A. If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit MDOT MPA to use such item or items.
- B. The Contractor will defend or settle, at its own expense, any claim or suit against MDOT MPA alleging that any such item furnished by the Contractor infringes any patent, trademark,

copyright, or trade secret. If a third party claims that a Product infringes that party's patent or copyright, the Contractor will defend MDOT MPA against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a Court finally awards, provided MDOT MPA (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations.

C. If any products furnished by the Contractor become, or in the Contractor's or MDOT MPA's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense:

- (1) Procure for MDOT MPA the right to continue using the applicable item;
- (2) Replace the product with a non-infringing product substantially complying with the item's specifications; or
- (3) Modify the item so that it becomes noninfringing and performs in a substantially similar manner to the original item.

D. Options C(1), (2) and (3) are collectively referred to herein as the "Options". The Contractor may elect which Option it pursues provided, however, that:

- (1) Any Option shall be implemented by the Contractor using its best efforts; and
- (2) MDOT MPA shall have the right to direct the Contractor to select and implement a specific Option to the extent that MDOT MPA believes, in its sole judgment, that the selection and implementation of that particular Option is necessary to prevent or mitigate service-affecting interruptions to MDOT MPA's operations.

36. TERMS AND CONDITIONS PREVAILING

In event of a conflict between these Terms and Conditions and any other provision of the Contract documents, these Terms and Conditions shall prevail unless such other provision expressly provides to the contrary.

37. MARYLAND LAW PREVAILS

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

38. RESIDENT BUSINESS PREFERENCE

- A. This procurement is subject to the applicable provisions of COMAR Title 25.01.01.04, which authorizes that when awarding a Contract by competitive bidding, MDOT MPA may give a preference to the lowest responsive and responsible bid from a Maryland firm over that of a nonresident firm if the State in which the nonresident firm is located gives a resident business preference.
- B. The preference given under this Section shall be identical to the preference, through law, policy or practice, given to its residents by the State in which the non-resident firm is located.
- C. This provision shall not apply if it conflicts with any federal grant or regulation affecting this Contract.

39. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Contractor shall comply with the ADA, 42 USC 12101 *et seq.* and applicable regulations. To the extent required by the ADA, Contractor's facilities, services, and programs shall be accessible to persons with disabilities. Contractor shall bear sole responsibility for assuring that its activities under the Contract conform to the ADA. Contractor shall indemnify and hold harmless MDOT MPA, MDOT, and the State in any administrative proceeding or other action brought pursuant to the ADA for all damages, attorney fees, litigation expenses and costs, if such action or proceeding arises from the acts of Contractor and Contractor's employees, agents or subcontractors.

40. PAYMENT OF STATE OBLIGATIONS

- A. Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.
- B. A proper invoice shall include a description of the items or services provided; the date the goods were received or the inclusive dates the services were rendered; the Contract price(s); retention, if any; the basis for the billing; the Contract or purchase order number; the Contractor's Federal Tax Identification Number or Social Security Number; the name and address of the proper invoice recipient.
- C. In order to receive payment of interest, the Contractor must submit a proper invoice for accrued interest within 30 calendar days after the payment date of the amount on which the interest is claimed to have accrued. Interest may not be claimed for more than one (1) year following the 31st calendar day after the date that a proper invoice was received, or on amounts representing unpaid interest, or if a claim has been filed under State Finance and Procurement Article Title 15, Subtitle 2 of the Annotated Code of Maryland.
- D. For the purposes of this Contract an invoice amount will not be deemed due and payable if:
 - (1) The amount invoiced is inconsistent with the Contract.
 - (2) The proper invoice has not been received by the person or location specified in the Contract.
 - (3) The invoice or performance under the Contract is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
 - (4) The item or services have not been accepted;
 - (5) The quantity of items delivered is less than the quantity ordered;
 - (6) The items or services do not meet the quality requirements of the Contract;
 - (7) The proper invoice for the progress payment, if applicable has not been submitted according to the schedule contained in the agreement;
 - (8) All stipulated conditions for release of the retainage, if applicable, have not been met; and
 - (9) Satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract Administrator(s) concerning performance under the Contract has been submitted by the Contractor.
- E. Payment by Electronic Funds Transfer

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

Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the GOT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The required form may be downloaded at

<http://compnet.comp.state.md.us/gad>

- F. Unless otherwise provided in the solicitation, invoices are to be sent by email to mpainvoices@marylandports.com or mailed to MDOT MPA Accounts Payable, 401 East Pratt Street, Suite 1100, Baltimore, MD 21202.

41. SUSPENSION OF WORK

The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he or she may determine to be appropriate for the convenience of the State.

42. PRE-EXISTING REGULATIONS

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

43. RETENTION OF RECORDS

The Contractor shall retain and maintain all records and documents in any way relating to this Contract for three years after Contract close out and final payment by the State of Maryland under this Contract or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Procurement Officer or the Procurement Officer's designee, the Contract Manager or the Contract Manager's designee at all reasonable times. The Contractor shall, upon request by the department, surrender all and every copy of documents needed by the State, including such documents as, but not limited to itemized billing documentation containing the dates, hours spent and work performed by Contractor and its subcontractors under the Contract. The Contractor agrees to cooperate fully in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

44. INSOLVENCY

If the Contractor becomes insolvent, files for bankruptcy petition in any court, becomes the subject of an involuntary bankruptcy petition, makes a general assignment for the benefit of creditors, has a receiver appointed for assets, or ceases to conduct business, the Contractor shall be considered in default of the Contract. If any of these events occurs, the Contractor must immediately notify the Procurement Officer or designee.

45. COMMERCIAL NONDISCRIMINATION

- A. As a condition of entering into this Contract, Contractor represents and warrants that it will comply 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. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other

unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- B. The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Maryland Department of Transportation, in all subcontracts.
- C. As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that is requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

46. RIGHTS TO RECORDS

- A. The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, solely for purposes of this Contract with MDOT MPA shall be the sole property of MDOT MPA and shall be available to MDOT MPA at any time. MDOT MPA shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- B. The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the Department, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.
- C. The Contractor shall report to the Contract Officer, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this agreement.

- D. The Contractor shall not affix any restrictive markings upon any data and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

47. CONFIDENTIALITY

- A. Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law.
- B. The provisions of this Section shall not apply to information that:
- (1) Is lawfully in the public domain;
 - (2) Has been independently developed by the other party without violation of this Contract;
 - (3) Was already in the possession of such party;
 - (4) Was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or
 - (5) Which such party is required to disclose by law.

48. PROMPT PAYMENT OF SUBCONTRACTORS

- A. If a contractor withholds payment of an undisputed amount to its subcontractor, MDOT MPA, at its option and in its sole discretion, may take one or more of the following actions:
- (1) Not process further payments to the contractor until payment to the subcontractor is verified;
 - (2) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
 - (3) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
 - (4) Place a payment for an undisputed amount in an interest-bearing escrow account; or
 - (5) Take other or further actions as appropriate to resolve the withheld payment.
- B. An "undisputed amount" means an amount owed by a contractor to a subcontractor for which there is no good faith dispute, including any retainage withheld, and includes an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- C. An act, failure to act, or decision of a Procurement Officer or a representative of MDOT MPA, concerning a withheld payment between a contractor and subcontractor under this policy directive, may not:
- (1) Affect the rights of the contracting parties under any other provision of law;

- (2) Be used as evidence on the merits of a dispute between MDOT MPA and the contractor in any other proceeding; or
 - (3) Result in liability against or prejudice the rights of MDOT MPA.
- D. The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- E. To ensure compliance with certified MBE subcontract participation goals, MDOT MPA may, consistent with COMAR 21.11.03.13, take the following measures:
- (1) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
 - (2) This verification may include, as appropriate:
 - (a) Inspecting any relevant records of the contractor;
 - (b) Inspecting the jobsite; and
 - (c) Interviewing subcontractors and workers.
 - (3) Verification shall include a review of:
 - (a) The contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
 - (b) The monthly report of each certified MBE subcontractor, which lists payments received from the contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- F. If MDOT MPA determines that a contractor is in noncompliance with certified MBE participation goals, then MDOT MPA will notify the contractor in writing of its findings, and will require the contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- G. If MDOT MPA determines that a contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that MDOT MPA requires, then MDOT MPA may:
- (1) Terminate the contract for default;
 - (2) Refer the matter to the Office of the Attorney General for appropriate action; or
 - (3) Initiate any other specific remedy identified by the contract, including the contractual remedies required by this section regarding the payment of undisputed amounts.
- H. Upon completion of the contract, but before final payment or release of retainage or both, the contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

49. SURETY BOND ASSISTANCE PROGRAM

Assistance in obtaining bid, performance, and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDF). Questions regarding the bonding assistance program should be referred to:

Maryland Department of Business and Economic Development
Maryland Small Business Development Financing Authority
401 East Pratt Street
Baltimore, MD 21202
(410) 767-6300

50. ACCESS TO MDOT MPA FACILITIES; MDOT MPA SECURITY; TWIC

- A. As used in this provision, “personnel performing the contract” means the Contractor and its employees, and all subcontractors and suppliers at any tier and their employees, including all individuals delivering goods to MDOT MPA terminals.
- B. Personnel performing the contract, including personnel delivering goods, shall be subject to all policies and procedures of MDOT MPA or applicable to MDOT MPA regarding (1) the security of MDOT MPA facilities, (2) ingress and egress to or from MDOT MPA facilities, and (3) movement within MDOT MPA facilities. **Such policies and procedures include those relating to the Transportation Worker Identification Credential (TWIC).** Applicable policies and procedures can be found at the MDOT MPA website (under Port Security) at: <http://www.mdot.state.md.us> and at http://www.tsa.gov/what_we_do/layers/twic/index.shtm . The Contractor shall comply with and be bound by all such policies and procedures, at no additional cost to MDOT MPA.
- C. The Contractor shall not be excused from performance of the contract by the failure of personnel performing the contract to possess a TWIC nor by MDOT MPA’s refusal to allow personnel performing the contract from using on an approved escort company to gain access to MDOT MPA terminals.
- D. Personnel performing the contract must enter and exit Dundalk Marine Terminal (DMT) and Seagirt Marine Terminal (SMT) through the DMT Truck Gate on Broening Highway, and may not enter through the Personally Owned Vehicle (POV) Gate.

51. ELECTRONIC TRANSACTIONS

- A. Under COMAR 21.03.05, unless otherwise prohibited by law, MDOT MPA may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.
- B. Participation in the solicitation process on a procurement contract for which electronic means have been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that contract which are specifically authorized under the solicitation or the contract.
- C. “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMaryland Marketplace Advantage), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g., Payment by Electronic Funds Transfer) and subject to the exclusions noted in this Section, the following transactions are authorized to be conducted by electronic means on the terms described:

- (1) The Procurement Officer may conduct this procurement using eMaryland Marketplace Advantage, email or facsimile to issue:
 - (a) The solicitation (e.g. the RFP);
 - (b) Any amendments;
 - (c) Prebid or preproposal conference documents;
 - (d) Questions and responses;
 - (e) Communications regarding the solicitation or proposal to any offeror or potential offeror including requests for clarification, explanation, or removal of elements of an offeror's proposal deemed not acceptable;
 - (f) Submission of bids, if so provided elsewhere in the solicitation;
 - (g) Notices of award selection or nonselection; and
 - (h) The Procurement Officer's decision on any protest or contract claim.
 - (2) An offeror or potential offeror may use email or facsimile to:
 - (a) Ask questions regarding this solicitation;
 - (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
 - (c) Request a debriefing; or,
 - (d) Submit a "No Bid Response" to this solicitation.
 - (3) The Procurement Officer, the Contract Administrator, and the contractor may conduct day-to-day contract administration, except as stated in subsection E, utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Administrator.
- E. The following transactions related to this procurement and any contract awarded pursuant to it are not authorized to be conducted by electronic means:
- (1) Submission of initial bids or proposals, except to the extent otherwise expressly provided in the solicitation;
 - (2) Filing of notices of claim and contract claims;
 - (3) Submission of documents determined by MDOT MPA to require original signatures (e.g. contract execution, contract modifications, etc); or
 - (4) Any transaction, submission, or communication where the Procurement Officer has specifically

directed that a response from the contractor, bidder or offeror be provided in writing or hard copy.

- F. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the solicitation, the Contract, or the direction from the Procurement Officer or Contract Administrator.

52. DRUG AND ALCOHOL FREE WORKPLACE

Contractor warrants that the Contractor shall comply with COMAR 21.11.08, Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of the Contract.

53. PURCHASE ORDER AS CONTRACT

- A. This Section 53 applies only when the MDOT MPA has issued a solicitation.
- B. As used in this Section 53, “bid” refers to a bid submitted under competitive sealed bidding, an offer submitted under competitive sealed proposals, and to a bid, offer, or quotation under any other method of procurement.
- C. As used in this provision, “bidder” refers to a bidder under competitive sealed bidding, an offeror under competitive sealed proposals, and to a bidder, offeror, or party submitting a quotation under any other method of procurement.
- D. As used in this provision, “solicitation” means an invitation to bid, a request for proposals, or any other document requesting bids, proposals, or a quotation for procurement by the MDOT MPA.
- E. The bidder’s execution and submission of a responsive bid constitutes a promise by the bidder to perform the contract solicited by the MDOT MPA in accordance with the terms and conditions stated in the solicitation. The bid shall be irrevocable for the period stated in the solicitation or for such longer period as the bidder and the MDOT MPA may agree.
- F. Upon acceptance of a bid, the Procurement Officer may issue a Purchase Order (PO), in a form to be determined by the MDOT MPA, to the bidder accepting the bid and binding the bidder to a contract. The execution and issuance of a PO by the Procurement Officer, subject to all necessary approvals, shall constitute acceptance of the bid and final award of the Contract.
- G. The contract of the parties (the “Contract”) will be embodied in the contract documents, which shall consist of:
 - (1) The executed PO of the Procurement Officer, including all documents, terms, and conditions incorporated into the PO;
 - (2) The solicitation, including all documents, terms, and conditions incorporated into the solicitation; and
 - (3) The bid.
- H. In the event of a conflict between provisions of the contract documents, the controlling provisions shall be, in the following order, those of:

- (1) The PO; then
- (2) The solicitation; and then
- (3) The bid.

54. ESTIMATED QUANTITIES; NOT A REQUIREMENTS CONTRACT

- A. Except as otherwise provided in the solicitation, estimated quantities represented in this solicitation are not warranted or guaranteed by the MDOT MPA. The Contractor will be entitled to no change in Contract price if quantities ordered or delivered are more or less than the quantities estimated in this solicitation. The Contractor will be paid for all items and quantities ordered or delivered under the Contract at the price bid, regardless of items or quantities previously ordered or delivered.
- B. The Contract is not a requirements contract. The MDOT MPA reserves the right to procure the same or similar goods from other sources in the absolute discretion of the MDOT MPA.

55. INVESTMENT ACTIVITIES IN IRAN

By submitting a bid or proposal in response to this solicitation, the bidder or offer certifies that the bidder or offeror:

- A. Is not identified on the list created by the Maryland Board of Public Works as a person engaging in investment activities in Iran as described in § 17-702 of the State Finance and Procurement Article, Annotated Code of Maryland, and
- B. Is not engaging in investment activities in Iran as described in § 17-702.

56. CONFLICT MINERALS THAT ORIGINATED IN THE DEMOCRATIC REPUBLIC OF THE CONGO OR NEIGHBORING COUNTRIES

- A. In this section the following words have the meanings indicated.
- B. (1) (a) “Conflict mineral” means a mineral or mineral derivative determined under federal law to be financing human conflict.

(b) “Conflict mineral” includes columbite-tantalite (coltan), cassiterite, gold, wolframite, or derivatives of these minerals.
- C. “Noncompliant person” means a person:
 - (1) That is required to disclose under federal law information relating to conflict minerals that originated in the Democratic Republic of the Congo or its neighboring countries; and
 - (2) For which the disclosure is not filed, is considered under federal law to be an unreliable determination, or contains false information.
- D. By submitting a bid or proposal under this solicitation, the bidder or offeror agrees and certifies that it is not a noncompliant person and that it shall not become a noncompliant person during the term of this Contract.

57. LIVING WAGE

A. If the solicitation provides that the contract is subject to the Living Wage, the Contractor promises to comply with the Living Wage Law (Title 18, State Finance and Procurement Article, Annotated Code of Maryland) and COMAR 21.11.10, at no additional cost to MDOT MPA, including:

- (1) To pay at least the Living Wage rate required;
- (2) To pay at least the revised Living Wage rate if the Living Wage rate is increased by the Commissioner of Labor and Industry; and
- (3) To file certified payrolls as required.

B. Withholding Contract Funds for Late Payroll Submissions on Living Wage Contracts.

(1) Pursuant to the Code of Maryland Regulations (COMAR) 21.11.10.05 an employer performing work under a Living Wage contract must submit to the Division of Labor and Industry (DLI) of the Department of Labor, Licensing, and Regulation (DLLR) payroll records for all employees covered under the Living Wage Law within 14 days after the end of each payroll period. To ensure compliance with this regulation, the Governor issued a policy directive in May 2014 directing all agencies to include payroll reporting requirement language in bid solicitations and to withhold payments and retainage if the employer fails to submit required payroll records on time. Contract funds will be withheld for late submission of payroll records according to the following process.

(2) If, at the conclusion of the 14-day period during which the contractor is required to submit certified payroll records, no payroll records were received by the Living Wage Unit, then a Living Wage investigator will send a written letter notifying the contractor that payroll records were not received as required by regulation. The Procurement Officer assigned to the contract will also receive a copy of this notification letter. In the letter from the Living Wage investigator, the contractor will be given 14 days to submit the required payroll records. During this 14-day period the investigator will attempt to contact the contractor by phone and email to resolve the issue in person as a follow-up to the written notification. The Procurement Officer may also attempt to contact the contractor about submitting payroll information on time.

(3) In the event that the contractor still fails to submit payroll records, the Living Wage investigator will then issue a final demand for submission of the late payroll. This second letter to the contractor will state that unless the required payroll is received by the close of business on a specified date, seven days after the period to submit stated in the second notification letter ends, funds will be withheld from contract payments until the payroll records are received by DLLR. The Procurement Officer will also receive a copy of this final demand letter.

(4) If the contractor remains unwilling to comply and DLLR does not receive the required payroll records, then the Living Wage Unit will send a withholding request to the Procurement Officer the day after the date specified on the demand letter (the second letter). The withholding request will be sent electronically through email, followed by a mailed hard copy. The request to the Procurement Officer will include a letter from the Living Wage Unit formally requesting that payment be withheld from the contractor for failure to submit certified payroll records as required. The request will also include all copies of all documented communication between

DLLR and the contractor.

- (5) Upon receipt of the withholding request, the Procurement Officer will determine the amount of money to be withheld from the contractor. It is suggested that Procurement Officers withhold 10% of each future payment due the contractor. The Procurement Officer will notify the contractor that funds will be withheld until the required payroll records are received by DLLR. The Procurement Officer will copy the Living Wage Unit on the withholding notice. The contractor's failure to submit subsequent payroll records will be considered a continuation of the same violation and the Procurement Officer will extend the withholding to subsequent payments. The Procurement Officer will not release the hold until the Living Wage Unit notifies the Procurement Officer that the payroll(s) have been submitted. The Living Wage Unit will notify the Procurement Officer both electronically and by mail.

58. PROTECTION OF PERSONAL INFORMATION

The Contractor hereby represents and warrants that it shall comply with all Federal and State laws and regulations applicable to the protection of personal information including but not limited to, State Government Article, Sections 10-1301 – 10-1308, Annotated Code of Maryland, that takes effect on July 1, 2014 and imposes the following requirements, among others, on Contractors that provide services to a State Unit and that are provided personal information about individuals under a written contract or agreement with the State Unit:

- A. Contractor shall implement and maintain reasonable security procedures and practices that:
 - (1) are appropriate to the nature of the personal information disclosed to the Contractor, and;
 - (2) are reasonably designed to help protect the personal information from unauthorized access, use, modification, disclosure, or destruction;
- B. Contractor shall conduct reasonable and prompt investigations when the security of a computerized data system that includes personal information is breached or a breach is suspected, and;
- C. Contractor shall provide notices required of the contractor under State Government Article, Sections 10-1301 – 10-1308, Annotated Code of Maryland.

59. COMPLIANCE WITH DOIT INFORMATION SECURITY POLICY

All information technology supplies (hardware, software, and equipment) and information technology services procured under this contract must comply with the most recent version of the Maryland Department of Information Technology (DOIT) Information Security Policy, which may be viewed at:

<https://doit.maryland.gov/Documents/Maryland%20IT%20Security%20Manual%20v1.2.pdf>

60. PERFORMANCE IN THE UNITED STATES – CONTRACTS FOR SERVICES OF \$2 MILLION OR MORE

- A. This section applies if the expected value of this contract is \$2 million or more.
- B. By submission of a bid or offer under this procurement, the bidder or offeror represents and warrants that substantially all of the services to be performed under the contract will be

performed within the United States (the “US”).

C. If substantially all of the services to be performed under this contract will not be performed within the US, the bidder or offeror shall disclose in its bid or offer:

(1) Where other than in the US a substantial portion the services will be performed; and

(2) The reason why it is necessary or advantageous to perform those services outside the US.

61. EIGHT (8) MB LIMIT ON EMAILS AND ATTACHMENTS TO MDOT MPA

Emails to MDOT MPA, including attachments, cannot exceed 8 MB in size. If the total size of an email and attachments to be sent to MDOT MPA exceeds 8 MB, you must break the email or attachments into multiple parts and send them via separate emails not exceeding 8 MB each (including attachments).

62. VETERAN-OWNED SMALL BUSINESS ENTERPRISES

A certified Veteran-Owned Small Business Enterprise (VSBE) must be verified by the State Department of Veterans Affairs or the U.S. Department of Veterans Affairs Vets First Verification Program (VetBiz) and registered as a VSBE on the State’s eProcurement platform, eMaryland Marketplace Advantage (eMMA). The listing of VSBEs is available through the “Vendor Search” on eMMA.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Attachment I. Contract Affidavit

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and Department ID Number: _____

Address: _____

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

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$200,000, file with the

Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its 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), above;
- (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
- (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
- (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.
- (4) I acknowledge and agree that:
- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

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

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

By: _____
Signature of Authorized Representative and Affiant

Printed
name: _____
Printed Name of Authorized Representative and Affiant

Title: _____
Title of Authorized Representative and Affiant

Date: _____
Date

ATTACHMENT J
MARYLAND DEPARTMENT OF TRANSPORTATION
MARYLAND PORT ADMINISTRATION
MBE/DBE PARTICIPATION FACTORS
SOLICITATION NO. 223016-S

Required by SF § 13-103(a)(2) for competitive sealed bidding and by SF § 13-104(b)(2) for competitive sealed proposals.

Summary of factors used to determine expected degree of MBE/DBE participation:
Subcontracting opportunities (potentially subcontractable work) identified for the project.

Subcontracting Category		NAICS Codes	Total Number of MBE/DBE Firms	Total Number of Available MBE/DBE Firms
Photography		541922	66	49
Writing (Freelance)		561410; 711510	272	234
Mail Services		541860	42	41
Paper Supplier		424110; 424120	21	19

**MDOT MBE FORM A
STATE-FUNDED CONTRACTS
CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
PAGE 1 OF 2**

THIS AFFIDAVIT MUST BE INCLUDED WITH THE BID/PROPOSAL. IF THE BIDDER/OFFEROR FAILS TO ACCURATELY COMPLETE AND SUBMIT THIS AFFIDAVIT AS REQUIRED, THE BID SHALL BE DEEMED NOT RESPONSIVE OR THE PROPOSAL NOT 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 have met the overall certified Minority Business Enterprise (MBE) participation goal of _____ percent (_____ %) and the following subgoals, if applicable:
_____ percent (_____ %) for African American-owned MBE firms
_____ percent (_____ %) for Hispanic American-owned MBE firms
_____ percent (_____ %) for Asian American-owned MBE firms
_____ percent (_____ %) for Women-owned MBE firms

I agree that these percentages of the total dollar amount of the Contract, for the MBE goal and subgoals (if any), will be performed by certified MBE firms as set forth in the MBE Participation Schedule - Part 2 of the MDOT MBE Form B (State-Funded Contracts).

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. Within 10 business days of receiving notice that our firm is the apparent awardee or as requested by the Procurement Officer, I will submit a written waiver request and all required documentation in accordance with COMAR 21.11.03.11. For a partial waiver request, I agree that certified MBE firms will be used to accomplish the percentages of the total dollar amount of the Contract, for the MBE goal and subgoals (if any), as set forth in the MBE Participation Schedule - Part 2 of the MDOT MBE Form B (State-Funded Contracts).

2. 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 business days of receiving such notice:

- (a) Outreach Efforts Compliance Statement (MDOT MBE Form C - State-Funded Contracts);
- (b) Subcontractor Project Participation Statement (MDOT MBE Form D - State-Funded Contracts);

**MDOT MBE FORM A
STATE-FUNDED CONTRACTS
CERTIFIED MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
PAGE 2 OF 2**

(c) If waiver requested, MBE Waiver Request Documentation and Forms (MDOT MBE/DBE Form E – Good Faith Efforts Guidance and Documentation) per COMAR 21.11.03.11; and

(d) Any other documentation required by the Procurement Officer to ascertain bidder's responsibility/ offeror's susceptibility of being selected for award in connection with the certified MBE participation goal and subgoals, if any.

I acknowledge that if I fail to return each completed document (in 2 (a) through (d)) within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award or that the proposal is not susceptible of being selected for award.

3. 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.

4. Products and Services Provided by MBE firms

I hereby affirm that the MBEs are only providing those products and services for which they are MDOT certified.

I solemnly affirm under the penalties of perjury that the information in this affidavit is 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

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE
page 1 of 3

parts 2 and 3 must be included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit part 2 with the bid/proposal as required, the bid shall be deemed not responsive or the proposal shall be deemed not susceptible of being selected for award.

PLEASE READ BEFORE COMPLETING THIS FORM

1. Please refer to the Maryland Department of Transportation (MDOT) MBE Directory at www.mdot.state.md.us to determine if a firm is certified for 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, please visit www.naics.com. Only those specific products and/or services for which a prime or subcontractor is a certified MBE in the MDOT Directory can be used for purposes of achieving the MBE participation goals.
2. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm (whether a prime or subcontractor) must be certified for that specific NAICS Code (“MBE” for State-funded projects designation after NAICS Code). **WARNING:** If the firm’s NAICS Code is in **graduated status**, such services/products **will not be counted** for purposes of achieving the MBE participation goals. Graduated status is clearly identified in the MDOT Directory (such graduated codes are designated with the word graduated after the appropriate NAICS Code).
- 5.
3. Examining the NAICS Code is the **first step** in determining whether an MBE firm is certified and eligible to receive MBE participation credit for the specific products/services to be supplied or performed under the contract. The **second step** is to determine whether a firm’s Products/Services Description in the MBE Directory includes the products to be supplied and/or services to be performed that are being used to achieve the MBE participation goals. 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 at mbe@mdot.state.md.us.
- 6.
4. Complete the Part 2 – MBE Participation Schedule for all certified MBE firms (including primes and subcontractors) being used to achieve the MBE participation goal and subgoals, if any.
5. **MBE Prime Self-Performance.** When a certified MBE firm participates as a prime (independently or as part of a joint venture) 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 forces toward 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 subgoals, if any, established for the contract. In order to receive credit for self-performance, an MBE prime must be (a) a certified MBE (see 1-3 above) and (b) listed in the Part 2 – MBE Participation Schedule with its certification number, the certification classification under which it will self-perform, and the percentage of the contract that can be counted as MBE self-performance. For the remaining portion of the overall goal and any subgoals, the MBE prime must also list, in the Part 2 – MBE Participation Schedule, other certified MBE firms used to meet those goals or, after making good faith efforts to obtain the participation of additional MBE firms, request a waiver. Note: A dually-certified MBE firm can use its own forces toward fulfilling ONLY ONE of the MBE subgoals for which it can be counted.
6. The Contractor’s subcontractors are considered second-tier subcontractors. Third-tier contracting used to meet an MBE goal is to be considered the exception and not the rule. The following two conditions must be met before MDOT, its Modal Administrations and the Maryland Transportation Authority may approve a third-tier contracting agreement: (a) the bidder/offeror must request in writing approval of each third-tier contract arrangement, and (b) the request must contain specifics as to why a third-tier contracting arrangement should

be approved. These documents must be submitted with the bid/proposal in Part 2 of this MBE Participation Schedule.

7.

7. For each MBE firm that is being used as a supplier/wholesaler/regular dealer/broker/manufacturer, please follow these instructions for calculating the **amount of the subcontract for purposes of achieving the MBE participation goals:**

A. Is the firm certified as a broker of the products/supplies? If the answer is YES, please continue to Item C. If the answer is NO, please continue to Item B.

B. Is the firm certified as a supplier, wholesaler, regular dealer, or manufacturer of such products/supplies? If the answer is YES, continue to Item D. If the answer is NO, continue to Item C only if the MBE firm is certified to perform trucking/hauling services under NAICS Codes 484110, 484121, 484122, 484210, 484220 and 484230. If the answer is NO and the firm is not certified under these NAICS Codes, then no MBE participation credit will be given for the supply of these products.

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE
page 2 of 3

- C. For purposes of achieving the MBE participation goal, you may count only the amount of any reasonable fee that the MBE firm will receive for the provision of such products/supplies - not the total subcontract amount or the value (or a percentage thereof) of such products and/or supplies. For Column 3 of the MBE Participation Schedule, please divide the amount of any reasonable fee that the MBE firm will receive for the provision of such products/services by the total Contract value and insert the percentage in Line 3.1.
- D. Is the firm certified as a manufacturer (refer to the firm's NAICS Code and specific description of products/services) of the products/supplies to be provided? If the answer is NO, please continue to Item E. If the answer is YES, for purposes of achieving the MBE participation goal, you may count the total amount of the subcontract. For Column 3 of the MBE Participation Schedule, please divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.
- E. Is the firm certified as a supplier, wholesaler and/or regular dealer? If the answer is YES and the MBE firm is furnishing and installing the materials and is certified to perform these services, please divide the total subcontract amount (including full value of supplies) by the total Contract value and insert the percentage in Line 3.1. If the answer is YES and the MBE firm is only being used as a supplier, wholesaler and/or regular dealer or is not certified to install the supplies/materials, for purposes of achieving the MBE participation goal, you may only count sixty percent (60%) of the value of the subcontract for these supplies/products (60% Rule). To apply the 60% Rule, first divide the amount of the subcontract for these supplies/products only (not installation) by the total Contract value. Then, multiply the result by sixty percent (60%) and insert the percentage in Line 3.2.
8. For each MBE firm that **is not** being used as a supplier/wholesaler/regular dealer/broker/manufacturer, to calculate the **amount of the subcontract for purposes of achieving the MBE participation goals**, divide the total amount of the subcontract by the total Contract value and insert the percentage in Line 3.1.

Example: \$ 2,500 (Total Subcontract Amount) ÷ \$10,000 (Total Contract Value) x 100 = 25%

9. **WARNING:** The percentage of MBE participation, computed using the percentage amounts determined per Column 3 for all of the MBE firms listed in Part 2, **MUST** at least equal the MBE participation goal **and** subgoals (if applicable) as set forth in MDOT MBE Form A – State-Funded Contracts for this solicitation. If a bidder/offeror is unable to achieve the MBE participation goal and/or any subgoals (if applicable), then the bidder/offeror must request a waiver in Form A or the bid will be deemed not responsive, or the proposal not susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist you in calculating the percentages and confirming that you have met the applicable MBE participation goal and subgoals (if any).

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 1 – INSTRUCTIONS FOR MBE PARTICIPATION SCHEDULE
page 3 of 3

GOAL/SUBGOAL PARTICIPATION WORKSHEET

1. Complete the Part 2 – MBE Participation Schedule for each MBE being used to meet the MBE goal and any subgoals.
2. After completion of the Part 2 – MBE Participation Schedule, you may use the Goal/Subgoal Worksheet to calculate the total MBE participation commitment for the overall goal and any subgoals.
3. **MBE Overall Goal Participation Boxes:** Calculate the total percentage of MBE participation for each MBE classification by adding the percentages determined per Column 3 of the Part 2 – MBE Participation Schedule. Add the percentages determined in Lines 3.1 and 3.2 for the MBE subcontractor (subs) total. Add the overall participation percentages determined in Line 3.3 for the MBE prime total.
4. **MBE Subgoal Participation Boxes:** Calculate the total percentage of MBE participation for each MBE classification by adding the percentages determined per Column 3 of the Part 2 – MBE Participation Schedule. Add the percentages determined in Lines 3.1 and 3.2 for the MBE subcontractor (subs) total. Add the subgoal participation percentages determined in Line 3.3 for the MBE prime total.
5. The percentage amount for the MBE overall participation in the Total MBE Firm Participation Box F1 should be equal to the sum of the percentage amounts in Boxes A through E of the MBE Overall Goal Participation Column of the Worksheet.
6. The percentage amount for the MBE subgoal participation in the Total MBE Firm Participation Box L should be equal to the sum of the percentage amounts in Boxes A through E of the MBE Subgoal Participation Column of the Worksheet.

GOAL/SUBGOAL WORKSHEET		
MBE Classification	MBE Overall Goal Participation	MBE Subgoal Participation
(A) Total African American Firm Participation (Add percentages determined for African American-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(B) Total Hispanic American Firm Participation (Add percentages determined for Hispanic American-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(C) Total Asian American Firm Participation (Add percentages listed for Asian American-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(D) Total Women-Owned Firm Participation (Add percentages determined for Women-Owned Firms per Column 3 of MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
(E) Total for all other MBE Firms (Add percentages for firms listed as Other MBE Classification per Column 3 of the MBE Participation Schedule)	_____ %subs _____ %prime	_____ %subs _____ %prime
Total MBE Firm Participation (Add total percentages determined for all MBE Firms in each column of the Worksheet)	(F1) _____ %	(F2) _____ %

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 2 – MBE PARTICIPATION SCHEDULE
Page of

Parts 2 and 3 must be included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit part 2 with the bid/proposal as required, the bid shall be deemed not responsive or the proposal shall be deemed not susceptible of being selected for award.

Prime Contractor	Project Description	8. Solicitation Number

LIST INFORMATION FOR EACH CERTIFIED MBE PRIME OR MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. NOTE INSTRUCTIONS IN EACH COLUMN.

COLUMN 1	COLUMN 2	COLUMN 3 <small>Unless the bidder/offeror requested a waiver in MDOT MBE Form A – State Funded Contracts for this solicitation, the cumulative MBE participation for all MBE firms listed herein must equal at least the MBE participation goal and subgoals (if applicable) set forth in Form A.</small>
NAME OF MBE PRIME OR MBE SUBCONTRACTOR AND TIER	CERTIFICATION NO. AND MBE CLASSIFICATION	FOR PURPOSES OF ACHIEVING THE MBE PARTICIPATION GOAL AND SUBGOALS, refer to Sections 5 through 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the MBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the MBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule. For items of work where the MBE firm is the prime, complete Line 3.3.
MBE Name: <input type="checkbox"/> Check here if MBE firm is a subcontractor and complete in accordance with Sections 6, 7, & 8 of Part 1 - Instructions. If this box is checked, complete 3.1 or 3.2 in Column C, whichever is appropriate. <input type="checkbox"/> Check here if MBE firm is the prime contractor, including a participant in a joint venture, and self-performance is being counted pursuant to Section 5 of Part 1 - Instructions. If this box is checked, complete 3.3 in Column C. <input type="checkbox"/> Check here if MBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 6 of Part 1 - Instructions	Certification Number: (If dually certified, check only one box.) <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	3.1. TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS). _____% (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any) 3.2 TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE MBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER) (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 7(E) IN PART 1 - INSTRUCTIONS). _____% Total percentage of Supplies/Products x _____ 60% (60% Rule) _____% (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any) 3.3. TOTAL PERCENTAGE TO BE PAID TO MBE PRIME FOR WORK THAT CAN BE COUNTED AS MBE SELF-PERFORMANCE (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE).. (a) _____% Total percentage for self-performed items of work in which MBE is certified) (b) _____% (Insert 50% of MBE overall goal) (c) _____% (Insert subgoal for classification checked in Column 2, if applicable)

		<p>Percentages for purposes of calculating achievement of MBE Participation goals:</p> <ul style="list-style-type: none">➤ For MBE Overall goal – Use lesser of (a) or (b)➤ For MBE Subgoal – Use lesser of (a) or (c)➤ If MBE Prime is supplier, wholesaler and/or regular dealer, apply the 60% rule.
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CHECK HERE IF CONTINUATION SHEETS ARE ATTACHED.

**MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 2 – MBE PARTICIPATION SCHEDULE
CONTINUATION SHEET**

Page of

Prime Contractor	Project Description	9. Solicitation Number

LIST INFORMATION FOR EACH CERTIFIED MBE PRIME OR MBE SUBCONTRACTOR YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. NOTE INSTRUCTIONS IN EACH COLUMN.

COLUMN 1	COLUMN 2	COLUMN 3
<p>NAME OF MBE PRIME OR MBE SUBCONTRACTOR AND TIER</p>	<p>CERTIFICATION NO. AND MBE CLASSIFICATION</p>	<p>COLUMN 3 Unless the bidder/offeror requested a waiver in MDOT MBE Form A – State Funded Contracts for this solicitation, the cumulative MBE participation for all MBE firms listed herein must equal at least the MBE participation goal <u>and</u> subgoals (if applicable) set forth in Form A.</p> <p>FOR PURPOSES OF ACHIEVING THE MBE PARTICIPATION GOAL AND SUBGOALS, refer to Sections 5 through 8 in Part 1 - Instructions. State the percentage amount of the products/services in Line 3.1, except for those products or services where the MBE firm is being used as a wholesaler, supplier, or regular dealer. For items of work where the MBE firm is being used as a supplier, wholesaler and/or regular dealer, complete Line 3.2 using the 60% Rule. For items of work where the MBE firm is the prime, complete Line 3.3.</p>
<p>MBE Name:</p> <hr/> <p><input type="checkbox"/> Check here if MBE firm is a subcontractor and complete in accordance with Sections 6, 7, & 8 of Part 1 - Instructions. If this box is checked, complete 3.1 or 3.2 in Column C, whichever is appropriate.</p> <p><input type="checkbox"/> Check here if MBE firm is the prime contractor, including a participant in a joint venture, and self-performance is being counted pursuant to Section 5 of Part 1 - Instructions. If this box is checked, complete 3.3 in Column C.</p> <p><input type="checkbox"/> Check here if MBE firm is a third-tier contractor (if applicable). Please submit written documents in accordance with Section 6 of Part 1 - Instructions</p>	<p>Certification Number:</p> <hr/> <p>(If dually certified, check only one box.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American- Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <hr/>	<p>3.1. TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE- EXCLUDING PRODUCTS/SERVICES FROM SUPPLIERS, WHOLESALERS OR REGULAR DEALERS).</p> <p>_____ % (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any)</p> <p>3.2 TOTAL PERCENTAGE TO BE PAID TO THE SUBCONTRACTOR FOR ITEMS OF WORK WHERE THE MBE FIRM IS BEING USED AS A SUPPLIER, WHOLESALER AND/OR REGULAR DEALER) (STATE THE PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE AND THEN APPLY THE 60% RULE PER SECTION 7(E) IN PART 1 - INSTRUCTIONS).</p> <p>_____ % Total percentage of Supplies/Products</p> <p>x _____ 60% (60% Rule)</p> <p>_____ % (Percentage for purposes of calculating achievement of MBE Participation goal and subgoals, if any)</p> <p>3.3. TOTAL PERCENTAGE TO BE PAID TO MBE PRIME FOR WORK THAT CAN BE COUNTED AS MBE SELF-PERFORMANCE (STATE THIS PERCENTAGE AS A PERCENTAGE OF THE TOTAL CONTRACT VALUE).</p> <p>(a) _____ % Total percentage for self-performed items of work in which MBE is certified)</p> <p>(b) _____ % (Insert 50% of MBE overall goal)</p> <p>(c) _____ % (Insert subgoal for classification checked in Column 2, if applicable)</p> <p>Percentages for purposes of calculating achievement of MBE Participation goals:</p> <ul style="list-style-type: none"> ➤ For MBE Overall goal – Use lesser of (a) or (b) ➤ For MBE Subgoal – Use lesser of (a) or (c) ➤ If MBE Prime is supplier, wholesaler and/or regular dealer, apply the 60% rule.

CHECK HERE IF CONTINUATION SHEETS ARE ATTACHED.

MDOT MBE FORM B
STATE-FUNDED CONTRACTS
PART 3 – CERTIFICATION FOR MBE PARTICIPATION SCHEDULE

10.

Parts 2 and 3 must be included with the bid/proposal as directed in the invitation to bid/ request for proposals.

I hereby affirm that I have reviewed the Products and Services Description (specific product that a firm is certified to provide or areas of work that a firm is certified to perform) set forth in the MDOT MBE Directory for each of the MBE firms listed in Part 2 of this MBE Form B for purposes of achieving the MBE participation goals and subgoals that were identified in the MBE Form A that I submitted with this solicitation, and that the MBE firms listed are only performing those products/services/areas of work for which they are certified. I also hereby affirm that I have read and understand the form instructions set forth in Part 1 of this MBE Form B.

The undersigned Prime Contractor hereby certifies and agrees that they have 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 business enterprise in its bid or proposal;
- (2) fail to notify the certified minority business enterprise before execution of the contract of its inclusion of 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.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF PARTS 2 AND 3 OF MDOT MBE FORM B 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

**MDOT MBE FORM C
STATE-FUNDED CONTRACTS
OUTREACH EFFORTS COMPLIANCE STATEMENT**

In conjunction with the offer/proposal submitted in response to Solicitation No. _____, I state the following:

1. Bidder/Offeror took the following efforts to identify subcontracting opportunities in these specific work categories:

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

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

4. Please Check One:

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

5. Please Check One:

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

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

**MDOT MBE FORM D
STATE-FUNDED CONTRACTS
MBE SUBCONTRACTOR PROJECT PARTICIPATION AFFIDAVIT**

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 OR THAT THE PROPOSAL IS NOT SUSCEPTIBLE OF BEING SELECTED FOR AWARD. SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED IN THE MBE PARTICIPATION SCHEDULE. BIDDERS/OFFERORS ARE HIGHLY ENCOURAGED TO SUBMIT FORM D PRIOR TO THE TEN (10) DAY DEADLINE.

Provided that _____ (Prime Contractor's Name) is awarded the Contract in conjunction with Solicitation No. _____, such Prime Contractor will enter into a subcontract with _____ (Subcontractor's Name) committing to participation by the MBE firm _____ (MBE Name) with MDOT Certification Number _____ (if subcontractor previously listed is also the MBE firm, please restate name and provide MBE Certification Number) which will receive at least \$ _____ (Total Subcontract Amount) which is _____% (Percent) of the Total Contract Value, 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

I solemnly affirm under the penalties of perjury that the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of my knowledge, information and belief. I acknowledge 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.

PRIME CONTRACTOR	SUBCONTRACTOR (SECOND-TIER)	SUBCONTRACTOR (THIRD-TIER)
Signature of Representative: _____	Signature of Representative: _____	Signature of Representative: _____
Printed Name and Title: _____	Printed Name and Title: _____	Printed Name and Title: _____
Firm's Name: _____	Firm's Name: _____	Firm's Name: _____
Federal Identification Number: _____	Federal Identification Number: _____	Federal Identification Number: _____
Address: _____	Address: _____	Address: _____
Telephone: _____	Telephone: _____	Telephone: _____
Date: _____	Date: _____	Date: _____

IF MBE FIRM IS A THIRD-TIER SUBCONTRACTOR, THIS FORM MUST ALSO BE EXECUTED BY THE SECOND-TIER SUBCONTRACTOR THAT HAS THE SUBCONTRACT AGREEMENT WITH THE MBE FIRM.

This form is to be completed monthly by the prime contractor.

Attachment D-5
Maryland Department of Information Technology
Minority Business Enterprise Participation
Prime Contractor Paid/Unpaid MBE Invoice Report

Report #: _____ Reporting Period (Month/Year): _____ Report is due to the MBE Officer by the 10th of the month following the month the services were provided. Note: Please number reports in sequence	Contract #: _____ Contracting Unit: _____ Contract Amount: _____ MBE Subcontract Amt: _____ Project Begin Date: _____ Project End Date: _____ Services Provided: _____ _____
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Prime Contractor:		Contact Person:																																								
Address:																																										
City:		State:	ZIP:																																							
Phone:	FAX:	Email:																																								
Subcontractor Name:		Contact Person:																																								
Phone:	FAX:																																									
Subcontractor Services Provided:																																										
List all payments made to MBE subcontractor named above during this reporting period: <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice#</u></th> <th style="width:40%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Paid: \$ _____</td> <td></td> </tr> </tbody> </table>			<u>Invoice#</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Paid: \$ _____			List dates and amounts of any outstanding invoices: <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:5%;"></th> <th style="width:40%; text-align: center;"><u>Invoice #</u></th> <th style="width:40%; text-align: center;"><u>Amount</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td></td><td></td></tr> <tr><td>2.</td><td></td><td></td></tr> <tr><td>3.</td><td></td><td></td></tr> <tr><td>4.</td><td></td><td></td></tr> <tr> <td colspan="2">Total Dollars Unpaid:</td> <td></td> </tr> <tr> <td colspan="2">\$ _____</td> <td></td> </tr> </tbody> </table>			<u>Invoice #</u>	<u>Amount</u>	1.			2.			3.			4.			Total Dollars Unpaid:			\$ _____		
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Total Dollars Unpaid:																																										
\$ _____																																										

**If more than one MBE subcontractor is used for this contract, you must use separate D-5 forms.
****Return one copy (hard or electronic) of this form to the following addresses (electronic copy with signature and date is preferred):**

<p>(TO MANAGER OF APPLICABLE POC NAME, TITLE) (AGENCY NAME) (ADDRESS, ROOM NUMBER) (CITY, STATE ZIP) (EMAIL ADDRESS)</p>	<p>(TO PROCUREMENT OFFICER OR APPLICABLE POC NAME, TITLE) (AGENCY NAME) (ADDRESS, ROOM NUMBER) (CITY, STATE ZIP) (EMAIL ADDRESS)</p>
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This form must be completed by MBE subcontractor

ATTACHMENT D-6
Minority Business Enterprise Participation
Subcontractor Paid/Unpaid MBE Invoice Report

Report#: _____	Contract #
Reporting Period (Month/Year): _____	Contracting Unit:
Report is due by the 10th 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:		Email:
Address:		
City: Baltimore	State:	ZIP:
Phone:	FAX:	
Subcontractor Services Provided:		
List all payments received from Prime Contractor during reporting period indicated above.		List dates and amounts of any unpaid invoices over 30 days old.
<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):**

(TO MANAGER OF APPLICABLE POC NAME, TITLE) (AGENCY NAME) (ADDRESS, ROOM NUMBER) (CITY, STATE ZIP) (EMAIL ADDRESS)	(TO PROCUREMENT OFFICER OR APPLICABLE POC NAME, TITLE) (AGENCY NAME) (ADDRESS, ROOM NUMBER) (CITY, STATE ZIP) (EMAIL ADDRESS)
--	--

Signature: _____ Date: _____
 (Required)

ATTACHMENT 2 - MDOT MBE/DBE FORM E GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION

Part 1 – Guidance for Demonstrating Good Faith Efforts to Meet MBE/DBE Participation Goals

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

I. Definitions

MBE/DBE Goal(s) – “MBE/DBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s) on a State-funded procurement and the DBE participation goal on a federally-funded procurement.

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/DBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE/DBE 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 DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE 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 DBEs identified by the procuring agency during the goal setting process and listed in the federally-funded procurement as available to perform the Identified Items of Work. It also may include additional DBEs identified by the bidder/offeror as available to perform the Identified Items of Work, such as DBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms or is a State-funded procurement, this term refers to all of the MBE Firms (if State-funded) or DBE Firms (if federally-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/DBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE/DBE Firms to increase the likelihood that the MBE/DBE 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/DBE Firms and should include all reasonably identifiable work opportunities.

MBE/DBE Firms – For State-funded contracts, “MBE/DBE Firms” refers to certified MBE Firms. Certified MBE Firms can participate in the State's MBE Program. For federally-funded contracts, “MBE/DBE Firms” refers to certified DBE Firms. Certified DBE Firms can participate in the federal DBE Program.

II. Types of Actions MDOT will Consider

The bidder/offeror is responsible for making relevant portions of the work available to MBE/DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/DBE subcontractors and suppliers, so as to facilitate MBE/DBE participation. The following is a list of types of actions MDOT will consider as part of the bidder's/offeror's Good Faith Efforts when the bidder/offeror fails to meet the MBE/DBE 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/DBE 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/DBE 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 or DBE Firms, whichever is appropriate, to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE/DBE Firms to increase the likelihood that the MBEDBE 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, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE/DBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE/DBE 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 or DBE Firms to Solicit

1. DBE Firms Identified in Procurements

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

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

2. MBE/DBE Firms Identified by Bidders/Offerors

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

(b) Any MBE/DBE Firms identified as available by the bidder/offeror should be certified in the appropriate program (MBE for State-funded procurements or DBE for federally-funded procurements)

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

C. Solicit MBE/DBEs

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/DBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE/DBE 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/DBE, and other requirements of the contract to assist MBE/DBE 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 DBEs listed in the procurement and any MBE/DBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE/DBE 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/DBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible by the interested MBE/DBE.

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

(a) by telephone using the contact information in the MBE/DBE 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/DBE Firms certified to perform the work of the contract. Examples of other means include:

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

(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; and

(c) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the procurement, to provide assistance in the recruitment and placement of MBE/DBE Firms.

D. Negotiate With Interested MBE/DBE Firms

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

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

(a) the names, addresses, and telephone numbers of MBE/DBE 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/DBE Firms to perform the work.

2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE 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/DBE Firms is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract DBE goal, as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE/DBE Firm's quote is excessive or unreasonable include, without limitation, the following:

- (a) the dollar difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
- (b) the percentage difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
- (c) the percentage that the DBE subcontractor's quote represents of the overall contract amount;
- (d) the number of MBE/DBE firms that the bidder/offeror solicited for that portion of the work;
- (e) whether the work described in the MBE/DBE and Non-MBE/DBE 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/DBE 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, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a MBE/DBE and one quote from a Non-MBE/DBE.

7. A bidder/offeror shall not reject a MBE/DBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE/DBE 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/DBE and Non-MBE/DBE Firms quoting similar work.

(a) The factors to take into consideration when assessing the capabilities of a MBE/DBE 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/DBE 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/DBE Firms

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

1. made reasonable efforts to assist interested MBE/DBE Firms in obtaining the bonding, lines of credit, or insurance required by MDOT or the bidder/offeror; and

2. made reasonable efforts to assist interested MBE/DBE 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/DBE 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/DBE and Non-MBE/DBE 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/DBE 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/DBE 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 Form E, Part 2)

A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE/DBE Firms in order to increase the likelihood of achieving the stated MBE/DBE 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) through (e) and 49 C.F.R. Part 26, Appendix A. **(Complete Outreach Efforts Compliance Statement)**

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

(a) the names, addresses, and telephone numbers of the MBE/DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Form E, Part 3, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

(b) a description of the information provided to MBE/DBE 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/DBE Firms (Complete Good Faith Efforts Form E, Part 4)

1. For each MBE/DBE 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/DBE and Non-MBE/DBE Firms quoting similar work.

2. For each certified MBE/DBE 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/DBE and Non-MBE/DBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE/DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE/DBE contractor or a statement from the bidder/offeror that the MBE/DBE contractor refused to sign the Minority Contractor 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.

MDOT MBE/DBE FORM E
GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION

PART 2 – CERTIFICATION REGARDING GOOD FAITH EFFORTS
DOCUMENTATION

PAGE __ OF __

Prime Contractor	Project Description	Solicitation Number

PARTS 3, 4, AND 5 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS SUPPORTING YOUR WAIVER REQUEST

I hereby request a waiver of (1) the Minority Business Enterprise (MBE) participation goal and/or subgoal(s), (2) the Disadvantaged Business Enterprise (DBE) participation goal, or (3) a portion of the pertinent MBE/DBE participation goal and/or MBE subgoal(s) for this procurement.¹ I affirm that I have reviewed the Good Faith Efforts Guidance MBE/DBE Form E. I further affirm under penalties of perjury that the contents of Parts 3, 4, and 5 of MDOT MBE/DBE Form E 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

¹ MBE participation goals and subgoals apply to State-funded procurements. DBE participation goals apply to federally-funded procurements. Federally-funded contracts do not have subgoals.

MDOT MBE/DBE FORM E
GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION
PART 3 – IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE
TO MBE/DBE FIRMS

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

Identify those items of work that the bidder/offeror made available to MBE/DBE Firms. This includes, where appropriate, those items the bidder/offeror identified and determined to subdivide into economically feasible units to facilitate the MBE/DBE 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/DBE Firms, and the total percentage of the items of work identified for MBE/DBE participation equals or exceeds the percentage MBE/DBE 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/DBE Firms, the bidder/offeror should make all of those items of work available to MBE/DBE Firms or explain why that item was not made available. If the bidder/offeror selects additional items of work to make available to MBE/DBE 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/DBE 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.

MDOT MBE/DBE FORM E
GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION
PART 4 – IDENTIFIED MBE/DBE FIRMS AND RECORD OF SOLICITATIONS

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

Identify the MBE/DBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE/DBE participation. Include the name of the MBE/DBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE/DBE provided a quote, and whether the MBE/DBE is being used to meet the MBE/DBE participation goal. MBE/DBE Firms used to meet the participation goal must be included on the MBE/DBE Participation Schedule, Form B. Note: If the procurement includes a list of the MBE/DBE 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/DBE Firms or explain why a specific MBE/DBE was not solicited. If the bidder/offeror identifies additional MBE/DBE Firms who may be available to perform Identified Items of Work, those additional MBE/DBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE/DBE Firms must be attached to this form. If the bidder/offeror used a Non-MBE/DBE or is self-performing the identified items of work, Part 4 must be completed.

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

Name of Identified MBE/DBE 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
<p>Firm Name: _____</p> <p>MBE Classification (Check only if requesting waiver of MBE subgoal.)</p> <p><input type="checkbox"/> African American-Owned</p> <p><input type="checkbox"/> Hispanic American-Owned</p> <p><input type="checkbox"/> Asian American-Owned</p> <p><input type="checkbox"/> Women-Owned</p> <p><input type="checkbox"/> Other MBE Classification</p> <p>_____</p>		<p>Date:</p> <p><input type="checkbox"/> Mail</p> <p><input type="checkbox"/> Facsimile</p> <p><input type="checkbox"/> Email</p>	<p>Date:</p> <p><input type="checkbox"/> Phone</p> <p><input type="checkbox"/> Mail</p> <p><input type="checkbox"/> Facsimile</p> <p><input type="checkbox"/> Email</p>	<p>Time of Call:</p> <p>Spoke With:</p> <p><input type="checkbox"/> Left Message</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	<p><input type="checkbox"/> Used Other MBE/DBE</p> <p><input type="checkbox"/> Used Non-MBE/DBE</p> <p><input type="checkbox"/> Self-performing</p>

Please check if Additional Sheets are attached.

MDOT MBE/DBE FORM E
GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION
PART 5 – ADDITIONAL INFORMATION REGARDING REJECTED MBE/DBE
QUOTES

PAGE ___ OF ___

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 3 indicates that a MBE/DBE quote was rejected because the bidder/offeror is using a Non-MBE/DBE 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/DBE, and if applicable, state the name of the Non-MBE/DBE. Also include the names of all MBE/DBE and Non-MBE/DBE Firms that provided a quote and the amount of each quote.

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

Please check if Additional Sheets are attached.

MDOT MBE/DBE FORM E

GOOD FAITH EFFORTS GUIDANCE AND DOCUMENTATION

PART 1 – GUIDANCE FOR DEMONSTRATING GOOD FAITH EFFORTS TO MEET MBE/DBE PARTICIPATION GOALS

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

I. Definitions

MBE/DBE Goal(s) – “MBE/DBE Goal(s)” refers to the MBE participation goal and MBE participation subgoal(s) on a State-funded procurement and the DBE participation goal on a federally-funded procurement.

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/DBE Goal(s), which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE/DBE 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 DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE 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 DBEs identified by the procuring agency during the goal setting process and listed in the federally-funded procurement as available to perform the Identified Items of Work. It also may include additional DBEs identified by the bidder/offeror as available to perform the Identified Items of Work, such as DBEs certified or granted an expansion of services after the procurement was issued. If the procurement does not include a list of Identified Firms or is a State-funded procurement, this term refers to all of the MBE Firms (if State-funded) or DBE Firms (if federally-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/DBE Firms. It also may include additional portions of items of work the bidder/offeror identified for performance by MBE/DBE Firms to increase the likelihood that the MBE/DBE 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/DBE Firms and should include all reasonably identifiable work opportunities.

MBE/DBE Firms – For State-funded contracts, “MBE/DBE Firms” refers to certified **MBE** Firms. Certified MBE Firms can participate in the State's MBE Program. For federally-funded contracts, “MBE/DBE Firms” refers to certified **DBE** Firms. Certified DBE Firms can participate in the federal DBE Program.

II. Types of Actions MDOT will Consider

The bidder/offeror is responsible for making relevant portions of the work available to MBE/DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/DBE subcontractors and suppliers, so as to facilitate MBE/DBE participation. The following is a list of types of actions MDOT will consider as part of the bidder's/offeror's Good Faith Efforts when the bidder/offeror fails to meet the MBE/DBE 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/DBE 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/DBE 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 or DBE Firms, whichever is appropriate, to perform that work.

(b) Bidders/Offerors may, and are encouraged to, select additional items of work to be performed by MBE/DBE Firms to increase the likelihood that the MBE/DBE 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, bidders/offerors should reasonably identify sufficient items of work to be performed by MBE/DBE Firms.

(b) Where appropriate, bidders/offerors should break out contract work items into economically feasible units to facilitate MBE/DBE 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 or DBE Firms to Solicit

1. DBE Firms Identified in Procurements

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

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

2. MBE/DBE Firms Identified by Bidders/Offerors

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

(b) Any MBE/DBE Firms identified as available by the bidder/offeror should be certified in the appropriate program (MBE for State-funded procurements or DBE for federally-funded procurements)

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

C. Solicit MBE/DBEs

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/DBE Firms to respond;

(b) send the written solicitation by first-class mail, facsimile, or email using contact information in the MBE/DBE 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/DBE, and other requirements of the contract to assist MBE/DBE 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 DBEs listed in the procurement and any MBE/DBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE/DBE 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/DBE cannot access the information provided by electronic means, the bidder/offeror must make the information available in a manner that is accessible by the interested MBE/DBE.

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

(a) by telephone using the contact information in the MBE/DBE 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/DBE Firms certified to perform the work of the contract. Examples of other means include:

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

(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; and

(c) effectively using the services of other organizations, as allowed on a case-by-case basis and authorized in the procurement, to provide assistance in the recruitment and placement of MBE/DBE Firms.

D. Negotiate With Interested MBE/DBE Firms

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

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE/DBE 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/DBE Firms to perform the work.
2. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE 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/DBE Firms is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract DBE goal, as long as such costs are reasonable. Factors to take into consideration when determining whether a MBE/DBE Firm's quote is excessive or unreasonable include, without limitation, the following:
 - (a) the dollar difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
 - (b) the percentage difference between the MBE/DBE subcontractor's quote and the average of the other subcontractors' quotes received by the bidder/offeror;
 - (c) the percentage that the DBE subcontractor's quote represents of the overall contract amount;
 - (d) the number of MBE/DBE firms that the bidder/offeror solicited for that portion of the work;
 - (e) whether the work described in the MBE/DBE and Non-MBE/DBE 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/DBE 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, except that there should be quotes from at least three subcontractors, and there must be at least one quote from a MBE/DBE and one quote from a Non-MBE/DBE.
7. A bidder/offeror shall not reject a MBE/DBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE/DBE 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/DBE and Non-MBE/DBE Firms quoting similar work.
 - (a) The factors to take into consideration when assessing the capabilities of a MBE/DBE 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/DBE 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/DBE Firms

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

1. made reasonable efforts to assist interested MBE/DBE Firms in obtaining the bonding, lines of credit, or insurance required by MDOT or the bidder/offeree; and
2. made reasonable efforts to assist interested MBE/DBE 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/DBE 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/DBE and Non-MBE/DBE 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/offeree 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/offerees in meeting the contract. For example, when the apparent successful bidder/offeree 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/offeree could have met the goal. If the apparent successful bidder/offeree fails to meet the goal, but meets or exceeds the average MBE/DBE participation obtained by other bidders/offerees, this, when viewed in conjunction with other factors, could be evidence of the apparent successful bidder/offeree having made Good Faith Efforts.

IV. Documenting Good Faith Efforts

At a minimum, a bidder/offeree seeking a waiver of the MBE/DBE 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 Form E, Part 2)

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

B. Outreach/Solicitation/Negotiation

1. The record of the bidder's/offeree's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a) through (e) and 49 C.F.R. Part 26, Appendix A. **(Complete Outreach Efforts Compliance Statement)**
2. A detailed statement of the efforts made to contact and negotiate with MBE/DBE Firms including:

(a) the names, addresses, and telephone numbers of the MBE/DBE Firms who were contacted, with the dates and manner of contacts (letter, fax, email, telephone, etc.) **(Complete Good Faith Efforts Form E, Part 3, and submit letters, fax cover sheets, emails, etc. documenting solicitations);** and

(b) a description of the information provided to MBE/DBE 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/DBE Firms (Complete Good Faith Efforts Form E, Part 4)

1. For each MBE/DBE 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/DBE and Non-MBE/DBE Firms quoting similar work.

2. For each certified MBE/DBE 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/DBE and Non-MBE/DBE firms bidding on the same or comparable work. **(Include copies of all quotes received.)**

3. A list of MBE/DBE Firms contacted but found to be unavailable. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE/DBE contractor or a statement from the bidder/offeror that the MBE/DBE contractor refused to sign the Minority Contractor 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.

Attachment L. CORPORATE DIVERSITY ADDENDUM

CORPORATE DIVERSITY ADDENDUM

Effective August 18, 2022

Instructions: Pursuant to § 11-101 of the Tax-Property Article, certain entities must provide a Corporate Diversity Addendum, which contains certain diversity data specified by Code of Maryland Regulation (“COMAR”) 24.01.07. To determine whether you must provide the Corporate Diversity Addendum, please complete Worksheet A.

Failure to complete the Addendum or failure to meet the criteria therein, may prohibit you from receiving certain State benefits. For more information, refer to COMAR 24.01.07.

Please be aware, the information you include in the Corporate Diversity Addendum may be shared with other Maryland State agencies.

Worksheet A

1. Are you an entity that is required to be in good standing with the State Department of Assessments and Taxation (“SDAT”), and meets the following definition:

(1) A commercial enterprise or business that is formed in the State or registered with SDAT to do business in the State; or (2) a corporation, foundation, school, hospital, or other legal entity for which none of the net earnings inure to the benefit of any private shareholder or individual holding an interest in the entity?

- Yes – Proceed to Question 2
 No – STOP. You are not required to complete the Corporate Diversity Addendum. Complete Affidavit (I) on Page 2 and submit with the application for a State benefit.

2. Check the appropriate box if you are any of the following types of entities:

- Sole Proprietor
 Limited liability company (LLC) owned by a single member
 Privately held company if at least 75% of the company’s shareholders are family members
 Entity that (1) has an annual operating budget or annual sales less than \$5,000,000; and (2) has not qualified for or applied for, and does not intend to apply for, a State benefit, as defined below

Did you check at least one box?

- Yes – STOP. You are not required to complete the Corporate Diversity Addendum. Complete Affidavit (I) on Page 2 and submit with the application for a State benefit.
 No – Proceed to the Corporate Diversity Addendum on Page 3.

“State benefit” means (1) a State capital grant funding totaling \$1.0 million or more in a single fiscal year (July 1 – June 30); (2) State tax credits totaling \$1.0 million or more in a single fiscal year (July 1 – June 30); or (3) the receipt of a State contract with a total value of \$1.0 million or more. “State contract” means a contract that (a) resulted from a competitive procurement process and (b) is not federally funded in any way.

AFFIDAVIT (I)

UNDER PENALTIES OF PERJURY, I hereby swear that the entity submitting this report is not required to submit the Corporate Diversity Addendum.

Entity/Business Name: _____

Federal Employer Identification Number (FEIN): _____

SDAT Identification Number: _____

Name of Entity's representative completing this Affidavit (print clearly):

Title: _____

Signature: _____ Date: _____

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

CORPORATE DIVERSITY ADDENDUM

Instructions: If you are required to provide the Corporate Diversity Addendum, completing Affidavit (II) on Page 4 is mandatory. A response to both items is required. Failure to provide a complete response to either of the two items may render the entity ineligible for certain state benefits. For more information, refer to COMAR 24.01.07.

I. A response to Item I is required. However, the content of your response has no bearing on eligibility for State benefits. Select below the underrepresented communities which are represented on this entity's board or in executive leadership. Select all that apply.

- Alaska Native
- Asian-Pacific Islander
- Black or African-American
- Hispanic or Latino
- Native American
- Native Hawaiian
- One or more of the racial or ethnic groups listed above
- None of the above

II. Check the box next to the following Corporate Diversity indicators that pertain to this entity. *Note that references to underrepresented communities refers to communities listed in Item I above. The examples provided are intended to be representative, not exclusive.* Select all that apply.

1. Entity maintains written workforce diversity, equity, and inclusion ("DEI") policies.
2. Entity offers DEI training to its workforce.
3. Entity assigns a senior-level employee as responsible for oversight and direction of the entity's DEI efforts.
4. Entity reports performance of its workforce DEI programs on its website.
5. Entity includes DEI objectives in performance plans of its managers.
6. Entity publishes information on its website about its DEI commitments and efforts.
7. Entity provides career advancement training/opportunities for employees, including members of underrepresented communities.
8. Entity collaborates with educational institutions, or is an educational institution, serving significant or predominant student populations or affinity groups from underrepresented communities (e.g., career fairs, scholarships, internships, apprenticeships).
9. Entity has a supplier diversity policy that provides business opportunities to diverse suppliers, including businesses owned by members of underrepresented communities, such as State-certified Minority Business Enterprises ("MBEs").
10. Entity publicizes its procurement opportunities to encourage participation from businesses owned by members of underrepresented communities.
11. Entity measures percentage of contract dollars awarded to businesses owned by members of underrepresented communities, including MBEs.
12. Entity provides support and outreach to underrepresented communities and/or organizations that represent underrepresented communities.

Only entities that meet at least 33% (4) of the Corporate Diversity Indicators above, by checking all the applicable boxes, qualify to receive a State benefit.

AFFIDAVIT (II)

UNDER PENALTIES OF PERJURY, I declare that I have examined this Corporate Diversity Addendum, and to the best of my knowledge and belief, it is true, correct, and complete.

Entity/Business Name: _____

Federal Employer Identification Number (FEIN): _____

SDAT Identification Number: _____

Name of Entity’s representative completing this Affidavit (print clearly):

Title: _____

Signature _____ Date _____

Penalties for Submitting False Information. If information provided by the entity in this form or by other means is materially false, the entity and the individual providing the false information may be subject to criminal prosecution for perjury, procurement fraud, and other crimes and may be subject to debarment, and all State benefits or contracts to the entity made in reliance upon the inaccurate form or other information may be void or subject to termination for default. See COMAR 24.01.07.

SUBMIT THIS AFFIDAVIT WITH PROPOSAL