



**STATE OF MARYLAND**  
**MARYLAND TRANSIT ADMINISTRATION (MDOT MTA)**  
**INVITATION FOR BIDS (IFB)**  
**VEHICLE WASHING AND CLEANING**  
**IFB NUMBER AGY-23-074-MT**

**ISSUE DATE: MAY 31, 2023**

**NOTICE**

A Prospective Bidder that has received this document from a source other than eMarylandMarketplace (eMMA) <https://procurement.maryland.gov> should register on eMMA. See **Section 4.2**.

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

**NO BID NOTICE/VENDOR FEEDBACK FORM**

To help us improve the quality of State solicitations, and to make our 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 or fax this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet below for contact information).

**Title: Vehicle Washing and Cleaning**  
**Solicitation No: AGY-23-074-MT**

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/commodities 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 Bid is insufficient
  - Start-up time is insufficient
  - Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
  - Bid 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: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND**  
**MARYLAND TRANSIT ADMINISTRATION (MDOT MTA)**  
**KEY INFORMATION SUMMARY SHEET**

<b>Invitation for Bids</b>	Maintenance - Vehicle Washing and Cleaning
<b>Solicitation Number:</b>	AGY-23-074-MT
<b>IFB Issue Date:</b>	May 31, 2023
<b>IFB Issuing Office:</b>	Maryland Transit Administration (MDOT MTA or the "Department")
<b>Procurement Officer:</b>	Cassandra Gilbert 6 Saint Paul Street, 7th Floor Baltimore, MD 21202
<b>e-mail:</b>	CGilbert@MDOT.Maryland.gov
<b>Office Phone:</b>	410-767-3576
<b>Bids are to be sent to:</b>	Submitted Via eMMA
<b>Pre-Bid Conference:</b>	June 7, 2023 Local Time via Microsoft Teams See <b>Attachment A</b> for directions and instructions.
<b>Questions Due Date and Time</b>	June 14, 2023 at 2 PM Local Time
<b>Bid Due (Closing) Date and Time:</b>	June 28, 2023 at 1:30 PM Local Time Bidders are reminded that a completed Feedback Form is requested if a no-bid decision is made (see <b>page iv</b> ).
<b>Public Bid Opening Date, Time and Location</b>	June 28, 2023 at 1:30 PM Local Time
<b>MBE Subcontracting Goal:</b>	0%
<b>VSBE Subcontracting Goal:</b>	0%
<b>Contract Type:</b>	Firm Fixed
<b>Contract Duration:</b>	five (5) years base period without option periods
<b>SBR Designation:</b>	No
<b>Federal Funding:</b>	No

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## 1 Minimum Qualifications

### 1.1 Bidder Minimum Qualifications

As part of the determination to be considered responsive, the Bidder must document in its Bid that it satisfies the following Minimum Qualifications:

- 1.1.1 The Bidder shall provide proof with its Bid that the Bidder has one or more physical drive-thru car wash locations within a five-mile radius outside the I-695 Beltway in the Baltimore area.

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## 2 Contractor Requirements: Scope of Work

### 2.1 Summary Statement

- 2.1.1 The Maryland Transit Administration (MDOT MTA or the "Department") is issuing this Invitation for Bids (IFB) in order to procure the services defined in this Section 2, as specified in this IFB, from a contract between the successful bidder(s) and the Maryland Transit Administration: to provide washing and cleaning services on non-revenue vehicles.
- 2.1.2 It is the State's intention to obtain goods and services, as specified in this IFB, from a Contract between the selected Bidder and the State.
- 2.1.3 The Department intends to make a single award for the work under this IFB. See IFB **Section 4.9 Award Basis** for more Contract award information.
- 2.1.4 A Bidder, 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 Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5 Maryland State and local entities as defined in Finance and Procurement §13-110(a) and nonprofit entities within the State of Maryland may purchase from the Contractor goods or services covered by the Contract at the same prices chargeable to the State. All such purchases by non-executive branch entities, non-State governments, government agencies or nonprofit entities:
- Shall constitute Contracts between the Contractor and that entity;
  - Shall not constitute purchases by the State or State agencies under the Contract;
  - Shall not be binding or enforceable against the State; and
  - May be subject to other terms and conditions agreed to by the Contractor and the purchaser.
- 2.1.6 All Contract prices, terms, and conditions must be provided to any Maryland local government or nonprofit entity requesting services under the Contract. The Contractor bears the risk of determining whether or not a government, agency or organization with which the Contractor is dealing is a State entity.

### 2.2 Background and Purpose

The MDOT MTA currently has approximately 320 non-revenue vehicles that need to be cleaned and washed for which the MDOT MTA does not have facilities or staff available. MDOT MTA reserves the right to add or delete non-revenue vehicles during the length of this contract.

#### 2.2.1 Project Goals

- A. The contractor shall wash and clean up to 320 vehicles on an as-needed basis, assigned to various MDOT MTA personnel and divisions.
- B. Washing and cleaning of vehicles to include both exterior and interior of the vehicle by the contractor. Exterior washing shall include basic exterior wash, tire, and rim cleaning, towel dry, and cleaning windows or equivalent. Interior cleaning shall include vacuuming and washing windows.
- C. Vehicle types include the following:



- Passenger sedan vehicles including electric vehicle
- Sport Utility Vehicles including electric vehicle
- Light duty vehicles including, but not limited to:
  - Passenger and cargo van up to 1-ton
  - Regular, extended, and crew cab pick-up trucks up to 1-ton including electric vehicle

**D. Heavy Duty Vehicles**

- Hi-Rail Truck of various body types
- Aerial Bucket Truck
- Dump Truck
- Wrecker Tow Truck
- Rollback Tow Truck
- Mobility Bus
- Small Transit Buses

**E. Mobile Police Command Bus – Option #1: Cleaning and Washing only**

**F. MDOT MTA reserves the right to increase or decrease the number of vehicles or the frequency of the washings/cleanings at any time during the length of this contract.**

**2.2.2 Optional Services**

**A. The MDOT MTA Fleet Manager may from time to time request additional services for some vehicles. The contractor shall receive prior approval from the Fleet Manager, or his assigned designee, before performing any additional services. Please include the pricing for each option on the bid form.**

- Option 1: Mobile Police Command Bus, cleaning and washing only.
- Option 2: Washing and cleaning is to include both the inside and outside of the vehicle.
- Option 3: The MDOT MTA from time to time may request extra services for some vehicles such as detailing, waxing of vehicle, etc. The Fleet Manager must approve this work first.

**2.2.3 MTA Vehicle Wash Log**

**A. An MDOT MTA vehicle wash log shall be maintained and submitted monthly for approval from the Fleet Manager, or approved designee, and must include the following information:**

- Date of wash
- MTA vehicle number
- License Plate number
- Name of driver of the Vehicle (Printed)
- Department
- Cost of Washing/Cleaning

- Driver's signature
- B. All information on the MDOT MTA vehicle wash log shall be printed and legible as no payment will be made if the information is not legible.
- C. The MTA will permit the use of RFID if the contractor is one of the awardees. Upon award, MTA will notify the contractor of the permitted location for the RFID's to be installed at the cost of the contractor. The contractor shall install the RFID upon the first visit to their location for services in the permitted location on the vehicle. This does not eliminate the need to provide MTA vehicle logs with the invoices each month.

**2.2.4 Miscellaneous Information**

- A. Vendor(s) must be in the Baltimore area.
- B. Vendor(s) must be able to wash and clean up to approximately 79 vehicles monthly, assigned to various MTA personnel and divisions.
- C. This contract is for a period of five (5) years. All pricing shall be firm for the length of this contract, it is the contractor's responsibility to price accordingly on the bid sheet for a five-year period.

**MTA VEHICLE LOG HAS BEEN ATTACHED AS EXHIBIT "A"**

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

## 3 Contractor Requirements: General

### 3.1 Contract Initiation Requirements

This section is inapplicable to this IFB.

### 3.2 End of Contract Transition

This section is inapplicable to this IFB.

### 3.3 Invoicing

#### 3.3.1 General

- a) The Contractor shall send OR e-mail the original of each invoice and signed authorization to invoice to the Contract Monitor and Keith Stewart at e-mail address:  
[KStewart@MDOT.Maryland.gov](mailto:KStewart@MDOT.Maryland.gov)

All invoices for services shall be verified by the Contractor as accurate at the time of submission.

An invoice not satisfying the requirements of a Proper Invoice (as defined in COMAR 21.06.09) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:

- 1) Contractor 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);
  - 5) Invoice date;
  - 6) Invoice number;
  - 7) State assigned Contract number;
  - 8) State 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.
- b) Invoicing is to occur monthly for services rendered. A “MTA Vehicle Log” shall be maintained with a minimum of the following information:
- Date of Wash
  - MTA Vehicle Number
  - Tag Number
  - Cost of cleaning
  - Driver of the vehicle and department
  - All information is to be printed except for the signature of the driver
  - Driver’s signature
  - The “MTA Vehicle Log” to accompany the monthly invoice.

Invoices that contain both fixed price and time and material items shall clearly identify each item as either fixed price or time and material billing.

The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.

Any action on the part of the Department, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.

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.

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.

### **3.3.2 Invoice Submission Schedule**

The Contractor shall submit invoices in accordance with the following schedule:

- a) For items of work for which there is one-time pricing (see **Attachment B** –Bid Form) those items shall be billed in the month following the acceptance of the work by the Department.

### **3.3.3 For the purposes of the Contract an amount will not be deemed due and payable if:**

- a) The amount invoiced is inconsistent with the Contract;
- b) The proper invoice has not been received by the party or office specified in the Contract;
- c) The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
- d) The item or services have not been accepted;
- e) The quantity of items delivered is less than the quantity ordered;
- f) The items or services do not meet the quality requirements of the Contract;
- g) If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
- h) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
- i) The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

### **3.3.4 Travel Reimbursement**

Travel will not be reimbursed under this IFB.

## **3.4 Liquidated Damages**

### **3.4.1 MBE Liquidated Damages**

THIS SECTION IS INAPPLICABLE TO THIS IFB.

### 3.4.2 Liquidated Damages other than MBE

THIS SECTION IS INAPPLICABLE TO THIS IFB.

## 3.5 Insurance Requirements

[X] **Commercial General Liability Insurance** with minimum limits of \$5,000,000 per occurrence, written on an occurrence form. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the umbrella/excess policy must follow form of the underlying policy and be extended to “drop down” to become primary in the event the primary limits are reduced or aggregate limits are exhausted.

The coverage shall include:

- [X] Personal and Advertising Injury coverage,
- [X] Products and Completed Operations coverage,
- [X] Independent Contractors coverage,
- [X] Terrorism coverage,
- [ ] XCU coverage (explosion, collapse, and underground hazards)
- [ ] Delete Contractual Liability exclusion (applicable to work to be performed within 50 feet of railroad tracks) must be removed.
- [X] Additional Insured Endorsement naming MTA.
- [X] Waiver of subrogation rights in favor of MTA
- [ ] In addition to procuring and maintaining this insurance during the duration of the contract, the Contractor shall continue to procure and maintain products and completed operations liability insurance coverage through (a) the applicable statute of repose period or (b) 10 years, whichever period is longer.

[X] **Workers’ Compensation Insurance** meeting the statutory requirements of the jurisdiction where the work will be performed for employees and or volunteers, including Employer’s Liability coverage with minimum limits of \$1,000,000 each accident or disease.

[ ] Longshore & Harbor Workers’ Compensation Act Endorsement (work performed on or over navigable waterways) to cover contractor’s employees for wages, transportation, maintenance and cure, in accordance with applicable laws.

[ ] Maritime Coverage Endorsement (Jones Act) for work upon navigable waterways and barges, tug boats, and all other vessels on the ocean and all intracoastal rivers and canals, covering drivers, divers, and underwater personnel, seamen, masters and members of a crew, providing remedy for damage or injury, in accordance with applicable laws.

[X] **Commercial Automobile Liability Insurance** with minimum limits of \$1,000,000 per occurrence covering contractor against claims for bodily injury and property damage arising out of the ownership, maintenance or use of any owned, hired, or non-owned motor vehicle. MTA shall be added as an additional insured on the policy.

[ ] MCS-90 Endorsement for work involving the transportation or disposal of any hazardous material or waste off of the jobsite. If the MCS-90 Endorsement is required, minimum auto liability limits of \$5,000,000 per occurrence are also required.

[ ] **Railroad Protective Liability Insurance** (hereinafter “RRPL”) issued to MTA as the Named Insured with minimum limits of \$2,000,000 per occurrence, \$6,000,000 in the aggregate and covering the liability of all Permitted Parties or The Contractor. Coverage is for work to be performed within fifty (50) feet (on, above, adjacent to or underneath) of MTA’s railroad property for any personal injuries or deaths or any damage to the property, equipment and facilities caused by the activities of any Permitted Party or The Contractor resulting from performance of the work which is the subject of this Permit / Contract.

This insurance is available through MTA with a separate application through MTA's Blanket Rail Road Protective Liability Insurance Program. This program is not an Owner Controlled Insurance Program coverage. If the Contractor chooses to purchase this insurance through the standard insurance market, a copy of the original policy must be forwarded to MTA for review prior to construction.

[ ] **Professional Liability (Errors and Omissions) Insurance** appropriate to the Consultant's profession with limits not less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate to cover liability resulting from any error or omission in the performance of professional services under this contract. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract work.

[ ] **Contractor's Pollution Liability Insurance** with minimum limits of \$5,000,000 per occurrence for work involving environmentally regulated substances or hazardous material exposures, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including cleanup costs and defense. This insurance may be supplied by the subcontractor performing the work if the Contractor is not performing any of the relevant work and providing that MTA and the Contractor are named as additional insureds on the subcontractor's policy. In the event the Contractor or its subcontractor transports hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the MCS-90 Endorsements shall be attached to the Contractor's (or subcontractor's) auto liability policy.

[ ] **All Builder's Risk Insurance:** To include fire, extended coverage, vandalism, and malicious mischief, flood, and earthquake. This policy is to be written to completed value plus ten (10) percent of the contract price. The policy shall include the Administration as a name insured as their interest may appear.

[ ] **Pollution Legal Liability Insurance (Non-Owned Disposal Site Coverage)** with minimum limits of \$5,000,000 per occurrence. Coverage may be maintained in one of the following ways:

- A standalone policy;
- Non-Owned Disposal Site Endorsement on Contractor's Pollution Liability policy naming MTA as an additional insured; or
- Contractor may designate the disposal site and provide a COI from the disposal facility naming Contractor and MTA as additional insureds.

[ ] **Property Insurance (including flood and earthquake, if warranted) for all-risk coverage including terrorism, physical destruction and theft for any MTA machinery or equipment in the Contractor's / Vendor's care, custody or control with limits not less than the full replacement cost of the damaged or stolen property.**

[ ] **Inland Marine Insurance** with minimum limits to cover full property values of property in transit for the purposes of the MTA Metro Rail Car Purchase Agreement and Maintenance and Installation of ATC Systems. This insurance shall be all risk coverage written on replacement basis to remain in force until such time MTA accepts railcar purchase as final and ATC project is fully complete. Coverage is to include property in transit and property in the custody of Contractor/Vendor.

## 1. Insurance Company Qualifications

A. The insurance required in this Article of this contract must be issued by companies that are:

- i. Acceptable to the MTA
- ii. Licensed to do business in the State of Maryland.

## 2. Policy Requirements

- A. The recommended Contractor awardee shall deliver to the MTA representative within 10 days of notification of proposed contract award an accurate and true Certificates of Insurance that show that:
- B. The Contractor has procured coverage stated in this Article of this contract.
- C. The Maryland Department of Transportation, the State of Maryland and the MTA has been named as an additional insured.
- D. The policies will not be canceled, terminated or modified without 30 days prior written notice to the Administration. Certificates of Insurance are acceptable in lieu of true copies of the policies if the policy writer notes on the Certificate, or through attachment to the Certificate, all policy exclusions.
- E. The Contractor shall require that any subcontractors providing services under this Contract obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

## 3.6 Security Requirements

The following requirements are applicable to the Contract:

### 3.6.1 Employee Identification

- a) Contractor Personnel shall display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel shall provide additional photo identification.
- b) Contractor Personnel shall cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.

### 3.6.2 On-Site Security Requirement(s)

- a) For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State's conditions and queries are satisfied.
  - 1) Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.
  - 2) Some State sites, especially those premises of the Department of Public Safety and Correctional Services, require each person entering the premises to document and inventory items (such as tools and equipment) brought onto the site, and to submit to a physical search of his or her person. Therefore, Contractor Personnel shall always have available an inventory list of tools being brought onto a site and be prepared to present the inventory list to the State staff or an officer upon arrival for review, as well as present the tools or equipment for inspection. Before leaving the site, the Contractor Personnel will again present the inventory list and the tools or equipment for inspection. Upon both entering the site and leaving the site, State staff or a correctional or police

officer may search Contractor Personnel. Depending upon facility rules, specific tools or personal items may be prohibited from being brought into the facility.

- b) Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the Department may be searched, fingerprinted (for the purpose of a criminal history background check), photographed and required to wear an identification card issued by the Department.
- c) Further, Contractor Personnel shall not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that control the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default.

### **3.7 Problem Escalation Procedure**

- 3.7.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.7.2 The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.
- 3.7.3 The Contractor shall provide the PEP no later than ten (10) Business Days after notice of recommended award or after the date of the Notice to Proceed, whichever is earlier. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
  - a) The process for establishing the existence of a problem;
  - b) Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
  - c) For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
  - d) Expedited escalation procedures and any circumstances that would trigger expediting them;
  - e) The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
  - f) Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
  - g) A process for updating and notifying the Contract Monitor of any changes to the PEP.
- 3.7.4 Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

### **3.8 Minority Business Enterprise (MBE) Reports**

This section is inapplicable to this IFB.



### 3.9 Veteran Small Business Enterprise (VSBE) Reports

This section is inapplicable to this IFB.

### 3.10 Work Orders

This section is inapplicable to this IFB.

### 3.11 Additional Clauses

#### 3.11.1 The State of Maryland's Commitment to Purchasing Environmentally Preferred Products and Services (EPPs)

[Maryland's State Finance & Procurement Article §14-410](#) defines environmentally preferable purchasing as "the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose." Accordingly, Bidders are strongly encouraged to offer EPPs to fulfill this contract, to the greatest extent practicable.

#### 3.11.2 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 Pre-Bid Conference

- 4.1.1 A pre-Bid conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.
- 4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Bids. If the solicitation includes an MBE goal, failure to attend the Conference will be taken into consideration as part of the evaluation of a bidder's good faith efforts if there is a waiver request.
- 4.1.3 It is highly recommended that ALL Prime Contractors bring their intended subcontractors to the Conference/Site Visit to ensure that all parties understand the requirements of the contract and the MBE Goal.
- 4.1.4 MBE subcontractors are encouraged to attend the Conference to market their participation to potential prime contractors.
- 4.1.5 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see Section 4.2.1 eMMA).
- 4.1.6 Those wishing to attend the web conference may request a meeting invitation by emailing Cassandra Gilbert at [CGilbert@MDOT.Maryland.gov](mailto:CGilbert@MDOT.Maryland.gov) no later than 2:00 PM on June 6, 2023. An invitation e-mail is required for registration, and therefore attendance. Upon receipt of the email, the Procurement Officer will reply with a registration email with a link that may be used to register for the conference. Registration must be completed by 2:00 PM June 6, 2023.

### 4.2 eMaryland Marketplace Advantage (eMMA)

- 4.2.1 eMMA is the electronic commerce system for the State of Maryland. The IFB, Conference summary and attendance sheet, Bidders' 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](http://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, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (AGY-23-074-MT - Vehicle Washing and Cleaning), and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified 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 Bid 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 IFB 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 the Department unless it issues an amendment in writing.

#### 4.4 Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Bidding method under COMAR 21.05.02.

#### 4.5 Bid Due (Closing) Date and Time

- 4.5.1 Bids, in the number and form set forth in **Section 5 Bid Format**, must be received by the Procurement Officer no later than the Bid 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 Bidders submitting Bids should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.02.10, Bids received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- 4.5.4 Bids may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Bids.
- 4.5.5 Bids may not be submitted by eMMA. Bids will be opened publicly at the date and time indicated on the Key Information Summary Sheet.
- 4.5.6 Potential Bidders not responding to this solicitation are requested to submit the “No Bid 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 Bids

Multiple or alternate Bids will not be accepted.

#### 4.7 Receipt, Opening and Recording of Bids

- 4.7.1.1 Upon receipt, each Bid and any timely modification(s) to a Bid shall be stored in a secure place until the time and date set for bid opening. Before Bid opening, the State may not disclose the identity of any Bidder.
- 4.7.1.2 Bids shall be opened publicly, at the time, date and place designated in the IFB Key Information Summary Sheet (near the beginning of the solicitation, after the Title Page and Notice to Vendors). The name of each Bidder, the Total Bid Price, and such other information as is deemed appropriate shall be read aloud or otherwise made available and recorded at the time of bid opening.

#### 4.8 Confidentiality of Bids / Public Information Act Notice

- 4.8.1 The Bidder should give specific attention to the clear identification of those portions of its Bid that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4. This information should be identified by page number and placed in the Transmittal Letter with the Bid.
- 4.8.2 The Bids shall be tabulated or a Bid abstract made. The opened Bids shall be available for public inspection at a reasonable time after Bid opening, but in any case before contract award, except to the extent the Bidder designates trade secrets or other proprietary data to be confidential as set forth in this solicitation. Material so designated as confidential shall accompany the Bid and shall

be readily separable from the Bid in order to facilitate public inspection of the non-confidential portion of the Bid, including the Total Bid Price.

- 4.8.3 For requests for information made under the PIA, the Procurement Officer shall examine the Bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by the Office of the Attorney General.

#### **4.9 Award Basis**

- 4.9.1 A Contract shall be awarded to the responsible Bidder(s) submitting a responsive Bid with the most favorable bid price or most favorable evaluated bid price (as referenced in COMAR 21.05.02.13) for providing the goods and services as specified in this IFB. Bidders must bid all line items. Partial or incomplete bids will be rejected unless otherwise stated in the solicitation. See IFB Section 6 for Bid evaluation and award information.
- 4.9.2 Award of this contract will not be final and complete until after: (1) the Contractor submits complete and satisfactory documentation required under the Contract and/or documentation required by the Procurement Officer; and (2) the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.

#### **4.10 Tie Bids**

Tie Bids will be decided pursuant to COMAR 21.05.02.14.

#### **4.11 Duration of Bids**

Bids submitted in response to this IFB are irrevocable for the latest of the following: 120 days following the Bid due date and time or the date any protest concerning this IFB is finally resolved. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

#### **4.12 Revisions to the IFB**

- 4.12.1 If the IFB is revised before the due date for Bids, the Department shall post any addenda to the IFB on eMMA and shall endeavor to provide such addenda to all prospective Bidders that were sent this IFB or are otherwise known by the Procurement Officer to have obtained this IFB. It remains the responsibility of all prospective Bidders to check eMMA for any addenda issued prior to the submission of Bids.
- 4.12.2 Bidders shall acknowledge the receipt of all addenda to this IFB issued before the Bid due date.
- 4.12.3 Failure to acknowledge receipt of an addendum does not relieve the Bidder from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Bid to be deemed not responsive.

#### **4.13 Cancellations**

- 4.13.1 The State reserves the right to cancel this IFB, accept or reject any and all Bids, in whole or in part, received in response to this IFB and to waive or permit the cure of minor irregularities.
- 4.13.2 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).

- 4.13.3 If the services that are the subject of the IFB are currently being provided under an interagency agreement with a public institution of higher education and the State determines that the services can be provided more cost effectively by the public institution of higher education, then the IFB may be cancelled in accordance with Md. Code Ann., State Finance and Procurement Art., § 3-207(b)(2).

#### **4.14 Incurred Expenses**

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a Bid or performing any other activities related to submitting a Bid in response to this solicitation.

#### **4.15 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).

#### **4.16 Bidder Responsibilities**

- 4.16.1 Bidders must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Bidder shall be responsible for Contract performance including any subcontractor participation.
- 4.16.2 If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this IFB (see **Section 4.26** “MBE Participation Goal” and **Section 4.27** “VSBE Goal”).
- 4.16.3 If the Bidder is the subsidiary of another entity, all information submitted by the Bidder, 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 Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder’s Bid 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.
- 4.16.4 A parental guarantee of the performance of the Bidder under this Section will not automatically result in crediting the Bidder with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Bidder’s experience and qualifications. Instead, the Bidder’s responsibility will be assessed to the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Bidder, 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 the State.

#### **4.17 Acceptance of Terms and Conditions**

By submitting a Bid in response to this IFB, the Bidder, if selected for award, shall be deemed to have accepted the terms and conditions of this IFB and the Contract, attached hereto as Attachment M. Any exceptions to this IFB or the Contract must be raised prior to Bid submission. Changes to the solicitation, including the Bid Form or Contract, made by the Bidder may result in Bid rejection.

#### **4.18 Bid/Proposal Affidavit**

A Bid submitted by the Bidder must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this IFB.

#### 4.19 Contract Affidavit

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment N** of this IFB. 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.

#### 4.20 Compliance with Laws/Arrearages

By submitting a Bid in response to this IFB, the Bidder, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

#### 4.21 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 Bidder complete registration prior to the Bid due date and time. The Bidder’s failure to complete registration with SDAT may disqualify an otherwise successful Bidder from final consideration and recommendation for Contract award.

#### 4.22 False Statements

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

4.22.1 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.

4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.

4.22.3 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.

#### 4.23 Payments by Electronic Funds Transfer

By submitting a Bid in response to this solicitation, the Bidder, if selected for award:

- 4.23.1 Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller’s Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Bidder shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

- 4.23.2 Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:  
[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf).

#### 4.24 Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Pay Requirements" (see **Attachment M**). Additional information is available on GOSBA's website at:  
<http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

#### 4.25 Electronic Procurements Authorized

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Bidder to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this IFB, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.25.1 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://procurement.maryland.gov>), and electronic data interchange.
- 4.25.2 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., IFB § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

The Procurement Officer may conduct the procurement using eMMA to issue:

- 1) The IFB;
- 2) Any amendments;
- 3) Pre-Bid conference documents;
- 4) Questions and responses;
- 5) Communications regarding the solicitation or Bid to any Bidder or potential Bidder;
- 6) Notices of award selection or non-selection; and

- 7) The Procurement Officer's decision on any Bid protest or Contract claim.

The Bidder or potential Bidder may use eMMA to:

- 8) Submit Bids;
- 9) Ask questions regarding the solicitation;
- 10) 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 through eMMA, but only on the terms specifically approved and directed by the Procurement Officer and;
- 11) Submit a "No Bid Notice/Vendor Feedback Form" to the IFB.

The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.3** of this subsection, utilizing e-mail, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.25.3 The following transactions related to this procurement and any Contract awarded pursuant to it are **not authorized** to be conducted by electronic means:

- A. Submission of initial Bids, except through eMMA;
- B. Filing of bid protests;
- C. Filing of Contract claims;
- D. Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
- E. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Bidder be provided in writing or hard copy.

4.25.4 Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

#### **4.26 MBE Participation Goal**

There is no MBE subcontractor participation goal for this procurement.

#### **4.27 VSBE Participation Goal**

There is no VSBE participation goal for this procurement.

#### **4.28 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 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, 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.



Contractor understands that failure of 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 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 F**. Bidders must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Bids. If the Bidder fails to complete and submit the required documentation, the State may determine the Bidder 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. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or 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 Bidder must identify in its Bid 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) The Bidder shall identify in the Bid the location from which services will be provided.
- g) **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change or a change in the State minimum wage. The Contractor shall be responsible for any wage/rate increase during the term of the Contract and such increase may not be passed on to the State.

#### 4.29 Federal Funding Acknowledgement

This Contract does not contain federal funds.

### 4.30 Conflict of Interest Affidavit and Disclosure

- 4.30.1 The Bidder shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Bid.
- 4.30.2 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.
- 4.30.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services << under OR individual Task Orders issued under >> the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4 Participation in Drafting of Specifications: Disqualifying Event: Bidders 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 Bidder submitting a Bid in violation of this provision shall be classified as “not responsible.”

### 4.31 Non-Disclosure Agreement

#### 4.31.1 Non-Disclosure Agreement (Bidder)

A Non-Disclosure Agreement (Bidder) is not required for this procurement.

#### 4.31.2 Non-Disclosure Agreement (Contractor)

All Bidders are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment I**. 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 Bid.

### 4.32 HIPAA - Business Associate Agreement

A HIPAA Business Associate Agreement is not required for this procurement.

### 4.33 Nonvisual Access

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

### 4.34 Mercury and Products That Contain Mercury

All products or equipment provided pursuant to this solicitation shall be mercury-free products. The Bidder must submit a Mercury Affidavit in the form of **Attachment K** with its Bid.

### 4.35 Location of the Performance of Services Disclosure

The Bidder is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment L**. The Disclosure must be provided with the Bid.

### 4.36 Department of Human Services (DHS) Hiring Agreement

This solicitation does not require a DHS Hiring Agreement.

#### **4.37 Small Business Reserve (SBR) Procurement**

This section is inapplicable to this IFB.

#### **4.38 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/>.

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## 5 Bid Format

### 5.1 One Part Submission

Each Bidder shall submit its Bid with all Required Bid Submissions (see IFB Section 5.4) in a single sealed package.

### 5.2 Labeling

Each Bidder is required to label the sealed Bid with the IFB title and number, name and address of the Bidder, and closing date and time for receipt of the Bids.

### 5.3 Bid Price Form

The Bid shall contain all price information in the format specified on the Bid Form. The Bidder shall complete the Bid Form only as provided in the Bid Pricing Instructions and the Bid Form. Do not amend, alter, or leave blank any items on the Bid Form or include additional clarifying or contingent language on or attached to the Bid Form. Failure to adhere to any of these instructions may result in the Bid being determined to be non-responsive and rejected by the Department.

### 5.4 Required Bid Submission

A Bidder shall include the following with its Bid:

5.4.1 **Bidder Information Sheet** (see **Appendix 2**)

5.4.2 **Acknowledgement** of all addenda to this IFB.

5.4.3 **Minimum Qualifications Documentation.** The Bidder shall submit any Minimum Qualifications documentation that may be required, as set forth in **IFB Section 1**. If references are required in **IFB Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1**.

5.4.4 **Completed Required Attachments.** Submit three (3) copies of each with original signatures:

- 1) Completed Bid Form (**Attachment B**).
- 2) Completed Bid Affidavit (**Attachment C**).
- 3) Completed Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**).

5.4.5 **Additional Document \*If Required.** Submit three (3) copies of each with original signatures, if required. \*See appropriate IFB section to determine whether the document is required for this procurement.

- 1) A Signed Statement from the Bidder's Parent Organization Guaranteeing Performance of the Bidder. \*see **IFB section 4.16**
- 2) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**) \*see **IFB section 4.30**
- 3) Completed Mercury Affidavit (**Attachment K**) \*see **IFB section 4.34**
- 4) Completed Location of the Performance of Services Disclosure (**Attachment L**) \*see **IFB section 4.35**.

5.4.6 **References.** At least three (3) references are requested from customers who are capable of documenting the Bidder's ability to provide the goods and services specified in this IFB. References used to meet any Minimum Qualifications (see IFB **Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Bidder has provided goods and services within the past five (5) years and shall include the following information:

- 1) Name of client organization;
- 2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- 3) Value, type, duration, and description of goods and services provided.

The Department reserves the right to request additional references or utilize references not provided by the Bidder. Points of contact must be accessible and knowledgeable regarding Bidder performance.

5.4.7 **List of Current or Prior State Contracts.** Provide a list of all contracts with any entity of the State of Maryland for which the Bidder is currently performing goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Bidder is to provide:

- 1) The State contracting entity;
- 2) A brief description of the goods and services provided;
- 3) The dollar value of the contract;
- 4) The term of the contract;
- 5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- 6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Bidder's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Bidder and considered as part of the experience and past performance evaluation criteria of the IFB.

5.4.8 **Financial Capability.** The Bidder must include in its Bid a commonly-accepted method to prove its fiscal integrity. If available, the Bidder shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Bidder may supplement its response to this Section by including one or more of the following with its response:

- 1) Dun & Bradstreet Rating;
- 2) Standard and Poor's Rating;
- 3) Lines of credit;
- 4) Evidence of a successful financial track record; and
- 5) Evidence of adequate working capital.

5.4.9 **Certificate of Insurance.** The Bidder shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Bid submission date.

The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

- 5.4.10 **Subcontractors.** The Bidder shall provide a complete list of all subcontractors that will work on the Contract if the Bidder receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this IFB.
- 5.4.11 **Legal Action Summary.** This summary shall include:
- 1) A statement as to whether there are any outstanding legal actions or potential claims against the Bidder and a brief description of any action;
  - 2) A brief description of any settled or closed legal actions or claims against the Bidder over the past five (5) years;
  - 3) A description of any judgments against the Bidder within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and
  - 4) In instances where litigation is ongoing and the Bidder has been directed not to disclose information by the court, provide the name of the judge and location of the court.

## 5.5 Delivery

- 5.5.1 Bids shall only be accepted via the State's internet based electronic procurement system, eMMA. Bidders may not mail or hand-deliver Bids.
- 5.5.2 Bidders shall provide their Bids in one envelope through eMMA following the [Quick Reference Guides](#) (QRG) labelled "4 - eMMA QRG Responding to Solicitations (IFB)" for single envelope submissions.

## 5.6 Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a notification of recommendation for contract award, the following documents shall be completed and submitted by the recommended awardee within five (5) business days, unless noted otherwise. Submit one (1) electronic copy of each of the following documents:

- A. Signed contract (Attachment M),
- B. Completed Contract Affidavit (Attachment N),
- C. Signed Non-Disclosure Agreement (Attachment I), if applicable; see IFB Section 4.31,
- D. Copy of a current certificate of insurance with the prescribed limits set forth in IFB Section 3.1 "Insurance Requirements," listing the State as an Additional Insured, if applicable; see IFB Section 3.1.

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## 6 Bid Evaluation and Award

### 6.1 Bid Evaluation Criteria

The Bids will be evaluated based on the Total Bid Price, as per COMAR 21.02.13. All responsible Bidders will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Bid Price as submitted on the **Attachment B** - Bid Form.

### 6.2 Reciprocal Preference

6.2.1 Although Maryland law does not authorize procuring agencies to favor resident Bidders 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 Bidder;
- b) The lowest responsive Bid is from a responsible Bidder whose principal office, or principal base of operations is in another state;
- c) The other state gives a preference to its resident businesses through law, policy, or practice; and
- d) The preference does not conflict with a federal law or grant affecting the procurement Contract.

6.2.2 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

### 6.3 Award Determination

Award will be made to the responsible Bidder who submits to the State the responsive Bid that has the lowest Total Bid Price.

### 6.4 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 – IFB Attachments and Appendices**.

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## 7 IFB ATTACHMENTS AND APPENDICES

### Instructions Page

A Bid submitted by the Bidder must be accompanied by the completed forms and/or affidavits identified as “with Bid” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this IFB, 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 Bid:

1. Submit one (1) copy of each with signatures.

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

For documents required after award, submit one (1) copies 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: IFB ATTACHMENTS AND APPENDICES**

Applies?	When to Submit	Label	Attachment Name
Y	Before Bid	A	Pre-Bid Conference Response Form
Y	With Bid	B	Bid Instructions and Form
Y	With Bid	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
N	With Bid	D	MBE Forms D-1A
N	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C,D-2, D-3A, D-3B
N	As directed in forms	D	MBE Forms D-4A, D-4B, D-5
N	With Bid	E	Veteran-Owned Small Business Enterprise (VSBE) Form E-1A
N	5 Business Days after recommended award	E	VSBE Forms E-1B, E-2, E-3
Y	With Bid	F	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )



Applies?	When to Submit	Label	Attachment Name
N	With Bid	G	Federal Funds Attachments
Y	With Bid	H	Conflict of Interest Affidavit and Disclosure (see link at <a href="https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )
Y	5 Business Days after recommended award – However, suggested with Bid	I	Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a> )
N	5 Business Days after recommended award – However, suggested with Bid	J	HIPAA Business Associate Agreement
Y	With Bid	K	Mercury Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf</a> )
Y	With Bid	L	Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a> )
Y	5 Business Days after recommended award	M	Sample Contract (included in this IFB)
Y	5 Business Days after recommended award	N	Contract Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf</a> )
N	5 Business Days after recommended award	O	DHS Hiring Agreement
<b>Appendices</b>			
Applies?	When to Submit	Label	Attachment Name
Y	n/a	1	Abbreviations and Definitions (included in this IFB)
Y	With Bid	2	Bidder Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf</a> )

Applies?	When to Submit	Label	Attachment Name
Y	Monthly	3	MTA Vehicle Log (Referenced in Section 2 of this IFB).
<b>Additional Submissions</b>			
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy
Y	10 Business Days after recommended award		PEP; 1 copy

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**Attachment A. Pre-Bid Conference Response Form**

**Solicitation Number AGY-23-074-MT**

Vehicle Washing and Cleaning

A Pre-Bid conference will be held June 7, 2023 at 10 AM via Microsoft Teams.

Please return this form by June 6, 2023, advising whether or not your firm plans to attend. The completed form should be returned via e-mail or fax to the Procurement Officer at the contact information below:

Cassandra Gilbert  
MDOT MTA Office of Procurement  
E-mail: CGilbert@MDOT.Maryland.gov

Please indicate:

- \_\_\_\_\_ Yes, the following representatives will be in attendance.  
Attendees and their e-mail addresses (Check the IFB for limits to the number of attendees allowed):
- 1.
  - 2.
  - 3.
- \_\_\_\_\_ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see IFB § 4.1“Pre-Bid conference”):

Bidder: \_\_\_\_\_  
*Bidder Name (please print or type)*

By: \_\_\_\_\_  
*Signature/Seal*

Printed Name: \_\_\_\_\_  
*Printed Name*

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

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

**Directions to the Pre-Bid Conference**

**Attachment B. Bid Instructions & Form**

**B-1 Bid Instructions**

In order to assist each Bidder in the preparation of its Bid and to comply with the requirements of this solicitation, Bid Instructions and a Bid Form have been prepared. Each Bidder shall submit its Bid on the Bid Form in accordance with the instructions on the Bid Form and as specified herein. Do not alter the Bid Form or the Bid may be determined to be not responsive. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid Form.

The Bid Form is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this IFB and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Bid Form shall be filled in. Any changes or corrections made to the Bid Form by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the Bid Form, nothing shall be entered on or attached to the Bid Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Bid not responsive.
- G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the Bidder will be treated as provided in COMAR 21.05.02.12, and may cause the Bid to be rejected.
- H) If option years are included, Bidders must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the IFB at the prices entered in the Bid Form.
- I) All Bid prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the IFB. The Bid price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, 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. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the IFB, sample amounts used for calculations on the Bid Form are typically estimates for evaluation purposes only. Unless stated otherwise in the IFB, the Department does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.
- K) Failure to adhere to any of these instructions may result in the Bid being determined not responsive.

**B-1 Bid Form**

The Bid Form shall contain all price information in the format specified on these pages. Complete the Bid Form only as provided in the Bid Instructions. Do not amend, alter or leave blank any items on the Bid Form. If option years are included, Bidders must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Bid being determined not responsive.

See separate Excel Bid Form labeled “Bid Form.”

Submitted by:

Signature of Authorized Representative	Date
Printed Name and Title:	
Telephone:	
Email address:	
Bidder Company Name:	
Bidder Company Address:	
Location(s) from which goods/services will be provided/performed (City/State):	
FEIN:	
eMMA #:	

**Attachment C. Bid/Proposal Affidavit**

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf).

**Attachment D. Minority Business Enterprise (MBE) Forms**

This solicitation does not include a Minority Business Enterprise (MBE) subcontractor participation goal.

**Attachment E. Veteran-Owned Small Business Enterprise (VSBE)  
Forms**

This solicitation does not include a Veteran-Owned Small Business Enterprise goal.



**Attachment F. Maryland Living Wage Affidavit of Agreement for Service Contracts**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

- 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.

**Attachment G. Federal Funds Attachments**

This solicitation does not include a Federal Funds Attachment.

**Attachment H. Conflict of Interest Affidavit and Disclosure**

See link at <https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>.

**Attachment I. Non-Disclosure Agreement (Contractor)**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

**Attachment J. HIPAA Business Associate Agreement**

This solicitation does not require a HIPAA Business Associate Agreement.

**Attachment K. Mercury Affidavit**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf>.

**Attachment L. Location of the Performance of Services Disclosure**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.



**Attachment M. Contract**

**Maryland Transit Administration (MDOT MTA)**

**“Vehicle Washing and Cleaning”**

**AGY-23-074-MT**

THIS CONTRACT (the “Contract”) is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between \_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the Maryland Transit Administration (“MDOT MTA” or the “Department”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**1. Definitions**

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated \_\_\_\_\_ (Bid date).
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contractor” means the entity first named above whose principal business address is \_\_\_\_\_ and whose principal office in Maryland is \_\_\_\_\_, whose Federal Employer Identification Number or Social Security Number is \_\_-\_\_\_\_\_, and whose eMaryland Marketplace Advantage vendor ID number is SUP\_\_\_\_\_.
- 1.4 “IFB” means the Invitation for Bids for Vehicle Washing and Cleaning, Solicitation # AGY-23-074-MT, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.5 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.6 “State” means the State of Maryland.
- 1.7 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.8 Capitalized terms not defined herein shall be ascribed the meaning given to them in the IFB.

**2. Scope of Contract**

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The Contract Affidavit, executed by the Contractor and dated \_\_\_/\_\_\_/\_\_\_

Exhibit B – Bid Affidavit

Exhibit C – IFB with Addenda

Exhibit D – The Bid dated \_\_\_/\_\_\_/\_\_\_

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement

Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

### **3. Period of Performance**

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the "Effective Date") and shall continue until five (5) years ("Initial Term").
- 3.2 The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.3 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Bid. Unless properly modified (see above Section 2), payment to the Contractor with FEIN pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Bid.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by IFB section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only 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.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

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

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

## 5. Rights to Records

- 5.1 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 for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), 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 made for hire for the State, 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.
- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## 6. Exclusive Use

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

## 7. Patents, Copyrights, and Intellectual Property

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor 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 the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.
- 7.4 Without limiting Contractor’s obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation

- with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7 The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8 The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 8. Confidential or Proprietary Information and Documentation**
- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, 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 or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract..
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract;

(c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

## **9. Loss of Data**

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **IFB Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in IFB Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **IFB Section 3.7**.

## **10. Indemnification and Notification of Legal Requests**

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (i) 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 against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.
- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

## **11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or

affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, 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. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **13. Maryland Law Prevails**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

## **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## **15. Contingent Fee Prohibition**

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

## **16. Non-Availability of Funding**

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

State's 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 nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**17. 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, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State 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 hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

**19. Delays and Extensions of Time**

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 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.

**20. Suspension of Work**

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

**21. 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 Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**22. 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 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.

**23. 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 contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website:  
[http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

**24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

**25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.

- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist 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.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the Department has the right to audit such subcontractor(s).

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State 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, 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;
- 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.

## **27. Cost and Price Certification**

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Bid.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Bid, was inaccurate, incomplete, or not current.

## **28. Subcontracting; Assignment**

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Limitations of Liability**

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:

- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 7 “Patents, Copyrights, Intellectual Property”** of this Contract;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor’s liability shall be unlimited.
- 29.2 Contractor’s indemnification obligations for Third party claims arising under Section 10 (“Indemnification”) of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor’s indemnification liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors are agents of Contractor and Contractor is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

### **30. Commercial Nondiscrimination**

- 30.1 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, 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 or on the basis of disability, or otherwise 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.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, 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 four (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 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 are 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.

30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

### 31. Prompt Pay Requirements

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:

- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
- (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
- (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
- (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
- (e) Take other or further actions as appropriate to resolve the withheld payment.

31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:

- (a) Affect the rights of the contracting parties under any other provision of law;
- (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
- (c) Result in liability against or prejudice the rights of the Department.

31.4 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 MBE program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:

- (a) 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. This verification may include, as appropriate:
  - i. Inspecting any relevant records of the Contractor;
  - ii. Inspecting the jobsite; and
  - iii. Interviewing subcontractors and workers.

Verification shall include a review of:

- i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and

- ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
- (b) If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department 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.
- (c) If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
  - i. Terminate the Contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.
- (d) 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.

### **32. Living Wage**

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the Department may withhold payment of any invoice or retainage. The Department may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

### **33. Use of Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

### **34. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

### **35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the

Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

**36. Miscellaneous**

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.
- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**37. Contract Monitor and Procurement Officer**

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

**38. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

Keith Stewart  
1515 Washington Blvd.  
Baltimore, MD 21230  
Phone Number: 410-454-7085  
E-Mail: [KStewart@MDOT.Maryland.gov](mailto:KStewart@MDOT.Maryland.gov)

With a copy to:

Cassandra Gilbert

Maryland Transit Administration (MDOT MTA)

6 Saint Paul Street, 7th Floor

Phone Number: 410-767-3576

E-Mail: [CGilbert@MDOT.Maryland.gov](mailto:CGilbert@MDOT.Maryland.gov)

If to the Contractor:

(Contractor's Name)

(Contractor's primary address)

Attn: \_\_\_\_\_

SIGNATURES ON NEXT PAGE

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

Contractor: (Contractor Name)	State of Maryland Maryland Transit Administration (MDOT MTA)
By: (Contractor Signer)	By: Memory L. Hewlett, Director of Procurement
Date:	Date:
Witness/Attest:	Witness/Attest:
PARENT COMPANY (GUARANTOR) (if applicable)	
By:	
Date:	
Witness/Attest:	

Approved for form and legal sufficiency  
this \_\_\_ day of \_\_\_\_\_, 20\_\_.  
\_\_\_\_\_  
Assistant Attorney General

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



**Attachment N. Contract Affidavit**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

**Attachment O. DHS Hiring Agreement**

This solicitation does not require a DHS Hiring Agreement.

## Appendix 1. – Abbreviations and Definitions

For purposes of this IFB, the following abbreviations or terms have the meanings indicated below:

- A. Bid – The Bidder’s Bid.
- B. Bid Price Form or Bid Form - The Attachment B Bid Form.
- C. Business Day(s) – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
- D. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
- E. Contract – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment M**.
- F. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
- G. Contractor – The selected Bidder that is awarded a Contract by the State.
- H. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this IFB.
- I. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
- J. Maryland Transit Administration or (MDOT MTA or the “Department”).
- K. eMMA – eMaryland Marketplace Advantage (see IFB **Section 4.2**).
- L. Invitation for Bids (IFB) – This Invitation for Bids issued by the Maryland Transit Administration (Department), with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
- M. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See IFB **Sections 3.10**.
- N. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
- O. Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- P. Normal State Business Hours - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.

- Q. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
- R. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
- S. Bidder – An entity that submits a Bid in response to this IFB.
- T. Personally Identifiable Information (PII) – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- U. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.
- V. Protected Health Information (PHI) – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- W. Security Incident – A violation or imminent threat of violation of computer security policies, Security Measures, acceptable use policies, or standard security practices. “Imminent threat of violation” is a situation in which the organization has a factual basis for believing that a specific incident is about to occur.
- X. Security or Security Measures – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
- Y. Sensitive Data - Means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
- Z. State – The State of Maryland.
- AA. Total Bid Price - The Bidder’s bid price or evaluated bid price for goods and services in response to this solicitation, included in **Attachment B** – Bid Form.
- BB. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

## Appendix 2. – Bidder Information Sheet

### Appendix 2. Bidder Information Sheet

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder\\_OfferorInformationSheet.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf).

## GENERAL PROVISIONS FOR MAINTENANCE CONTRACTS

### MARYLAND DEPARTMENT OF TRANSPORTATION GENERAL CONDITIONS FOR MAINTENANCE CONTRACTS

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Revised July 5, 2002

MARYLAND DEPARTMENT OF TRANSPORTATION  
GENERAL CONDITIONS FOR MAINTENANCE CONTRACTS

**1. Definitions**

Wherever in these General Provisions or in other contract documents the following terms or abbreviations are used, the meaning shall be as follows:

**A. Organizational Structure**

The Maryland Department of Transportation is composed of the following Jurisdictions:

- (i) Maryland Aviation Administration
- (ii) Maryland Port Administration
- (iii) Maryland Transportation Authority
- (iv) Maryland Transit Administration
- (v) Motor Vehicle Administration
- (vi) State Highway Administration
- (vii) The Secretary's Office

**B. Definitions**

**Agreement** – Contract.

**Award** – The decision by a Jurisdiction to execute a purchase agreement or contract after all necessary approvals have been obtained.

**Bid/Offer** – A statement of price, terms of sale, and description of the supplies, services, or construction related services submitted to the State, in response to an Invitation for Bids or offers under procurement by competitive sealed bidding or comparable small procurement procedures.

**Board** – The Board of Public Works of the State of Maryland.

**Business** – Any corporation, partnership, individual, sole proprietorship, joint venture, or any other legal entity through which commercial activity is conducted.

**Change Order** – A written order signed by the responsible Procurement Officer, directing a Contractor to make changes which the changes clause of a contract authorizes the Procurement Officer to order with or without the consent of the Contractor.

**Code** – The Annotated Code of Maryland.

**COMAR** – Code of Maryland Regulations.

**Construction** – The process of building, adding, altering, converting, relocating, renovating,



replacing, repairing, improving, demolishing or restoring of real property in which the State has an interest.

**Contract** – Any agreement entered into by a Jurisdiction for the acquisition of supplies, services, construction, or any other item, including:

- Awards and notices of award;
- Contracts of a fixed-price, cost-reimbursement, cost-plus-a-fixed-fee, fixed-price incentive, or cost-plus incentive fee type;
- Contract providing for the issuance of job or task orders;
- Leases;
- Letter contracts;
- Purchase orders;
- Supplemental agreements with respect to any of these;
- Orders; and
- Grants.

Contract does not include:

- Collective bargaining agreements with employee organizations; or
- Medical, Medicare, Judicare, or similar reimbursement contracts for which eligibility and cost are set by law or regulation.

**Contract Affidavit** – An affidavit in compliance with, and in substantially the same form as set forth in COMAR 21.05.08.07 and any amendments thereto.

**Contract Drawing** – See “Plans”

**Contract Modification** – Any written alteration in the specifications, delivery point, date of delivery, contract period, price, quantity, or other provision of any existing contract, whether accomplished in accordance with a contract provision, or by mutual action of the parties to the Contract. It includes Change Orders, Extra Work Orders, Supplemental Agreements, Contract amendments, reinstatements, or options/renewals.

**Contractor** – Any person (see definition of Person) having a contract with a Jurisdiction. Contractor does not include any employees claiming such status pursuant to any collective bargaining agreement.

**Day** – Calendar day unless otherwise designated.

**Department** – The Maryland Department of Transportation (MDOT).

**Engineer** – Any person designated by the Jurisdiction or the Procurement Officer, acting directly or through the duly authorized representative, such representative acting within the scope of the assigned duties or authority.

**Extension** – As applied to contracts for the performance of maintenance work or services, means

a change in the scope of services to be performed by the Contractor by including in the Contract a requirement for the performance of phases of services not previously included.

**Extra Work Order** – Change Order

**Firm** – Business

**Inspector** – The authorized representative of the procurement officer assigned to make detailed inspections of any or all portions of the work, or materials thereof.

**Invitation for Bids** – Any document, whether attached or incorporated by reference, used for soliciting bids under procurement by competitive sealed bidding and small procurement including requests for quotations.

**Jurisdiction** – Any one of the above Administrations or Authorities within the Maryland Department of Transportation, as listed in Section 1.B.

**Maintenance** – Any work or services necessary for the continued operation or upkeep of a facility, structure, building, grounds, or building system, including built-in equipment or an in-ground system.

**Minority Business Enterprise** – Any legal entity, other than a joint venture, organized to engage in commercial transactions, which is at least 51 percent owned and controlled by one or more minority persons, or a non-profit entity organized to promote the interests of the physically or mentally disabled and is “Certified” by the Department. Certified means that the Department, through established procedures, has determined that a legal entity is a minority business enterprise.

**Minority Person** – A member of a socially or economically disadvantaged minority group, including African Americans/Black (not of Hispanic origin), Hispanic American, Asian American, Native American, Alaska natives, Asians, Pacific Islanders, Women, and the Physically or Mentally Disabled.

**Notice to Proceed** – A written notice to the Contractor of the date on or before which the Contractor shall begin performing the work to be done under the contract.

**Offeror** – A person or entity that responds to a Proposal and desires to enter into a contract with the Department.

**Payment Bond** – Security as stated in COMAR 21.06.07.01B as a guarantee that Contractor will pay in full all bills and accounts for materials and labor used in the work, as provided by law.

**Performance Bond** – Security as stated in COMAR 21.06.07.01B, guaranteeing complete performance of the Contract.

**Person** – Any individual or a corporation, partnership, sole proprietorship, joint stock company,

joint venture, unincorporated association, union, committee, club or other organization or legal entity.

**Plans** – The official drawings issued by the Jurisdiction as part of the contract documents, including those incorporated in the contract documents by referenced.

**Price Proposal** – A contractor written price derivation response, with required support documentation and affidavits, to a Department request for price from a Contractor technically selected for a specific Project. The Price Proposal shall be signed by the person(s) required to legally bind the Contractor to the proposal.

**Procurement Officer** – Any person authorized by a State agency in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

**Proposal** – The response by an Offeror to a solicitation of the Jurisdiction for a supply or service. The response may include, but is not limited to, an Offeror's price and terms for the proposed Contract, a description of technical expertise, work experience and other information as requested in the solicitation.

**Public Improvement** – The construction, maintenance and repair of any building, structure or other public work now or hereafter constructed or acquired by the State or any the Department.

**Quotation** – Bid/Offer

**Request for Proposals** – Any document, whether attached or incorporated by reference, used for soliciting proposals under procurement by competitive sealed proposals, noncompetitive negotiations, multi-step and comparable small procurement procedures.

**Resident Business** – A business enterprise that has a Maryland address, is registered to do business in the State of Maryland, employs Maryland residents, and regularly conducts business within the State. The term include subsidiaries, divisions and branches of a business enterprise headquartered outside of the State of Maryland.

**Responsible Bidder or Offeror** – A person who has the capability in all respects to perform fully the Contract requirements, and the integrity and reliability which will assure good faith performance.

**Secretary** – The Chief Executive Officer of the Maryland Department of Transportation.

**Services** – The rendering of a person's time, effort or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance of services. It includes, but is not limited to, professional, personal and/or contractual services provided by attorneys, architects, engineers, accountants, physicians, consultants, appraisers, land surveyors, and property

management, where the service is associated with the provision of expertise and/or labor. “Services” does not include the work normally associated with the repair and/or maintenance of facilities, structures, or building systems defined as “maintenance.”

**Specification** – A written description of functional characteristics, or the nature of an item to be procured. It may include a statement of any of the user’s requirements and may provide for inspection, testing, or preparation of an item before procurement. Procedures to accomplish tasks may be included.

**Solicitation** – Invitation for bids, Request for Proposals, or any other method or instrument used to provide public notice and advertisement of a Jurisdiction’s intent to procure supplies, services, and construction.

**State** – The State of Maryland acting through its authorized representative including any Jurisdiction as listed in Section 1.B.

**State Agency** – Any administration, agency, association, authority, board, bureau, college, commission, committee, council, foundations, fund, department, institute, institution, public corporation, service, trust, university, or other unit of the Executive Branch of the State Government and including any subunit within any of the foregoing.

**Subcontractor** – Any person undertaking a part of the work under the terms of the Contract, by virtue of an agreement with the Contractor, who, prior to such undertaking, receives the approval of the surety and the Jurisdiction.

**Superintendent** – The executive representative of the Contractor authorized to receive and execute instructions from the Procurement Officer, and/or Inspector who shall supervise and direct the work.

**Supplemental Agreement** – Any contract modification which is accomplished by the mutual action of the parties.

**Supplemental Specification** – Additions and revisions to the Standard Specifications. Generally include five (5) new or improved procedures, construction items or materials developed subsequent to the publication of Standard Specifications.

**Work** – The furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed by the Contract.

NOTE: Any reference to one gender shall be deemed to include the other gender, unless the Contract clearly requires otherwise.

## 2. **Preparation of Bid/Proposal**

Offeror shall submit its bid/proposal upon the forms furnished by the Jurisdiction, carefully following bid preparation instructions provided. A completed Bid/Proposal Affidavit is an essential part of the

proposal submission. A completed Contract Affidavit will be required of the successful Offeror before issuance of notice to proceed.

Offerors should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information or trade secrets and provide any written justification of why such materials, upon request, should not be disclosed by the State under the Maryland Public Information Act, Section 10-611 et seq. of the State Government Article of the Annotated Code of Maryland.

### **3. Site Investigation**

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

### **4. Bid, Performance and Payment Bonds**

#### **A. Bid Bonds**

If required for a procurement in excess of \$100,000, a proposal shall not be considered unless accompanied by a guaranty in an amount not less than 5% of the amount bid, and made payable to the State of Maryland.

#### **B. Performance Bonds**

A performance bond may be required for maintenance contracts in excess of \$100,000 in the amount equal to at least 100 percent of the Contract price. If required by the Special Provisions of the Contract, the performance bond shall be delivered by the Contractor to the State no later than the time the Contract is executed. If a Contractor fails to deliver the required performance bond, that Contractor's bid shall be rejected, its bid security shall be enforced, and the award of the Contract shall be made to the next lowest responsible and responsive offeror.

#### **C. Payment Bonds**

A payment bond may be required for a maintenance contract in excess of \$100,000 in the

amount equal to at least 100 percent of the Contract price. If required by the Special Provisions of the Contract, the payment bond shall be delivered by the Contractor to the State no later than the time the Contract is executed. If a Contractor fails to deliver the required payment bond, the Contractor's bid shall be rejected, its bid security shall be enforced, and award of the Contract shall be made to the next lowest responsible and responsive offeror.

**D. Acceptable Security**

Acceptable security for bid, performance and payment bonds shall be as set forth in COMAR 21.06.07.01B.

**5. 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 to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide agent, bona fide salesperson or commercial selling agency, any fee or other consideration contingent on the making of this Contract.
- B. For breach or violation of this warranty, the Jurisdiction shall have the right to terminate this Contract without liability, or, in its 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.

**6. 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, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current.

**7. Contract Administration**

This Contract may be administered on behalf of the Department or Jurisdiction as the case may be, by the Procurement Officer.

## **8. Authority of the Procurement Officer**

- A. The Procurement Officer 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 terms of the Contract on the part of the Contractor.
- B. The Procurement Officer 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 may authorize progress payments for work satisfactorily completed, subject to such retainage that the Procurement Officer deems appropriate.

## **9. Corporate Registration and Tax Payment Certification**

Corporations are required to execute a Certification of Corporation Registration and Tax Payment.

## **10. Compliance With Laws**

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

## **11. Initiation of Work**

The Contractor shall not commence performance of the Work or Services until it receives a formal written Notice to Proceed from the Jurisdiction.

## **12. Notice to Proceed and Completion of the Work**

After the Contract has been executed, the Jurisdiction will, within the time limit specified elsewhere in the Contract documents, issue to the Contractor a Notice to Proceed stipulating the date on or before which the Contractor shall begin Work. The specified Contract time shall begin on the first day that the Contract Work (other than the erection of the inspector's office, construction stakeout, and mobilization) actually starts or on the day stipulated in the Notice to Proceed, whichever is earlier. Any preliminary work started, or materials ordered, before receipt of the Notice to Proceed, shall be at the Contractor's sole risk.

The Contractor shall begin Work promptly within the time specified by the Procurement Officer and shall notify the Procurement Officer at least forty-eight (48) hours before starting Work. The Contractor shall submit a progress schedule, in writing, to the Procurement Officer within ten (10) days from the date of the Notice to Proceed. This schedule shall be updated and revised to reflect all changes affecting the job progress.

After the work has once been started, it shall be conducted continuously on all acceptable working days without stoppage until the entire Contract is complete. Should the progress of the Work for any reason be discontinued, the Contractor shall notify the Procurement Officer of his intention to stop and shall also notify the Procurement Officer at least twenty-four (24) hours in advance of resuming operations. Said notification shall be confirmed in writing, by the Contractor.

### **13. Conformity with Contract Requirements**

A. All Work performed and all materials furnished shall be in conformity with the Contract requirements. In the event the Procurement Officer finds the materials or the finished product in which the materials are used or the Work performed do not conform to the Contract requirements and have resulted in an inferior or unsatisfactory product, the Work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

In the event the Procurement Officer finds the materials or the finished product in which the materials are used are not in conformity with the Contract requirements but that acceptable work has been produced, the Procurement Officer shall then make a determination if the work shall be accepted. In this event, the Procurement Officer will document the basis of acceptance by a change order which may provide for an equitable adjustment in the Contract price. Any action taken pursuant to this paragraph may not result in an increase of the Contract price.

B. When any article is specified in the Contract by proprietary name, trade name, and/or name of manufacturer with or without the addition of such expressions as "or equal" or "or approved equal," it is to be understood that the article named or the equal thereof is intended, subject to the approval of the Procurement Officer as to the quality thereof; and it is distinctly understood: (a) that the Procurement Officer is to exercise independent judgement in determining, from time to time, whether or not any article proposed to be substituted is the equal of any article so specified; (b) that the decision of the



Procurement Officer on all such questions of equality shall be final; and (c) that, in the event of any adverse decision by the Procurement Officer, no claim of any sort shall be made or allowed against the Procurement Officer, or the Jurisdiction, because of such decision.

The offeror of an article by the Contractor for an article specified will raise the presumption that any such substitution it is for the purpose of saving money. If, in such a case, the article is approved, the Jurisdiction shall be given credit in the amount of the difference between the net cost to the Contractor of the article submitted and the price at which he could have obtained the lowest priced article specified. For convenience in checking the credit, if any, the Contractor shall submit these figures when the offer of substitution is made, and no article shall be considered without such figures. The word "article," wherever used in this Paragraph 13, subsection entitled "Equal or Approved Equal," shall be taken to mean any article, material or thing.

#### **14. Inspection of Work**

All materials and each part or detail of the Work shall be subject at all times to inspection by the Procurement Officer, or other appropriate persons from the Jurisdiction, and the Contractor shall be held strictly to the Contract including allowable tolerances, quality of materials and workmanship, and the diligent execution of the Contract. Such inspection may include mill, plant or shop inspection. Any material furnished under the Contract is subject to such inspection. The Procurement Officer, or other appropriate person from the Jurisdiction, shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required to make a complete and detailed inspection.

If the Procurement Officer so requests, the Contractor, at any time before the Jurisdiction's acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After inspection, the Contractor shall restore said portions of the Work to the standards required by the Contract. Should the Work thus expose or inspected prove acceptable, adjustments in the Contract time and price will be made by Change Order for the uncovering or removing, and the replacing of the covering or making good of the parts removed. Should the Work so exposed or examined prove unacceptable, the uncovering, removing and/or replacing, shall be at the Contractor's sole expense.

When the United States Government or any railroad, corporation or other agency is to pay a portion of the cost of the Work covered by this Contract, a representative of any such entity shall have the right to inspect the Work.

#### **15. Removal of Defective Work**

All Work and materials which do not conform to the requirements of the Contract shall be considered unacceptable, unless otherwise determined acceptable under the provisions in Section 13 herein.

Any defective Work, whether the result of poor workmanship, use of defective materials,

damage through carelessness or any other cause, found to exist, shall be removed and replaced by Work and materials which shall conform to the specifications or shall be remedied otherwise in an acceptable manner authorized by the Procurement Officer. Upon any failure by the Contractor to comply promptly with any order of the Procurement Officer made under the provisions of this Paragraph 15, the Procurement Officer shall have the authority to cause defective Work to be remedied or removed and replaced and unauthorized Work to be removed, and to deduct the costs attributable to such corrective notions from any monies due or to become due to Contractor under this Contract.

#### **16. Discrepancies in Contract Documents**

In the event the Contractor discovers any discrepancies in the Contract documents, the Contractor shall immediately notify the Procurement Officer. The Procurement Officer will then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract. In the event of a conflict between these General Conditions and any other provisions of the Contract documents, these General Conditions shall prevail unless such other provision expressly provides to the contrary.

#### **17. Cooperation by Contractor**

The Contractor shall give the Work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Procurement Officer and the Jurisdiction's inspector in every way possible.

The Contractor shall assign to the Contract, as his agent, a competent superintendent capable of communicating in English, capable of reading and thoroughly understanding the Contract documents, and thoroughly experienced in the type of work being performed, who shall receive instructions from the Procurement Officer or an authorized Jurisdiction representative. The superintendent shall have full authority to execute the orders or directions of the Procurement Officer without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required. Such superintendent(s) shall be furnished irrespective of the amount of Work sublet.

#### **18. Cooperation with Utilities**

The Contractor has considered in its bid all of the permanent and temporary utility appurtenances in their present or relocated positions. No additional compensation shall be allowed for normal delays, inconvenience, or damage sustained by the Contractor due to any interference from the said utility appurtenances or the operation of moving them.

The Contractor shall have sole responsibility for notifying all affected utility companies prior to the necessity of performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the sole responsibility of the Contractor.

In the event of interruption to utility service as a result of accidental breakage or as a result of

being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with said authority in the restoration of service. No Work shall be undertaken around fire hydrants until provisions for continued services have been approved by the local fire authority.

## **19. Cooperation Between Contractors**

- A. Separate Contractors on adjoining or overlapping work shall cooperate with each other as necessary. Such cooperation shall include but is not limited to, (1) arrangement and conduct of Work, and (2) storage and disposal of materials, etc., by each in such a manner as to not unnecessarily interfere with or hinder the progress of the work being performed by other Contractors. Contiguous Work shall be joined in an acceptable manner.
- B. The Jurisdiction shall have the right, at any time, to contract for and perform other work on, near, over or under the Work covered by this Contract. In addition, other work may be performed under the direction of another Jurisdiction. The Contractor shall cooperate fully with such other contractors and carefully fit its own Work to such other work as may be directed by the Procurement Officer
- C. In the event of disputes as to cooperation, the Procurement Officer shall act as referee and decisions made by the Procurement Officer will be binding. The Contractor shall make no claims against the Jurisdiction for any inconvenience, delay or loss experienced by the Contractor because of the presence and/or operations of other contractors.

## **20. Jurisdiction Furnished Material**

The Contractor shall furnish all materials required to complete the Work, except those specified to be furnished by the Jurisdiction. Materials furnished by the Jurisdiction will be delivered or made available to the Contractor at the point or points specified in the Special Provisions. All costs of handling and placing all materials, after delivery to the Contractor, are included in the Contract price for the item in connection with which they are used.

The Contractor is responsible for all delivered material. Deductions shall be made from any monies due him to make good any shortages and deficiencies, and for any damage which may occur after such delivery from any cause whatsoever, and for any demurrage charges.

In cases where materials are supplied by the Jurisdiction and incorporated in the Contract Work by the Contractor, materials inspection and acceptance will not be a prerequisite for acceptance of the final product as the product pertains to these items.

## **21. Indemnification and Insurance**

- A. Responsibility for Claims and Liability

The Contractor(s) shall protect, defend, indemnify, save harmless, release and discharge the Department and the Jurisdiction, their Officers, agents, and employees from and against all claims, suits, judgements, expenses, actions, damages and costs of every name and description arising out of or resulting from errors, omissions, negligent acts, negligent performance or nonperformance of any rights or obligations of the Contractor or those of his subcontractors, agents or employees under this Contract, or arising from or based on the violation of applicable federal, State or local law, ordinance, regulations, order or decree, whether by himself or his employees or subcontractors.

Further, the Contractor shall pay any claims for personal injury, bodily injury or property damage which the Contractor is legally obligated to pay and shall indemnify the Department and the Jurisdiction, their officers, agents and employees from any third party claim seeking such damages. The provisions of this Paragraph shall survive termination or expiration of this Contract with respect to any liability arising prior to such termination or expiration.

## B. Insurance Requirements

The Contractor shall carry and maintain in full force and effect for the duration of this Contract, and any supplement or extension thereto, the insurance coverage sufficient to protect the Department, the Jurisdiction, and the State, and their officers, agents, employees, invitees, successors and assigns, from claims which may arise out of or as a result of the Contractor's activities under this Contract. The Contractor shall obtain and maintain at least the minimum levels of insurance specified, and any other coverage specified by the Department or Jurisdiction, in the amounts specified elsewhere in the Contract documents. The Contractor shall submit to the Department or Jurisdiction a certificate of insurance indicating the existence of coverage required by this provision. Policies shall be issued by an insurance company authorized to do business in the State of Maryland and approved by the Department or Jurisdiction.

### 1) Comprehensive General Liability Insurance

Occurrence form of comprehensive General Liability Insurance with Comprehensive Board Form endorsement including, but not limited to, coverage for damage to persons or property arising out of or relating to the performance of work under this Contract by the Contractor, its subcontractors, employees and agents.

### 2) Professional Liability Insurance

Professional Liability Insurance Policy which covers the Indemnification Clause of this Contract (Paragraph 21.A above) as it relates to errors, omissions, negligent acts or negligent performance in the Work performed under this Contract by the Contractor, its subcontractors, employees and agents.

### 3) Worker's Compensation Insurance

Worker's compensation as required by the laws of the State of Maryland, including Employer's Liability Coverage and coverage for the benefits set forth under the U.S. Longshoremen and Harbor Workers Compensation Act, the Jones Act, and other federal laws where applicable.

4) Comprehensive Automobile Liability Insurance

Comprehensive Business Automobile Liability covering use of any motor vehicle to be used in conjunction with this Contract, including hire automobiles and non-owned automobiles. Loading and unloading of any motor vehicle shall be covered by endorsement to the automobile liability policy or policies.

Prior to the start of Work on any contract, the Contractor shall submit to the Procurement Officer Certificate(s) of Insurance demonstrating that the Contractor carries insurance against the risks and in the amounts specified elsewhere in the Contract. If at any time during the term of the Contract any of the above required insurance policies are canceled, terminated or modified so that the insurance is not in full force and effect as required herein, the Department or Jurisdiction may terminate this Contract for default, or, at its sole option, the Department or Jurisdiction may obtain insurance coverage equal to that required herein, the full cost of which shall be charged and paid for by the Contractor.

**22. Responsibility for Damage Claim**

- A. The Contractor shall protect, defend, indemnify, save harmless, release and discharge the State and all of its representatives from all suits, actions, or claims of any character brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding the Work or through the use of unacceptable materials in the construction of the improvement, or on account of any act or omission by the said Contractor, or as a result of faulty, inadequate or improper temporary drainage during construction, or on account of the use, misuse, storage or handling of explosives, or on account of any claims or amounts recovered for any infringement of patent, trademark, or copyright, or from any claims or amounts arising or recovered under the Workers' Compensation Laws, or any other law, bylaw, ordinance, order or decree or any claims, suits, judgements, expenses, actions, damages and costs arising from or based on the violation of any federal, State or local law, ordinance, regulation, order or decree, whether by himself or its employees or subcontractors. The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the Work resulting from any act, omission, neglect or misconduct, in the manner or method of executing said work satisfactorily or due to the non-execution of said Work or at any time due to defective work or materials and said responsibility shall continue until the improvement shall have been completed and accepted.
- B. The Contractor shall not be held responsible for any claims arising from accidents incurred because of any traffic and/or general use permitted during the time the project or any section thereof is open to traffic except from accidents which are attributable to the Contractor's negligence.

### **23. Assignment**

The Contractor shall not assign this Contract in whole or in part, or any monies due or to become due under this Contract without the prior written consent of the Jurisdiction. Any attempted assignment without such consent is void ab initio. In the event that 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.

### **24. General Guarantee**

Neither the final acceptance of the Work nor payment thereof nor any provision in the Contract documents nor partial or entire use of the Work by the Jurisdiction shall constitute an acceptance of work which is not performed in accordance with the Contract documents or relieve the Contractor of liability for any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the Work, and pay for any damage to other Work resulting from defects in the Work which shall appear within a period of one (1) year from the date of final acceptance of Work, unless a longer period is specified. The Jurisdiction shall give notice of observed defects with reasonable promptness.

### **25. Final Acceptance and Payment**

Upon completion of all the Work under this Contract, the Procurement Officer shall make a final inspection of the entire Work and direct the Contractor to take any corrective action to properly complete the Work. Once the Procurement Officer is satisfied that the Work is properly completed, the Procurement Officer shall certify to the Jurisdiction, in writing, the final acceptance of the entire project. The Jurisdiction, upon receipt and approval of said certificate, shall pay, or cause to be paid, to the Contractor, the whole amount of money then due the Contractor under the terms of the Contract.

### **26. 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 the Jurisdiction, Procurement Officer or other authorized representatives, either personally or as officials of the State. It is understood that in all such matters they act solely as authorized agents and representatives of the State.

### **27. Approval Authority**

This Contract is subject to any Change Order, Contract Modification, or amendment thereto, and is subject to the approval requirements established by the Secretary of the Department of Transportation and the Board of Public Works of Maryland. The Contract shall be considered to

bind the parties hereto in accordance with the Constitution and Laws of the State of Maryland.

## **28. Remedies and Termination**

### **A. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts of omission relied on as cause for termination. All finished or unfinished supplies and services provided by the Contractor shall, at the State's option, become the State's property. The State 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 hereunder, including the determination of the rights and obligations of the parties shall be governed by the provisions of COMAR, Title 21.07.01.11B.

### **B. Termination for Convenience of the State**

The performance of Work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, wherever the State shall determine that such termination is in the best interest of the State. The State 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 hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A.

## **29. Delays and Extension of Time**

The Contractor agrees to prosecute the Work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the Work specified in this Contract. 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 supplies arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

## **30. Differing Site Conditions**

- A. The Contractor shall, within ten (10) days of discovering any of the following conditions, and before such conditions are disturbed, notify the Procurement Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this Contract; (2) unknown physical conditions at the site of an unusual nature, differing materially from those indicated in this Contract; or (3) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract. Upon receipt of such written notice, the Procurement Officer shall promptly investigate the conditions, and if he finds such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Contract modified in writing accordingly.
- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in A. above; provided, however, the time prescribed therefore may be extended by the State.
- C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

### **31. Changes**

- A. The Procurement Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
  - 1) In the specifications (including drawings and designs);
  - 2) In the method or manner or performance of the Work;
  - 3) In the State-furnished facilities, equipment, materials, services, or site; or
  - 4) In any acceleration in the performance of the Work.
- B. Any other written order or an oral order including a direction, instruction, interpretation or determination from the Procurement Officer that causes any such change, shall be treated as a Change Order under this clause, provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a Change Order.
- C. Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a Change Order under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. Subject to subparagraph F. herein, 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 this Contract, whether or not changed by any 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 change under B. 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 increase cost reasonably incurred by the Contractor in attempting to comply with such defective Specifications.

- E. If the Contractor intends to assert a claim for an equitable adjustment under this clause, the Contractor shall, within thirty (30) days after receipt of a written Change Order under A. above or the furnishing of written notice under B. above, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the State. The statement of claim hereunder may be included in the notice under B. above.
- F. 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 modification or Change Order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the Contract Modification or Change Order will cause an increase in cost that will exceed budgeted and available funds, the modification or Change Order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.
- G. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

### **32. Negotiated Payment Provision**

If the Contractor is entitled to an equitable adjustment, the Contractor shall be allowed to add the following maximum percentage for overhead and profit to its costs for labor, materials and equipment:

- A. 20% may be added by the Contractor for overhead and profit for work performed by his its forces.
- B. 15% may be added only by the first-tier subcontractor for overhead and profit for work performed by the first-tier subcontractor; the Contractor may add an additional 5% of the first-tier subcontractor's costs for labor, material and equipment.
- C. The provisions of Paragraph 32, A. and B., apply only to price adjustments negotiated prior to completion of the added or changed Work and do not apply to work performed on a force account basis as provided for in Paragraph 34.

### **33. Suspension of Work**

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

### **34. Force Account Work**

When the Contractor is required to perform Work as a result of additions or changes to the Contract for which there are no applicable unit prices in the contract, the Jurisdiction and Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the Jurisdiction may require the Contractor to do such work on a force account basis to be compensated in accordance with the following:

#### **A. Labor**

For all labor and for foremen in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour that said labor and foremen are actually engaged in such work.

#### **B. Materials**

For materials accepted by the Procurement Officer and used, the Contractor shall receive the actual cost of such materials delivered to the work site, including transportation charges paid by the Contractor (exclusive of machinery rentals as hereinafter set forth).

#### **C. Equipment**

For any machinery or special equipment (other than small tools, whether rented or owned), the use of which has been authorized by the Procurement Officer, the Contractor shall receive the rates agreed upon in writing before such work is begun, or

the Contractor shall receive those rates which may be specified elsewhere in the Special Provisions. For the purpose of definition, equipment with a new cost of \$500 or less will be considered small tools.

**D. Materials and Supplies Not Incorporated in the Work**

For materials and supplies expended in the performance of the work (excluding those required for rented equipment) and approved by the Procurement Officer, the Contractor shall receive the actual cost of such materials and supplies used. The Contractor shall receive a reasonable allowance for materials used but not expended in the performance of the Work.

**E. Subcontractors**

The Contractor shall receive the actual cost of Work performed by a subcontractor. Subcontractor's cost is to be determined as in **A.**, **B.**, **C.** and **D.** above, plus the fixed fee for overhead and profit allowance computed as in **G.**

**F. Superintendence**

No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

**G. Contractor's Fixed Fee**

The Procurement Officer and the Contractor shall negotiate a fixed fee for force account work performed pursuant to this Paragraph 34 by the Contractor and any subcontractor(s), as compensation for overhead and profit for the Work performed. Failure of the Contractor and the Procurement Officer to negotiate a fixed fee consistent with applicable cost principles in COMAR 21.09.01, shall be treated as a dispute pursuant to Paragraph 52 herein and in the event of such dispute, the Contractor shall proceed diligently with the performance of the force account work to completion. The Contractor's fixed fee shall include an amount equal to the sum of 65%, of **A.** which shall include, but not be limited to, the following:

- 1) Compensation for all costs paid to, or on behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits that may be required by collective bargaining agreement or other employment contracts generally applicable to the classes of labor employed in the Work.
- 2) Bond premiums, property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account work

The Contractor's fixed fee may also include an amount not to exceed 20% of **B.** and 5%

of **D.** and **E.** as defined above.

#### H. **Compensation**

The compensation as set forth above shall be received by the Contractor as payment in full for Change Order work done on a force account basis. At the end of each day, the Contractor's representative and the Procurement Officer shall compare records of the cost of work ordered on a force account basis.

#### I. **Statements**

No payment shall be made for work performed on a force account basis until the Contractor furnishes the Procurement Officer duplicate itemized statements of the cost of such force account work detailed as to the following:

- 1) Name, classification, date, daily hours, total hours, rate, and an extension for each laborer or foreman.
- 2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.
- 3) Quantities of materials, prices and extensions.
- 4) Transportation of materials
- 5) Payments of items under I.1. shall be accomplished by copies of certified payrolls. Under I.2., original receipted invoices for rentals must be provided if requested by the Procurement Officer. I.3. and 4. shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work were not specifically purchased for such work but were taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from his stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost. Any request for payment shall be submitted in the order outlined above.

### **35. Variations in Estimated Quantities**

Where the quantity of a pay item in this Contract is an estimated quantity and where the actual quantity of such pay item varies more than 25% above or below the estimated quantity stated in this Contract, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs solely to the variation above 125% or below 75% of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of

the delay, or within a further period of time which may be granted by the Procurement Officer before the date of final settlement of the Contract, ascertain the facts and make the adjustment for extending the completion date as in his judgement of the findings justified.

### **36. Sanctions Upon Improper Acts**

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 to be done or payment to be made under this Contract, the Contract may, in the discretion of the Department, be terminated for default under Paragraph 28A herein. The following sections of the Annotated Code of Maryland and COMAR are incorporated herein by reference:

Section 16-203 of State Finance and Procurement Article of the Annotated Code of Maryland, and COMAR 21.08, which relate to contracts with persons convicted of bribery, attempted bribery or conspiracy to bribe.

Section 11-205 of State Finance and Procurement Article of the Annotated Code of Maryland and COMAR 21.08.03 relating to collusion for purposes of defrauding the State, Subtitle 08 of Title 21 of COMAR, "Disqualification, Suspension, Debarment, Reinstatement, and Sanctions".

### **37. Non-Hiring of Employees**

Non-employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Contract, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

### **38. Conflict of Interest Law**

It is unlawful for any State officer, employee, or agent to participate personally in an official capacity through decision, approval, disapproval, recommendation, advice, or investigation in any contract or other matter in which he/she, his/her 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/she is serving as an officer, director, trustee, partner, or employee is a party, or to which any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, is a party, unless such officer, employee or agent has previously complied with the provisions of Article 40A, Subsection 3-101 et seq. of Annotated Code of Maryland.

### **39. Registration**

Pursuant to Subsection 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 W. Preston Street, Baltimore, Maryland 21201, before doing any inter-state or foreign business in this State. Before doing any intra-state business in this State, a foreign corporation shall qualify with the Department

of Assessments and Taxation.

**40. Taxes – Responsibility for Payment, Exemption, Forms to be Filed, etc.**

The Contractor is responsible for, and by submitting a bid, agrees to pay all retail sales, income, real estate, sales and use, transportation and special taxes applicable to and assessable against any materials, equipment, processes and operations incident to or involved in the work. The Contractor is responsible for ascertaining and acquainting himself with such taxes and making all necessary arrangements to pay same.

The jurisdiction hereby reserves the right to withhold final payment under this Contract until the Contractor and any subcontractor performing any duties under this Contract have furnished or caused to be furnished to the Comptroller of the State of Maryland all properly completed forms required by the said Comptroller and until all of said retail sales and/or use taxes due the State of Maryland by the Contractor have been paid and the Contractor exhibits a release or receipt from the Comptroller evidencing such payment.

**41. Tax Exemption**

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, and District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in the performance of a Contract, the Contractor shall pay the Maryland sales tax applicable to such material and the State's exemption does not apply.

**42. Specifications**

All materials, equipment, supplies of services shall conform to federal and State laws and regulations and to the Specifications contained in the solicitation.

**43. Delivery**

Delivery shall be made in accordance with the Contract Specifications. The State reserves the right to test any materials, equipment, supplies or services delivered to determine if the Specifications have been met. Any material that is defective or fails to meet the terms of the Specifications shall be rejected. Rejected materials shall be promptly replaced by the Contractor or, in the Jurisdiction's sole discretion, by the Jurisdiction at the Contractor's sole cost. In the event the Contractor does not replace rejected materials, the State reserves the right to purchase replacement materials in the open market. Contractors failing to promptly replace materials lawfully rejected shall be liable for any excess price paid by the Jurisdiction for the replacement plus applicable expenses, if any.

**44. Patent, Trade Mark and Copyright Infringements**

Contractor shall indemnify, protect, defend and save harmless the State, its officers, agents and

employees with respect to any claim, action, cost or judgement for patent, trademark and copyright infringements, arising out of purchase or use of materials, supplies, equipment or services covered by this Contract. This clause shall control over any other clause herein which may conflict with it.

#### **45. Occupational Safety and 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.

#### **46. Minority Business Enterprise and Affirmative Action**

A. This Contract is subject to Executive Order 01.01.1970.15, December 9, 1970; amended by Order 01.01.1976.05, July 9, 1996 (Code of Fair Practices), and COMAR 21.11.04 Contractor's Affirmative Action Plan Review/Approval and Compliance Monitoring Process – DOT. This Contract is also subject to the applicable provisions of Title 14, Subtitle 3 of State Finance and Procurement Article of the Annotated Code of Maryland; COMAR 21.11.03 Minority Business Enterprise Policies; and COMAR Title 11.01.10 which incorporates by reference the current revision of the Minority Business Enterprise Program. Copies of the Minority Business Enterprise Program may be requested from the Department of Transportation Fair Practices Officer, 7201 Corporate Center Drive, P.O. Box 548, Hanover, Maryland 21076. This Contract is also subject to all applicable federal and State laws and regulations pertaining to Minority Business Enterprise and Affirmative Action.

B. To the extent any of the above laws or regulations are applicable to this Contract, they are specifically incorporated herein.

#### **47. Small Business Procurement**

If this solicitation indicates that this procurement has been designated for a small business preference, the provisions of COMAR Title 21.11.01.02 pertaining to small business preferences shall apply and are incorporated herein by reference.

#### **48. Non-Discrimination in Employment**

A. Compliance with State Law and Regulations

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or the physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above in any subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

## B. Compliance with Federal Law

Contractors providing materials, equipment, supplies, or services to the State under this Contract herewith assure the State that they are conforming to the provision of the Civil Rights Act of 1964, and Section 202 of Execution Order 11246 of the President of the United States of America as amended by Executive Order 11375, as applicable.

The Contractor shall comply with all applicable federal laws pertaining to non-discrimination in employment.

## C. Sanctions for Non-Compliance

In the event of the Contractor's non-compliance with the non-discrimination provisions of this Contract, the Department 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.

## **49. Multi-Year 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 canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the 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. The State 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.

## **50. "Buy America Steel" Act**

The provisions of COMAR 21.11.02 pertaining to implementation of the "Buy American Steel" Act (State Finance and Procurement Article, Title 17, subtitle 3 of the Annotated Code of Maryland) are incorporated in this Contract by reference.

## **51. Disputes**

This Contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2 (Dispute Resolution) 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. Unless a lesser period is provided by applicable statute, regulation, or this Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) day of the filing of a notice of claim, but no later than the date of final payment under this Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **52. Liquidated Damages**

Time is an essential element of the Contract and it is important that the Work be vigorously prosecuted until completion. For each day that any Work shall remain uncompleted beyond the time(s) specified elsewhere in the Contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the solicitation; provided however, that due account shall be taken of any adjustment of specified completion time(s) for completion of Work as granted by approved change orders such liquidated damages are not intended as a penalty but rather as compensation determined in advance for Contractor's failure to fully perform under this Contract.

## **53. Contractor's Invoices**

Contractor agrees to include its federal Tax Identification or Social Security Number on the face of all invoices billed to the State.

## **54. 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 \$100,000 or more, shall, within thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

## **55. Political Contribution Disclosure**

The Contractor shall comply Article 33, §§14-101 - 14-104, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with

the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 1.

**56. Incorporation by Reference**

All terms and conditions set forth in the solicitation, any amendments thereto and Contractor's Bid/Proposal, are made a part of this Contract.

**57. Maryland Law Prevails**

The parties hereby agree that:

- A. The Contract was made and entered into in Maryland, and under the laws of Maryland.
- B. The Law of Maryland shall govern the resolution of any issue arising in connection with this Contract, including, but not limited to, all questions concerning the validity of this Contract the capacity of the parties to enter therein, any modification or amendment thereto, and the rights and obligations of the parties hereunder.

**58. Bid Award – Resident Business**

- A. When awarding a contract by competitive bidding, the Department or Jurisdiction may give a preference to the lowest responsive and responsible bid/offeror from a Maryland firm over that of a non-resident firm if the State in which the non-resident firm is located gives a resident business preference.
- B. The preference given under this Paragraph shall be identical to the preference 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.

**59. Payment of State Obligations**

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

- B. A proper invoice shall include a description of the items of 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 with thirty (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 purpose of this Contract, an amount shall not be deemed due and payable if any of the following apply:
- 1) The amount invoiced is inconsistent with the Contract.
  - 2) The proper invoice has not been received by the party or office 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) If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule contained in the Contract.
  - 8) If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met.
  - 9) The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

**60. 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 Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

## **61. Retention of Records**

The Contractor shall retain and maintain all records and documents relating to this Contract for three (3) years after final payment by the State hereunder 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 authorized designee, at all reasonable times.

## **62. General Conditions Controlling**

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

## **63. Dissemination of Information**

During the term of this Contract, the Contractor shall not release any information related to the services or performances of the services under this Contract nor publish any final reports or documents.

## **64. Insolvency**

In the event Contractor files a voluntary petition in the Bankruptcy Courts of the United States, Contractor shall notify the Department of Jurisdiction in writing of its intent to file. This notice must be received by not less than ten (10) days prior to such filing. Failure to provide such notice shall be a material breach of the Contract, and in this event, this Contract shall, as a result of such breach, terminate automatically and cease to be of any further force or effect as of the ninth (9<sup>th</sup>) day prior to such filing. In the event Contractor becomes the subject of any involuntary petition filed in the Bankruptcy Courts of the United States, Contractor shall notify the Department or Jurisdiction of such filing no later than ten (10) days after the petition was filed. Failure to provide such notice shall be a material breach of the Contract, and in that event, this Contract shall, as a result of such breach, terminate automatically and cease to be any further force and effect as of the eleventh (11<sup>th</sup>) day after such filing.

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