

Issue Date: December 20, 2019



INVITATION FOR BIDS

Fire Sprinkler System Modifications

M&T Bank Stadium

SOLICITATION# MSA 20-032

NOTICE

NOTICE

A Prospective Bidder that has received this document from the MSA's website or <https://procurement.maryland.gov>, or that has received this document from a source other than the Procurement Officer, and that wishes to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide the Prospective Bidder's name and email address so that addenda to the IFB or other communications can be sent to the Prospective Bidder.

Minority Business Enterprises Are Encouraged to Respond to this Solicitation.

**MARYLAND STADIUM AUTHORITY
NOTICE TO OFFERORS/BIDDERS/CONTRACTORS
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: Fire Sprinkler System Modifications
Solicitation No: MSA No. 20-032

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 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: _____

MARYLAND STADIUM AUTHORITY
KEY INFORMATION SUMMARY SHEET

Invitation for Bids	Fire Sprinkler System Modifications
Solicitation Number:	MSA Project No. 20-032
IFB Issue Date:	December 20, 2019
IFB Issuing Office:	Maryland Stadium Authority
Procurement Officer:	Sandra Fox Maryland Stadium Authority 333 West Camden Street, Suite 500 Baltimore, Maryland 21201
e-mail: Office Phone:	sfox@mdstad.com 410-223-4130
Bids are to be sent to electronically through:	MSA' Third Party eProcurement System (Negometrix) See Attachment J for Instructions.
Pre-Bid	January 3, 2020 beginning at 10:00 a.m. Local Time at M&T Bank Stadium, Service Level – Network TV Lounge, 1101 Russell Street, Baltimore, MD 21230
Questions Due Date and Time	n/a
Bid Due (Closing) Date and Time:	January 17, 2020 by 2:00 p.m. Bidders are reminded that a completed Feedback Form is requested if a no-bid decision is made (see page 2 of 137).
MBE Subcontracting Goal:	35% of the total dollar value of the contract with subgoals: 7% African American and 4% Asian American
Primary Place of Performance:	M&T Bank Stadium
SBR Designation:	No

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1 Minimum Qualifications

The Contractor proof of experience must be demonstrated in the Contractor Experience and Qualifications Statement, Attachment G. Bidder must include a minimum of three (3) references of work performed of a similar nature as requested in this IFB. Experience officially gained prior to the formation of a corporation or other business entity may be considered when evaluating responsibility. The Procurement Officer or his representative, on behalf of MSA and in the exercise his discretion, may or may not contact any or all off the cited references, and in addition, may contact any other reference of his choosing.

- 1.1 The Contractor must be registered to do business in the State of Maryland and be in good standing before a contract can be awarded.
- 1.2 The successful Bidder must be licensed in the State of Maryland to provide such services. Proof of current State License must be submitted with the bid.
- 1.3 The designated project manager and site superintendent must have a minimum of five (5) years experience in performing similar size and type of projects. Provide resumes with the Bid for the designated project manager and site superintendent.
- 1.4 The Contractor must possess a valid Maryland Contractor's License prior to submission of the bid.
- 1.5 The Contractor must have completed at least three (3) construction projects as a Fire Protection Contractor in the amount equal to or greater than \$1,000,000 per project at commercial/government facilities within the past five (5) years.
- 1.6 The Contractor must have been established as a full time general contractor for a minimum of five (5) years of progressive experience in the construction of commercial /government/public facilities.

NOTE: A Bidder meeting the minimum requirements does not guarantee that the Bidder will be deemed responsible or have its bid deemed reasonably susceptible of being selected for an award.

Whether or not a Bidder is qualified for award is at the sole and absolute discretion of the Procurement Officer or designee.

2 Contractor Requirements: Scope of Work

2.1 Summary Statement

- 2.1.1 The Maryland Stadium Authority (MSA) is issuing this IFB to obtain a highly qualified Contractor to install packaged nitrogen generator systems and to test, access and replace the existing dry pipe sprinkler piping components that have reached the end of their useful life throughout the stadium complex. at M&T Bank Stadium (as described, in more detail in this IFB, Appendix III-Bid Specifications, Appendix IV- Reference Drawings, and Appendix V- Bid Drawings.
- 2.1.2 A Bidder either directly or through its subcontractor (s), must be able to provide all services and meet all of the requirements requested in this solicitation. The successful Bidder (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.3 MSA intends to make a single award as a result of this IFB.
- 2.1.4 The Contractor's obligations to pay invoices to subcontractors that provided services during the Contract term, as well as the audit, confidentiality, document retention, and indemnification obligations of the Contract (see **Attachment M**) shall survive expiration or termination of the Contract and continue in effect until all such obligation are satisfied.
- 2.1.5 Project Schedule

The Project schedule will span from February 2020 through August 2020.

2.2 Purpose

- 2.2.1 The intent of the Project is to replace the existing dry pipe sprinkler piping components that have reached the end of their useful life. The work to be performed includes but is not limited to, the repair/rehabilitation of the existing dry pipe sprinkler piping components including related aspects and the install packaged nitrogen generator systems in designated areas throughout the stadium complex.
- 2.2.2 The Project will be a short (5 month) duration so as to limit disturbance to stadium operations.
- 2.2.3 The Contractor will be responsible for the entire Project.

2.3 Responsibilities and Tasks

- 2.3.1 The Contractor shall:
 - 2.3.1.1 Furnish all necessary material, labor, and equipment required to perform the outlined work at the M&T Bank Stadium.
 - 2.3.1.2 Follow the attached plans (Appendix III –Bid Specificaitons, Appendix IV – Reference Drawings, and Appendix V-Bid Drawings to perform the work as outlined. The Contractor must follow all guidelines and specifications detailed in the plans. Submittals shall be submitted for MSA approval before construction begins.
- 2.3.2 The work will be completed in various phases.

2.3.3 General Requirements

- 2.3.3.1 The Contractor will be expected to work closely with MSA and the Baltimore Ravens, as appropriate throughout the project.
- 2.3.3.2 MSA reserves the right to add or delete the scope in any manner necessary to serve the best interest of MSA.
- 2.3.3.3 All plans shall comply with all Federal, State, and local codes.
- 2.3.3.4 MSA reserves the right to proceed with all or a partial portion of the scope of work at any point throughout the project.
- 2.3.3.5 The construction work is to take place prior to the 2020 Ravens' season. MSA will provide on-site storage for materials and equipment that need to be relocated for events.
- 2.3.3.6 All designs are to be submitted to MSA for review and approval. Contractor shall provide all samples requested in the specifications as well as any additional samples requested by MSA.
- 2.3.3.7 The Contractor shall maintain access to all walkways during the entire construction process.
- 2.3.3.8 Contractor shall locate and avoid all utilities.
- 2.3.3.9 If lead times for any materials are thought to be an issue, such issues must be disclosed with the Bid.
- 2.3.3.10 Contractor shall follow all OSHA and MOSHA regulations.

2.3.4 Implementation

- 2.3.4.1 MSA reserves the right to request information from the Contractor for review and evaluation for specialized projects to determine the appropriateness of the particular consultant firm for such work.
- 2.3.4.2 The selected Contractor shall be responsible for all services required by this IFB. Personnel and all subcontractor must be approved by MSA in advance. The selected Bidder retains responsibility for all work performed by and any deliverable submitted by a subcontractor.

2.3.5 Project Close-Out

- 2.3.5.1 All data, information, material and matter of any nature and all copies thereof in any and all forms whatsoever developed by the Contractor or in the Contractor's possession or control relating to the Project is the property of MSA and shall be delivered to MSA within 30 days upon completion of any project completed under this Contract. In addition, all documents in progress are the property of MSA and shall be delivered to MSA within 10 days in the event of termination of the Contractor contract prior to completion.

2.3.6 Standard of Performance

- 2.3.6.1 The Contractor shall perform the professional services with all respects in accordance with those usual and customary standards of professional aptitude, skill diligence which, at the time of performance of the services, commonly are followed by Contractors of the highest quality and stature in the performance of the same or similar services.
- 2.3.6.2 The approval of any material produced by the Contractor, in connection with the services provided in no way relieves the Contractor of its responsibility for the accuracy and completeness of such documents, nor compliance with required standards, codes, ordinances or other applicable regulations, nor compliance with the agreement and applicable law.
- 2.3.6.3 The Contractor shall be responsible for the provision of all services whether provided by the Contractor or his Contractors, agents, representatives or employee or others on behalf of the Contractor.

3 Contractor Requirements

3.1 Invoicing

- 3.1.1 The Contractor may submit invoices for properly performed services on a monthly basis during the contract period. The invoices shall contain the complete Contractor's FEIN or social security number, MSA Contract Number, Purchase Order Number, MSA location Name (street address), amount of work broken down into the unit cost(s) as indicated on the bid form. Failure to do so may result in delay of payment.
- 3.1.2 Undisputed invoices will be paid within thirty (30) days of receipt by MSA's Accounts Payable Office. Please keep in mind that Maryland Stadium Authority is exempt from Maryland Sales and Use Taxes, therefore taxes shall not be added to the invoices.
- 3.1.3 All Invoices must be submitted to invoices@mdstad.com. All invoices shall contain the following address:
- Maryland Stadium Authority
333 West Camden Street, Suite 500
Baltimore, Maryland 21201
- 3.1.4 Vendor payments can take up to 30 business days. Vendor may check the status of payment by registering on General Accounting Division of Comptrollers website at:
http://compnet.comp.state.md.us/General_Accounting_Division
- If you do not see your payment, you may fill out the request form on MSA's website at www.mdstad.com under "Account Payable" and it will be researched.
- 3.1.5 In addition to any other available remedies, if, in the opinion of the Procurement Officer or his designee, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer or his designee may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until the Contractor meets performance standards established by the Procurement Officer or his designee.
- 3.1.6 An amount will not be deemed due and payable if:
- 3.1.6.1 The amount invoiced is inconsistent with the Contract.
- 3.1.6.2 The proper invoice has not been received as indicated above.
- 3.1.6.3 The invoice or performance under the Contract is in dispute, or the Contractor has failed to otherwise comply with the provisions of the Contract related to such amount.
- 3.1.6.4 The items or services invoiced have not been accepted.
- 3.1.7 Electronic funds transfer will be used by the State to pay CONTRACTOR for this Contract and any other State payments due CONTRACTOR unless the State Comptroller's Office grants CONTRACTOR an exemption.

3.2 Travel Time Not Compensable

MSA shall not compensate the Contractor for travel time to and from the premises.

3.3 Intentionally Omitted

3.4 Insurance Requirements

- 3.4.1 The Contractor and its subcontractors shall maintain Commercial General Liability Insurance or its equivalent, for bodily injury and property damage, including loss of use. It is preferred that coverage be provided on an "occurrence" basis. If "claims made" forms are submitted, the requirements noted after section "G" must be met. Such Commercial General Liability policy shall include the following extensions:

3.4.1.1 It is preferred that the general aggregate limit apply separately to this contract;

- 3.4.2 Premises/Operations;

- 3.4.3 Actions of Independent CONTRACTORS;

- 3.4.4 Products/completed Operations to be maintained for two (2) years after completion of the contract;

- 3.4.5 Contractual liability assumed under this contract;

- 3.4.6 Personal injury liability including coverage for offenses related to employment, and for offenses assumed under this contract (delete any standard employment and contractual exclusions if contained in the personal injury coverage section).

- 3.4.7 The Contractor and its subcontractors shall maintain Business Automobile Liability Insurance which will pay for liabilities arising out of accidents involving the ownership, operation, maintenance or use of any owned, hired, or non-owned motor vehicles, uninsured motorist's insurance and automobile contractual liability. **NOTE: INSURANCE MUST BE ON A PRIMARY BASIS. CONTRACTUAL REQUIREMENTS MUST BE CLEARLY INDICATED ON CERTIFICATE OR BY ENDORSEMENTS.**

- 3.4.8 The CONTRACTOR and its subcontractors shall maintain Worker's Compensation Insurance as required by Maryland law.

- 3.4.9 The coverages listed above shall be written for not less than the following limits of liability. Limits can be furnished by a combination of primary and excess (umbrella) policies.

Commercial General Liability Insurance including all extensions –
 \$1,000,000 each occurrence;
 \$1,000,000 personal injury;
 \$1,000,000 products liability;
 \$1,000,000 general aggregate

Business Automobile Liability -
 \$1,000,000 each accident

Worker's Compensation Insurance – statutory requirements. Employers liability insurance - \$1,000,000 each accidental injury; and \$1,000,000 each employee, \$1,000,000 policy limit for disease.

- 3.4.10 All insurance policies required hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until forty-five (45) days prior written notice has been given to MSA.
- 3.4.11 No acceptance and/or approval of any insurance by MSA shall be construed as relieving or excusing the CONTRACTOR, or the surety or bond, if any, from any liability or obligation imposed upon either or both of them by the provisions of the Contract Documents.
- 3.4.12 NAMED ADDITIONAL INSUREDS. MSA, the Baltimore Ravens Limited Partnership and the State of Maryland (including their elected or appointed officials, agents and employees) are to be named as additional insured under all coverages except Worker's Compensation, and the certificates of insurance (or certified policies, if requested) must so indicate through inclusion of appropriate endorsement. Coverage afforded under this paragraph shall be primary to any other insurance or self-insurance, whether or not such other insurance or self-insurance is stated as primary, excess or contingent, as respects the above additional insured, their elected and appointed officials, agents and employees.
- 3.4.13 Insurance coverages required herein shall be in force throughout the Contract term. Should the Contractor fail to provide acceptable evidence of current insurance within ten (10) days of receipt of written notice at any time during the Contract term, MSA shall have the absolute right to terminate the Contract without any further obligation to the Contractor, and the Contractor shall be liable to MSA for the entire additional cost of procuring substitute performance and the cost of performing the incomplete portion of the Contract at the time of termination.
- 3.4.14 Contractual and other liability insurance provided under this Contract shall not contain a supervision, inspection or engineering service exclusion that would preclude MSA from supervising or inspecting the operations of the Contractors as the end result.
- 3.4.15 The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of agents or subcontractors and anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall be as fully responsible to MSA for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by the Contractor.
- 3.4.16 TORT CLAIMS ACT. It is agreed that the Contractor and its insurers will not raise or use, in the adjustment of claims or in the defense of suits against MSA, any immunity of the insured from tort liability (including Maryland Tort Claims Act), including any limitation of liability, unless requested by MSA.
- 3.4.17 The Contractor shall furnish subcontractors' certificates of insurance to MSA upon request.

3.5 Security Requirements

The following requirements are applicable to the Contract:

- 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.

Contractor Personnel may be subject to security checks when entering and leaving MSA building. The MSA reserves the right to require Contractor Personnel to be accompanied while in secured premises.
- B. Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the MSA may be searched, fingerprinted (for the purpose of a criminal history background check), photographed, videotaped, and required to wear an identification card issued by the MSA.
- 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 controls 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.

3.5.1 Employee Identification

- A. Contractor Personnel shall display his or her company ID badge in a visible location at all times while on MSA premises. Upon request of authorized MSA personnel, each Contractor Personnel shall provide additional photo identification.
- B. Contractor Personnel shall cooperate with MSA site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for MSA badge issuance.
- C. Contractor shall remove any Contractor Personnel from working on the Contract where the MSA determines, in its sole discretion that Contractor Personnel has not adhered to the Security requirements specified herein.
- D. The MSA reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

3.6 MBE and Prevailing Wage Compliance System

As part of MSA's commitment to assist firms in complying with legal and contractual requirements, MSA maintains a web-based MBE and prevailing wage compliance system (See Appendix II-MSA Contract Compliance System Information). The system was designed to provide various work-flow automation features that improve the project reporting process. This system will monitor contract compliance for all Program contracts. The prime firm, its first tier Contractors, and all MBE participation subcontractors awarded contracts will be required to use the web-based system to submit project information including, but not limited to, certification of payments made and received and certified payroll records (if the contract includes prevailing wage and/or workforce development requirements). MSA may require additional information related to the contract to be provided electronically through the system at any time, during, or after contract award.

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 Intentionally Omitted.
- 4.1.4 Intentionally Omitted.
- 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 Attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.
- 4.1.7 In order to assure adequate seating and other accommodations at the Conference, please e-mail the Pre-Bid Conference Response Form (**Attachment A**) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The MSA will make a reasonable effort to provide such special accommodation.

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, Bidder's 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 <https://emaryland.buyspeed.com/bsa/login.jsp>. Click on "Register" to begin the process, and then follow the prompts.

4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE goal shall identify in the subject line the Solicitation (MSA Project No. 20-032, Fire Sprinkler System Modifications, shall be submitted in writing via e-mail to the Procurement Officer at least five (5) days prior to the Bid due date, no later than the date and time specified in 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 MSA unless it issues an amendment in writing.

4.4 Intentionally Omitted**4.5 Bid Due (Closing) Date and Time**

4.5.1 Bids, in the form set forth in Section 5 “Bid Format,” must be received by the Procurement Officer no later than the date and time listed 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 Bids may be modified or withdrawn by written notice received by the Procurement Officer before the Bids due time and date.

4.5.4 Intentionally Omitted

4.5.5 Companies not responding to this solicitation are requested to submit the “Notice to Offers/Bidders” 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 Intentionally Omitted**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

A Contract shall be awarded to the responsible Bidder submitting a responsive Bid with the most favorable bid price or most favorable evaluated bid price for providing the goods and services as specified in this IFB.

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 MSA 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

The MSA 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.

4.14 Incurred Expenses

The MSA 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 MSA's Procurement Policies and Procedures.

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 Intentionally Omitted

- 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 Affidavit

A Bid submitted by the Bidder must be accompanied by a completed Bid 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 Fund 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.

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.gomdsmbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

4.25 Electronic Procurements Authorized

4.25.1 The Procurement Officer may conduct the procurement using eMMA, e-mail and/or MSA's third party e-procurement system, Negometrix, to issue:

- 1) The IFB,
- 2) Any amendments and requests for best and final offers;
- 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.

B. The Bidder or potential Bidder may use e-mail, or Negometrix e-procurement system to:

- 1) Ask questions regarding the solicitation;
- 2) 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, but only on the terms specifically approved and directed by the Procurement Officer; and
- 3) Submit a "No Bid Response" to the IFB.

C. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.2** of this subsection, utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.25.2 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 may not be submitted by email. However, if the solicitation expressly permits, bids may be submitted electronically through Negometrix e-procurement system;
- B. Filing of Protests and/or Contract claims;
- C. Submission of documents determined by the MSA to require original signatures (e.g., Contract execution, Contract modifications); or

- D. 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.

4.25.6 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

4.26.1 Establishment of Goal and Subgoals

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

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

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.28 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP will result in the State's rejection of the Offeror's Proposal for the applicable Service Category. This failure is not curable.

4.26.2 Attachments.

- A. Minority Business Enterprise instructions, and forms are provided in Attachment D to assist Offerors.
- B. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (Attachment D-1A) whereby:
 1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
 2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.

3. The Offeror requesting a waiver should review Attachment D-1B (Waiver Guidance) and D-1C (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

If the Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.

- 4.26.3 Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in Attachment D-1A is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.

- 4.26.4 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.

A. Outreach Efforts Compliance Statement (Attachment D-2);

B. MBE Subcontractor/Prime Project Participation Certification (Attachment D-3A/3B); and

C. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

D. Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.

- 4.26.5 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.

- 4.26.6 The Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.

- 4.26.7 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – Attachment M, Section 2.1).

- 4.26.8 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract

4.27 Conflict of Interest Affidavit and Disclosure

- 4.27.1 The Bidder shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Bid.
- 4.27.2 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.
- 4.27.3 Additionally, a Contractor has an ongoing obligation to ensure that all CONTRACTOR Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.27.4 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.”

4.28 Bonds

4.28.1 Bid Bond

If the total bid price exceeds \$100,000, Bidder must submit with its Bid a Bid Bond or other suitable security, as summarized in 4.28.4, in the amount of five percent (5%) of the Total Evaluated Price, guaranteeing the availability of the goods and services at the offered price for 180 days after the due date for receipt of Bids.

The bond shall be in the form provided in **Attachment O**.

The Bidder may request a release of the bond after the date of the award in return for a release signed by the Contractor and accepted by the MSA.

The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

4.28.2 Performance Bond

- a) If the total bid price exceeds \$100,000, the successful Bidder shall deliver a Performance Bond, or other suitable security, to the MSA after notification of recommended award.

The successful Bidder must submit a Performance Bond, or other suitable security in the amount of, guaranteeing that the Contractor shall well and truly perform the Contract.

The Performance Bond shall be in the form provided in **Appendix Performance Bond** and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the State, or other acceptable security for bond as described in COMAR 21.06.07, as summarized in **4.28.4**.

The Performance Bond shall be maintained throughout the term of the Contract, if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the MSA.

The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

4.28.3 Payment Bond

- a) If the total bid price exceeds \$100,000, the successful Bidder shall deliver a Payment Bond, or other suitable security, to the MSA after notification of recommended award.

4.28.4 Acceptable Security

Acceptable security shall be as described below, identified within and excerpted from COMAR 21.06.07.01:

- a) Acceptable security for bid, performance, and payment bonds is limited to:
 - 1) A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;
 - 2) A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
 - 3) Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;
 - 4) An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer.

4.28.5 Surety Bond Assistance Program

Assistance in obtaining bid, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to \$750,000. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Commerce
 Maryland Small Business Development Financing Authority
 MMG Ventures
 826 E. Baltimore Street
 Baltimore, Maryland 21202
 Phone: (410) 333-4270
 Fax: (410) 333-2552

4.29 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.

4.30 Tax Exemption

The State is generally exempt from federal excise 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.

4.31 General Terms and Conditions for Construction Contracts f

The contract resulting from this IFB will be subject to MSA's General Terms and Conditions for Construction Contracts. A copy is attached hereto as **Attachment L**.

4.32 Prevailing Wage Requirements

While the provisions of Section 17-201 through 17-226 of the State Finance and Procurement Article of the Annotated Code of Maryland (the "Prevailing Wage Law") are not binding upon MSA, nevertheless, unless otherwise directed by MSA, MSA has elected to administer certain of its contracts in a manner consistent with the provisions of the Prevailing Wage Law. The Prevailing Wage applicable to the project set forth in **Attachment I**.

4.32.3 **Ineligible Bids.** Under a small business reserve procurement, a business that is not a certified small business is ineligible for award of a contract.

4.324 Before awarding a contract under a procurement designated as a small business reserve procurement, the Procurement Officer shall verify that the apparent awardee is certified by the Governor's Office of Small, Minority & Women Business Affairs as a small business. A procurement contract award under a small business reserve may not be made to a business that has not been SBR certified.

4.33 Sustainability Policies

The MSA is committed to procuring all supplies, services, maintenance, construction and architect-engineer services in a manner consistent with the promotion of sound environmental practices. Moreover, the Camden Yards Sports Complex has adopted certain policies and procedures in furtherance of its LEED certification endeavor. In connection therewith, all goods and services provided in response to this solicitation shall conform to the policies attached hereto as **Attachment P** as applicable.

5 Bid Format

5.1 Intentionally Omitted

5.2 Bid Delivery and Packaging

5.2.1 Bids shall be delivered electronically in accordance with the instructions set forth below.

5.3 Electronic Submission

Electronic submittals will only be accepted through MSA's third party e-procurement system, Negometrix. Instructions for registering for Negometrix and utilizing the e-procurement system are attached as **Attachment J**. Please refer questions to Negometrix Help Desk or the MSA Procurement Officer.

5.4 Required Bid Submission

A Bidder shall include the following (in PDF Format) with its Bid:

5.4.1 Intentionally Omitted

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**.

5.4.4 **Completed Required Attachments.** Submit with original signatures:

- 1) Completed Bid Form (**Attachment B**);
- 2) Completed Bid Affidavit (**Attachment C**);
- 3) Completed MBE Forms (**Attachment D**)
Completed MBE Forms D-1A: MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (see attachments);
- 4) Contractor's Experience and Qualifications Form (**Attachment G**);
- 5) Completed Conflict of Interest Affidavit and Disclosure (**Attachment H**) *see IFB section 4.27.
- 6) **Bid Bond (Attachment O) for Bids exceeding \$100,000.**

5.4.5 **Additional Document *If Required.** .

- 1) A Signed Statement from the Bidder's Parent Organization Guaranteeing Performance of the Bidder. *see IFB section 4.16
- 2) **Bid Bond**

5.4.6 **Intentionally Omitted**

5.4.7 **Intentionally Omitted**

5.4.8 **Intentionally Omitted.**

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 3.4**. See **Section 3.4** for the required insurance certificate submission for the apparent awardee.

5.4.10 Intentionally Omitted

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 Intentionally Omitted

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 three (3) copies of each of the following documents:

- A. Signed contract (**Attachment M**),
- B. Completed Contract Affidavit (**Attachment N**),
- C. Copy of a current certificate of insurance with the prescribed limits set forth in IFB Section 3.4 "Insurance Requirements," listing the State as an Additional Insured, if applicable; see IFB Section 3.41.

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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. 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 MSA the responsive Bid that has the lowest Total Bid Price.

The MSA reserves the right to make the award by item, or groups of items, or Total Bid Price if it is in the best interest of the State to do so unless the Bidder specifies in its bid that a partial or progressive award is not acceptable.

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**.

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.

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 three (3) 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 Affidavit)
Y	With Bid	D	MBE Forms D-1A)-MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule and MBE Participation Schedule with signature page
Y	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B Important: Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.
Y	As directed in forms	D	MBE Forms D-4A, D-4B, D-5
Y	With Bid	G	Contractor Experience and Qualification Form
Y	With Bid	H	Conflict of Interest Affidavit and Disclosure
Y	n/a	J	Negometrix Instructions
Y	5 Business Days after recommended award	M	Sample Contract (included in this IFB)
Y	5 Business Days after recommended award	N	Contract Affidavit
Y	With Bid	0	Bid Bond

Appendices

Applies?	When to Submit	Label	Attachment Name
Applies?	When to Submit	Label	Attachment Name
Y	n/a	1	Abbreviations and Definitions (included in this IFB)
Y	5 Business Days after recommended award	Performance Bond and Payment Bond	Performance Bond and Payment Bond
Additional Submissions			
Applies?	When to Submit	Label	Document Name
Y	5 Business Days after recommended award		Evidence of meeting insurance requirements (see Section 3.4); 1 copy

Solicitation Number MSA Project No. 20-032**Contractor for Fire Sprinkler System Modifications**

A Pre-Bid Conference will be held at the Office of the M&T Bank Stadium, Service Level-Network TV Lounge, 1101 Russell Street, Baltimore, Maryland 21230 on January 3, 2020 at 10:00 a.m. Please return this form January 2, 2020, advising whether or not you plan to attend.

Return via e-mail or fax this form to the Procurement Officer:

Sandra Fox
Maryland Stadium Authority 333
West Camden Street Baltimore, MD
Email: sfox@mdstad.com
Procurement Officer Fax:
410-333-1888

Please indicate:

_____ Yes, the following representatives will be in attendance:

- 1.
- 2.
- 3.

_____ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested.

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 reasonably susceptible of being selected for award. 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 reasonably susceptible of being selected for award.
- 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 21.05.03.03.F, 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 MSA 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 reasonably susceptible of being selected for award.

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 reasonably susceptible of being selected for award.

.
See Attachment B- Bid Form in Excel.

ATTACHMENT C – BID AFFIDAVIT

A. AUTHORITY

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

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned Bidder/Offeror hereby certifies and agrees that the following information is correct: In preparing its Bid/proposal on this project, the Bidder/Offeror has considered all Bid/proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test, disability, or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the Bid/proposal submitted by the Bidder/Offeror on this project, and terminate any contract awarded based on the Bid/proposal. As part of its Bid/proposal, the Bidder/Offeror herewith submits a list of all instances within the past four (4) years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the Bidder/Offeror discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder/Offeror agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

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

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority bid/proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the Bid/proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the Bid/proposal.

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

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

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

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a Bid/proposal preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.13; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of § B-2(1) - (5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

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

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
 - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

- (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/Proposals for a public or private contract;
- (4) Been convicted of a violation of the State Minority Business Enterprise Law, § 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (5) Been convicted of a violation of § 11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;
- (6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1) — (5) above;
- (7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of Bids/Proposals for a public or private contract;
- (8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;
- (9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:
 - (a) §7201, Attempt to Evade or Defeat Tax;
 - (b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,
 - (c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information;
 - (d) §7206, Fraud and False Statements, or
 - (e) §7207 Fraudulent Returns, Statements, or Other Documents;
- (10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;
- (11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;
- (12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:
 - (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review;
- (14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:
- (a) A court:
 - (i) Made the finding; and
 - (ii) Decision became final; or
 - (b) The finding was:
 - (i) Made in a contested case under the Maryland Administrative Procedure act; and
 - (ii) Not overturned on judicial review; or
- (15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§ B and C and subsections D(1)—(14) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):
-
-

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

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

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

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

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

G. SUBCONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

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

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

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

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying Bid/proposal that is being submitted; or
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the Bid/proposal price of the Bidder/Offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying Bid/proposal is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

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

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

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

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

- (1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:
 - (a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

- (b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.
- (2) The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

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

I FURTHER AFFIRM THAT:

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

M. PROHIBITING DISCRIMINATORY BOYCOTTS OF ISRAEL

I FURTHER AFFIRM THAT:

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

N. I FURTHER AFFIRM THAT:

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

O. ACKNOWLEDGEMENT

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

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

By: _____

Signature of Authorized Representative and Affiant

Printed Name: _____

Printed Name of Authorized Representative and Affiant

Title: _____

Date: _____

SUBMIT THIS AFFIDAVIT WITH PROPOSAL

ATTACHMENTS D – MBE FORMS

**MBE ATTACHMENT D-1A:
MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT
& MBE PARTICIPATION SCHEDULE**

PART 1 - INSTRUCTIONS

PLEASE READ BEFORE COMPLETING THIS DOCUMENT

This form includes Instructions and the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule which must be submitted with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and Schedule with the bid or proposal, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

1. Contractor shall structure its procedures for the performance of the work required in this Contract to attempt to achieve the minority business enterprise (MBE) subcontractor participation goal stated in the Invitation for Bids or Request for Proposals. Contractor agrees to exercise good faith efforts to carry out the requirements set forth in these Instructions, as authorized by the Code of Maryland Regulations (COMAR) 21.11.03.
2. MBE Goals and Subgoals: Please review the solicitation for information regarding the Contract's MBE overall participation goals and subgoals. After satisfying the requirements for any established subgoals, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from the various MBE classifications to meet the remainder of the overall MBE participation goal.
3. MBE means a minority business enterprise that is certified by the Maryland Department of Transportation ("MDOT"). Only MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals. In order to be counted for purposes of achieving the MBE participation goals, the MBE firm, including a MBE prime, must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.
4. Please refer to the MDOT MBE Directory at <https://mbe.mdot.maryland.gov/directory/> to determine if a firm is certified with the appropriate North American Industry Classification System ("NAICS") code and the product/services description (specific product that a firm is certified to provide or specific areas of work that a firm is certified to perform). For more general information about NAICS codes, please visit <https://www.census.gov/eos/www/naics/>. Only those specific products and/or services for which a firm is certified in the MDOT Directory can be used for purposes of achieving the MBE participation goals. **CAUTION:** If the firm's NAICS code is in graduated status, such services/products may not be counted for purposes of achieving the MBE participation goals. A NAICS code is in the graduated status if the term "Graduated" follows the code in the MDOT MBE Directory.
5. **Guidelines Regarding MBE Prime Self-Performance.** Please note that when a certified MBE firm participates as a prime contractor on a Contract, a procurement agency may count the distinct, clearly defined portion of the work of the Contract that the certified MBE firm performs with its own workforce toward fulfilling up to, but no more than, fifty-percent (50%) of the overall MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
 - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
 - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
 - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
 - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.
http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
 7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.

8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**

- ✓ **Regular Dealer** (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

Example for illustrative purposes of applying the 60% rule

Overall contract value: \$2,000,000

Total value of supplies: \$100,000

Calculate Percentage of Supplies to overall contract value:

\$100,000 divided by \$2,000,000 = 5%

Apply 60% Rule - Total percentage of Supplies/Products $5\% \times 60\% = 3\%$

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

- ✓ **Manufacturer:** A certified MBE firm's participation may be counted in full if the MBE is certified in the appropriate NAICS code(s) to provide products and services as a manufacturer.
- ✓ **Broker:** With respect to materials or supplies purchased from a certified MBE that is neither a manufacturer nor a regular dealer, a unit may apply the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees, or transportation charges for the delivery of materials and supplies required on a procurement toward the MBE contract goals, provided a unit determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. A unit may not apply any portion of the costs of the materials and supplies toward MBE goals.
- ✓ **Furnish and Install and other Services:** The participation of a certified MBE supplier, wholesaler, and/or regular dealer certified in the proper NAICS code(s) to furnish and install materials necessary for successful contract completion may be counted in full. Includes the participation of other MBE service providers in the proper NAICS code(s) may be counted in full.

9. **Dually certified firms.** An MBE that is certified in more than one subgroup category may only be counted toward goal fulfillment of ONE of those categories with regard to a particular contract.

Example: A woman-owned Hispanic American (dually certified) firm may be used to fulfill the women-owned OR Hispanic American subgoal, but not both on the same contract.

10. **CAUTION:** The percentage of MBE participation, computed using the percentage amounts determined for all of the MBE firms listed in Part 3, MUST meet or exceed the MBE participation goal and subgoals (if applicable) as set forth in Part 2- for this solicitation. If a bidder/offeror is unable to meet the MBE participation goal or any subgoals (if applicable), then the bidder/offeror must request a waiver in Part 2 or the bid will be deemed not responsive, or the proposal not reasonably susceptible of being selected for award. You may wish to use the attached Goal/Subgoal Worksheet to assist in calculating the percentages and confirming that your commitment meets or exceeds the applicable MBE participation goal and subgoals (if any).

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-800-544-6056 or via email to mbe@mdot.state.md.us sufficiently prior to the submission due date.

Subgoals (if applicable)

Total African American MBE Participation: _____%

Total Asian American MBE Participation: _____%

Total Hispanic American MBE Participation: _____%

Total Women-Owned MBE Participation: _____%

Overall Goal

Total MBE Participation (include all categories): _____%

PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT

This MBE Utilization and Fair Solicitation Affidavit and MBE Participation Schedule must be completed and included with the bid/proposal. If the bidder/offeror fails to accurately complete and submit this Affidavit and the Schedule in Part 3 with the bid or proposal as required, the Procurement Officer shall deem the bid non-responsive or shall determine that the proposal is not reasonably susceptible of being selected for award.

In connection with the bid/proposal submitted in response to the Request for Proposals for Fire Sprinkler System Modifications, MSA Project No. 20-032, I affirm the following:

1. MBE Participation (PLEASE CHECK ONLY ONE)

☐ I acknowledge and intend to meet IN FULL the overall certified Minority Business Enterprise (MBE) participation goal of ___% percent. Therefore, I am not seeking a waiver pursuant to COMAR 21.11.03.11. I acknowledge that by checking the above box and agreeing to meet the stated goal and subgoal(s), if any, I **must** complete Part 3 - MBE Participation Schedule and Part 4 Signature Page in order to be considered for award.

OR

☐ I conclude that I am unable to achieve the MBE participation goal and/or subgoals. I hereby request a waiver, in whole or in part, of the overall goal and/or subgoals. I acknowledge that by checking this box and requesting a partial waiver of the stated goal and/or one or more of the stated subgoal(s) if any, I **must** complete Part 3, the MBE Participation Schedule and Part 4 Signature Page for the portion of the goal and/or subgoal(s) if any, for which I am not seeking a waiver, in order to be considered for award. I acknowledge that by checking this box and requesting a full waiver of the stated goal and the stated subgoal(s) if any, I **must** complete Part 4 Signature Page in order to be considered for award.

Additional MBE Documentation

I understand that if I am notified that I am the apparent awardee or as requested by the Procurement Officer, I must submit the following documentation within 10 working days of receiving notice of the potential award or from the date of conditional award (per COMAR 21.11.03.10), whichever is earlier:

- (a) Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C)
- (b) Outreach Efforts Compliance Statement (Attachment D-2);
- (c) MBE Subcontractor/MBE Prime Project Participation Statement (Attachments D-3A and 3B);
- (d) Any other documentation, including additional waiver documentation if applicable, required by the Procurement Officer to ascertain bidder or offeror responsibility in connection with the certified MBE participation goal and subgoals, if any.

I understand that if I fail to return each completed document within the required time, the Procurement Officer may determine that I am not responsible and therefore not eligible for contract award. If the contract has already been awarded, the award is voidable.

Information Provided to MBE firms

In the solicitation of subcontract quotations or offers, MBE firms were provided not less than the same information and amount of time to respond as were non-MBE firms.

PART 3 - MBE PARTICIPATION SCHEDULE

Set forth below are the (i) Certified MBEs I intend to use, (ii) the percentage of the total Contract value allocated to each MBE for this project and, (iii) the items of work each MBE will provide under the Contract. I have confirmed with the MDOT database that the MBE firms identified below (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.

Prime Contractor	Project Description	Project/Contract Number
	[SERVICE TYPE] [PROJECT NAME]	

LIST INFORMATION FOR EACH CERTIFIED MBE FIRM YOU AGREE TO USE TO ACHIEVE THE MBE PARTICIPATION GOAL AND SUBGOALS, IF ANY. **MBE PRIMES:** PLEASE COMPLETE BOTH SECTIONS A AND B BELOW.

SECTION A: For MBE Prime Contractors ONLY (including MBE Primes in a Joint Venture)

MBE Prime Firm Name: _____ _____ MBE Certification Number: _____ (If dually certified, check only one box.) ☐ African American-Owned ☐ Hispanic American- Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification NAICS code: _____ _____	Percentage of total Contract Value to be performed with own forces and counted towards the MBE overall participation goal (up to 50% of the overall goal): _____% Please refer to Item #8 in Part 1- Instructions of this document for new MBE participation guidelines regarding materials and supplies. Percentage of total Contract Value to be performed with own forces and counted towards the subgoal, if any, for my MBE classification (up to 100% of not more than one subgoal): _____% ☐ Supplier, wholesaler and/or regular dealer (count 60%) ☐ Manufacturer (count 100%) ☐ Broker (count reasonable fee/commission only) ☐ Furnish and Install and other Services (count 100%) Complete the applicable prompt (select only one) from prompts A-C below that applies to the type of work your firm is self-performing to calculate amount to be counted towards achieving the MBE Participation Goal and Subgoal, if any. A. Percentage amount of subcontract where the MBE Prime firm is being used for manufacturer, furnish and install, and/or services (excluding products / services from suppliers, wholesalers, regular dealers and brokers) _____% B. Percentage amount for items of work where the MBE Prime firm is being used as supplier, wholesaler, and/or regular dealer (60% Rule). Total percentage of Supplies/Products _____% x 60% = _____% C. Percentage amount of fee where the MBE Prime firm is being used as broker (count reasonable fee/commission only) _____% Description of the Work to be performed with MBE prime's own forces: _____ _____
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SECTION B: For all Contractors (including MBE Primes and MBE Primes in a Joint Venture)

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

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

Continue on separate page if needed

PART 4 – SIGNATURE PAGE

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

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

Bidder/Offeror Name
(PLEASE PRINT OR TYPE)

Signature of Authorized Representative

Address

Printed Name and Title

City, State and Zip Code

Date

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

MBE ATTACHMENT D-1B WAIVER GUIDANCE

GUIDANCE FOR DOCUMENTING GOOD FAITH EFFORTS TO MEET MBE PARTICIPATION GOALS

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

I. Definitions

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

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

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

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

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

II. Types of Actions Agency will Consider

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

A. Identify Proposal Items as Work for MBE Firms

1. Identified Items of Work in Procurements
 - (a) Certain procurements will include a list of Proposal items identified during the goal setting process as possible work for performance by MBE Firms. If the procurement provides a list of Identified Items of Work, the Offeror shall make all reasonable efforts to solicit quotes from MBE Firms to perform that work.
 - (b) Offerors may, and are encouraged to, select additional items of work to be performed by MBE Firms to increase the likelihood that the MBE Goal(s) will be achieved.
2. Identified Items of Work by Offerors
 - (a) When the procurement does not include a list of Identified Items of Work or for additional Identified Items of Work, Offerors should reasonably identify sufficient items of work to be performed by MBE Firms.
 - (b) Where appropriate, Offerors should break out contract work items into economically feasible units to facilitate MBE participation, rather than perform these work items with their own forces. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the Offeror of the responsibility to make Good Faith Efforts.

B. Identify MBE Firms to Solicit

1. MBE Firms Identified in Procurements
 - (a) Certain procurements will include a list of the MBE Firms identified during the goal setting process as available to perform the items of work. If the procurement provides a list of Identified MBE Firms, the Offeror shall make all reasonable efforts to solicit those MBE firms.
 - (b) Offerors may, and are encouraged to, search the MBE Directory to identify additional MBEs who may be available to perform the items of work, such as MBEs certified or granted an expansion of services after the solicitation was issued.
2. MBE Firms Identified by Offerors
 - (a) When the procurement does not include a list of Identified MBE Firms, Offerors should reasonably identify the MBE Firms that are available to perform the Identified Items of Work.
 - (b) Any MBE Firms identified as available by the Offeror should be certified to perform the Identified Items of Work.

C. Solicit MBEs

1. Solicit all Identified Firms for all Identified Items of Work by providing written notice. The Offeror should:
 - (a) provide the written solicitation at least 10 days prior to Proposal opening to allow sufficient time for the MBE Firms to respond;
 - (b) send the written solicitation by first-class mail, facsimile, or e-mail using contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; and
 - (c) provide adequate information about the plans, specifications, anticipated time schedule for portions of the work to be performed by the MBE, and other requirements of the contract to assist MBE Firms in responding. (This information may be provided by including hard copies in the written solicitation or by electronic means as described in C.3 below.)
2. "All" Identified Firms includes the MBEs listed in the procurement and any MBE Firms you identify as potentially available to perform the Identified Items of Work, but it does not include MBE Firms who are no longer certified to perform the work as of the date the Offeror provides written solicitations.
3. "Electronic Means" includes, for example, information provided via a website or file transfer protocol (FTP) site containing the plans, specifications, and other requirements of the contract. If an interested MBE cannot access the information provided by electronic means, the Offeror must make the information available in a manner that is accessible to the interested MBE.
4. Follow up on initial written solicitations by contacting MBEs to determine if they are interested. The follow up contact may be made:
 - (a) by telephone using the contact information in the MBE Directory, unless the Offeror has a valid basis for using different contact information; or
 - (b) in writing via a method that differs from the method used for the initial written solicitation.
5. In addition to the written solicitation set forth in C.1 and the follow up required in C.4, use all other reasonable and available means to solicit the interest of MBE Firms certified to perform the work of the contract. Examples of other means include:
 - (a) attending any pre-Proposal meetings at which MBE Firms could be informed of contracting and subcontracting opportunities; and
 - (b) if recommended by the procurement, advertising with or effectively using the services of at least two minority focused entities or media, including trade associations, minority/women community organizations, minority/women contractors' groups, and local, state, and federal minority/women business assistance offices listed on the MDOT Office of Minority Business Enterprise website.

D. Negotiate with Interested MBE Firms

Offerors must negotiate in good faith with interested MBE Firms.

1. Evidence of negotiation includes, without limitation, the following:
 - (a) the names, addresses, and telephone numbers of MBE Firms that were considered;
 - (b) a description of the information provided regarding the plans and specifications for the work selected for subcontracting and the means used to provide that information; and
 - (c) evidence as to why additional agreements could not be reached for MBE Firms to perform the work.

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

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

- (d) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (e) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
 - (f) percentage that the MBE subcontractor's quote represents of the overall contract amount;
 - (g) number of MBE firms that the Offeror solicited for that portion of the work;
 - (h) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
 - (i) number of quotes received by the Offeror for that portion of the work.
6. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
7. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
8. The "average of the other subcontractors' quotes received" by the Offeror refers to the average of the quotes received from all subcontractors. Offeror should attempt to receive quotes from at least three subcontractors, including one quote from an MBE and one quote from a Non-MBE.
9. The Offeror shall not reject an MBE Firm as unqualified without sound reasons based on a thorough investigation of the firm's capabilities. For each certified MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the Offeror concludes is not acceptable, the Offeror must provide a written detailed statement listing the reasons for this conclusion. The Offeror also must document the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
- (a) The factors to take into consideration when assessing the capabilities of an MBE Firm, include, but are not limited to the following: financial capability, physical capacity to perform, available personnel and equipment, existing workload, experience performing the type of work, conduct and performance in previous contracts, and ability to meet reasonable contract requirements.
 - (b) The MBE Firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of Proposals in the efforts to meet the project goal.

E. Assisting Interested MBE Firms

When appropriate under the circumstances, the decision-maker will consider whether the Offeror:

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

III. Other Considerations

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

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

IV. Documenting Good Faith Efforts

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

A. Items of Work (Complete Good Faith Efforts Documentation Attachment D-1C, Part 1)

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

B. Outreach/Solicitation/Negotiation

1. The record of the Offeror's compliance with the outreach efforts prescribed by COMAR 21.11.03.09C(2)(a). **(Complete Outreach Efforts Compliance Statement - D-2).**
2. A detailed statement of the efforts made to contact and negotiate with MBE Firms including:
 - (a) the names, addresses, and telephone numbers of the MBE Firms who were contacted, with the dates and manner of contacts (letter, fax, e-mail, telephone, etc.) **(Complete Good Faith Efforts Attachment D-1C- Part 2, and submit letters, fax cover sheets, e-mails, etc. documenting solicitations);** and
 - (b) a description of the information provided to MBE Firms regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed and the means used to provide that information.

C. Rejected MBE Firms (Complete Good Faith Efforts Attachment D-1C, Part 3)

1. For each MBE Firm that the Offeror concludes is not acceptable or qualified, a detailed statement of the reasons for the Offeror's conclusion, including the steps taken to verify the capabilities of the MBE and Non-MBE Firms quoting similar work.
2. For each certified MBE Firm that the Offeror concludes has provided an excessive or unreasonable price, a detailed statement of the reasons for the Offeror's conclusion, including the quotes received from all MBE and Non-MBE firms proposing on the same or comparable work. **(Include copies of all quotes received.)**
3. A list of MBE Firms contacted but found to be unavailable. This list should be accompanied by

an MBE Unavailability Certificate (see **D-1B - Exhibit A** to this Part 1) signed by the MBE contractor or a statement from the Offeror that the MBE contractor refused to sign the MBE Unavailability Certificate.

D. Other Documentation

1. Submit any other documentation requested by the Procurement Officer to ascertain the Offeror's Good Faith Efforts.
2. Submit any other documentation the Offeror believes will help the Procurement Officer ascertain its Good Faith Efforts.

D-1B - Exhibit A
MBE Subcontractor Unavailability Certificate

1. It is hereby certified that the firm of _____
 (Name of Minority firm)
 located at _____
 (Number) (Street)

 (City) (State) (Zip)

was offered an opportunity to bid on MSA Project No. 20-033

in _____ County _____
 by (Name of Prime Contractor's Firm)

2. (Minority Firm), is either unavailable for the work/service or unable to prepare a Proposal for this project for the following reason(s): _____

(Signature of Minority Firm's
 MBE Representative)

(Title)

(Date)

(MDOT Certification #)

(Telephone #)

3. To be completed by the prime contractor if Section 2 of this form is not completed by the minority firm.

To the best of my knowledge and belief, said Certified Minority Business Enterprise is either unavailable for the work/service for this project, is unable to prepare a Proposal, or did not respond to a request for a price Proposal and has not completed the above portion of this submittal.

(Signature of Prime Contractor)

(Title)

(Date)

MBE ATTACHMENT D-1C
GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

PAGE__OF __

Prime Contractor	Project Description	Solicitation Number

**PARTS 1, 2, AND 3 MUST BE INCLUDED WITH THIS CERTIFICATE ALONG WITH ALL DOCUMENTS
SUPPORTING YOUR WAIVER REQUEST.**

I affirm that I have reviewed Attachment____-1B, Waiver Guidance. I further affirm under penalties of perjury that the contents of Parts 1, 2, and 3 of this Attachment____-1C Good Faith Efforts Documentation Form are true to the best of my knowledge, information, and belief.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 1–IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO
MBE FIRMS

PAGE__OF __

Prime Contractor	Project Description	Solicitation Number

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

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

☐ Please check if Additional Sheets are attached.

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

PAGE__OF __

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment 1-B). If the bidder/offeror used a Non-MBE or is self- performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) ☐ ☐ African American-Owned ☐ Hispanic American-Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification		Date: ☐ Mail ☐ Facsimile ☐ Email	Date: ☐ Phone ☐ Mail ☐ Facsimile ☐ Email	Time of Call: Spoke With: ☐ Left Message	☐ Yes ☐ No	☐ Yes ☐ No	☐ Used Other MBE ☐ Used Non-MBE ☐ Self-performing
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) ☐ African American-Owned ☐ Hispanic American-Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE ☐ Classification		Date: ☐ Mail ☐ Facsimile ☐ Email	Date: ☐ Phone ☐ Mail ☐ Facsimile ☐ Email	Time of Call: Spoke With: ☐ Left Message	☐ Yes ☐ No	☐ Yes ☐ No	☐ Used Other MBE ☐ Used Non-MBE ☐ Self-performing

☐ Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 3 –ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE ____ OF ____

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 2 indicates that a MBE quote was rejected because the bidder/offeror is using a Non- MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

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

☐

Please check if Additional Sheets are attached.

MBE Attachment D-2
OUTREACH EFFORTS COMPLIANCE STATEMENT

Complete and submit this form within 10 Business Days of notification of apparent award or actual award, whichever is earlier.

In conjunction with the Proposal submitted in response to Solicitation No. MSA.20-032, I state the following:

1. Offeror identified subcontracting opportunities in these specific work categories:

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

3. Offeror made the following attempts to personally contact the solicited MDOT-certified MBE firms:

4. **Please Check One:**

- ☐ This project does not involve bonding requirements.
- ☐ Offeror assisted MDOT-certified MBE firms to fulfill or seek waiver of bonding requirements. (DESCRIBE EFFORTS): _____

5. **Please Check One:**

_____ Bidder/Offeror did attend the pre-bid/pre-proposal conference.-

_____ No pre-bid/pre-proposal meeting/conference was held.

_____ Offeror did not attend the pre-bid/pre-proposal conference.

Company Name

Signature of Representative

Address

Printed Name and Title

City, State and Zip Code

Date

MBE SUBCONTRACTOR PROJECT PARTICIPATION CERTIFICATION

PLEASE COMPLETE AND SUBMIT ONE FORM FOR EACH CERTIFIED MBE FIRM LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) WITHIN 10 WORKING DAYS OF NOTIFICATION OF APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS FORM WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

Provided that _____ (Prime Contractor) is awarded the State contract in conjunction with _____ (Project Name), such Prime Contractor intends to enter into a subcontract with _____ (Second Tier) committing to participation by the MBE firm _____ (Name of Second or Third Tier as applicable) with MDOT Certification Number _____, which will receive at least % of the Total Payments made to the Prime Contractor for performing the products/services for the State contract. The initial commitment to the MBE firm is \$ _____ (Contract Amount) based on the Prime Contractor's contract amount minus the amounts identified for Owner's contingency, allowances, and reimbursable expenses as described in the RFP.

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE)	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES

Each of the Contractor and Subcontractor acknowledges that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. Each of the Contractor and Subcontractor solemnly affirms under the penalties of perjury that: (i) the information provided in this MBE Subcontractor Project Participation Affidavit is true to the best of its knowledge, information and belief, and (ii) has fully complied and will comply with the State Minority Business Enterprise law, State Finance and Procurement Article §14-308(a)(2), Annotated Code of Maryland (Procurement Article) which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a Bid/Proposal and:

- (1) fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified Minority Business Enterprise in its Bid/Proposal;
- (2) fail to notify the certified Minority Business Enterprise before execution of the Contract of its inclusion of the Bid/Proposal;
- (3) fail to use the certified Minority Business Enterprise in the performance of the Contract; or
- (4) pay the certified Minority Business Enterprise solely for the use of its name in the Bid/Proposal.

Further, each signatory agrees that the MBE firm will be performing a commercially useful function as required by the Procurement Article and the Code of Maryland Regulations. Each signatory solemnly affirms under the penalties of perjury that the information provided in this form is true to the best of their knowledge, information and belief.

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

MBE Attachment D-3B

MBE PRIME - PROJECT PARTICIPATION CERTIFICATION

PLEASE COMPLETE AND SUBMIT THIS FORM TO ATTEST EACH SPECIFIC ITEM OF WORK THAT YOUR MBE FIRM

HAS LISTED ON THE MBE PARTICIPATION SCHEDULE (ATTACHMENT D-1A) FOR PURPOSES OF MEETING THE MBE PARTICIPATION GOALS. THIS FORM MUST BE SUBMITTED WITHIN 10 WORKING DAYS OF NOTIFICATION OF

APPARENT AWARD. IF THE BIDDER/OFFEROR FAILS TO RETURN THIS AFFIDAVIT WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE BIDDER/OFFEROR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.

Provided that _____ (Prime Contractor's Name) with Certification Number _ is awarded the State contract in conjunction with _____ (Project Name), such MBE Prime Contractor intends to perform with its own forces at least \$ _ which equals to _____ % (Total MBE Payments to MBE Firm as a percentage of Total Payments made to Prime) with an initial commitment of \$ _____ (Contract Amount) for performing the products or services for the Contract described below.

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

MBE PRIME CONTRACTOR

Signature of Representative:

Printed Name and Title: _____

Firm's Name: _____

Federal Identification Number: _____

Address: _____

Telephone: _____

Date: _____

GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 1–IDENTIFIED ITEMS OF WORK BIDDER/OFFEROR MADE AVAILABLE TO
MBE FIRMS

PAGE__OF __

Prime Contractor	Project Description	Solicitation Number

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

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

☐ Please check if Additional Sheets are attached.

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

PAGE__OF __

Prime Contractor	Project Description	Solicitation Number

Identify the MBE Firms solicited to provide quotes for the Identified Items of Work made available for MBE participation. Include the name of the MBE Firm solicited, items of work for which bids/quotes were solicited, date and manner of initial and follow-up solicitations, whether the MBE provided a quote, and whether the MBE is being used to meet the MBE participation goal. MBE Firms used to meet the participation goal must be included on the MBE Participation Schedule. Note: If the procurement includes a list of the MBE Firms identified during the goal setting process as potentially available to perform the items of work, the bidder/offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the bidder/offeror identifies additional MBE Firms who may be available to perform Identified Items of Work, those additional MBE Firms should also be included below. Copies of all written solicitations and documentation of follow-up calls to MBE Firms must be attached to this form. This list should be accompanied by a Minority Contractor Unavailability Certificate signed by the MBE contractor or a statement from the bidder/offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (see Exhibit A to MBE Attachment 1-B). If the bidder/offeror used a Non-MBE or is self- performing the identified items of work, Part 3 must be completed.

Name of Identified MBE Firm & MBE Classification	Describe Item of Work Solicited	Initial Solicitation Date & Method	Follow-up Solicitation Date & Method	Details for Follow-up Calls	Quote Rec'd	Quote Used	Reason Quote Rejected
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) ☐ ☐ African American-Owned ☐ Hispanic American-Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification		Date: ☐ Mail ☐ Facsimile ☐ Email	Date: ☐ Phone ☐ Mail ☐ Facsimile ☐ Email	Time of Call: Spoke With: ☐ Left Message	☐ Yes ☐ No	☐ Yes ☐ No	☐ Used Other MBE ☐ Used Non-MBE ☐ Self-performing
Firm Name: MBE Classification (Check only if requesting waiver of MBE subgoal.) ☐ African American-Owned ☐ Hispanic American-Owned ☐ Asian American-Owned ☐ Women-Owned ☐ Other MBE Classification		Date: ☐ Mail ☐ Facsimile ☐ Email	Date: ☐ Phone ☐ Mail ☐ Facsimile ☐ Email	Time of Call: Spoke With: ☐ Left Message	☐ Yes ☐ No	☐ Yes ☐ No	☐ Used Other MBE ☐ Used Non-MBE ☐ Self-performing

☐ Please check if Additional Sheets are attached.

**GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST
PART 3 –ADDITIONAL INFORMATION REGARDING REJECTED MBE QUOTES**

PAGE ____ OF ____

Prime Contractor	Project Description	Solicitation Number

This form must be completed if Part 2 indicates that a MBE quote was rejected because the bidder/offeror is using a Non- MBE or is self-performing the Identified Items of Work. Provide the Identified Items Work, indicate whether the work will be self-performed or performed by a Non-MBE, and if applicable, state the name of the Non-MBE. Also include the names of all MBE and Non-MBE Firms that provided a quote and the amount of each quote.

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

☐

Please check if Additional Sheets are attached.

ATTACHMENT E – INTENTIONALLY OMITTED

ATTACHMENT F – INTENTIONALLY OMITTED

ATTACHMENT G – CONTRACTOR EXPERIENCE AND QUALIFICATIONS FORM

ATTACHMENT H – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

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

B. "Person" has the meaning stated in COMAR 21.01.02.01B (64) and includes a Bidder/Offeror, Contractor, Contractor, or subcontractor or sub-contractor at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/Proposal is made.

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

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

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

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

Date: _____ By: _____
(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL

ATTACHMENT I – PREVAILING WAGE INSTRUCTIONS

ATTACHMENT J – NEGOMETRIX

ATTACHMENT K – INTENTIONALLY OMITTED

ATTACHMENT L – GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION CONTRACTS

MARYLAND STADIUM AUTHORITY



REVISED

Maryland Stadium Authority
General Terms and Conditions for Construction Contracts

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES

- 1.01 DEFINITIONS AND CONDITIONS
- 1.02 CONTRACTOR'S RESPONSIBILITIES

SECTION 2 - CONTRACT DOCUMENTS - SHOP DRAWINGS

- 2.01 CONTRACT DOCUMENTS
- 2.02 SHOP DRAWINGS AND MATERIAL SUBMITTALS
- 2.03 COST AND PRICE CERTIFICATION

SECTION 3 - SCOPE OF THE WORK

- 3.01 INTENT OF THE CONTRACT DOCUMENTS
- 3.02 GENERAL CONDITIONS CONTROLLING
- 3.03 DIFFERING SITE CONDITIONS
- 3.04 SITE INVESTIGATION
- 3.05 CONDITIONS AFFECTING THE WORK
- 3.06 CHANGES -- MISCELLANEOUS
- 3.07 MODIFICATION OF CONTRACT PRICE
- 3.08 UNAUTHORIZED WORK

SECTION 4 - CONTROL OF THE WORK

- 4.01 INTERPRETATION OF THE CONTRACT DOCUMENTS –
AUTHORITY OF THE ARCHITECT
- 4.02 CONFORMITY WITH CONTRACT REQUIREMENTS
- 4.03 ADJACENT WORK
- 4.04 CONTROL BY THE CONTRACTOR
- 4.05 COORDINATION WITH UTILITIES
- 4.06 INSPECTIONS, TESTS, STATE INSPECTORS
- 4.07 REMOVAL OF DEFECTIVE WORK
- 4.08 MAINTENANCE OF WORK DURING CONSTRUCTION
- 4.09 FAILURE TO MAINTAIN ENTIRE PROJECT
- 4.10 MSA'S RIGHT TO DO WORK
- 4.11 PROGRESS MEETINGS - SCHEDULING MEETINGS

SECTION 5 - MATERIALS

- 5.01 GENERAL
- 5.02 STORAGE AND HANDLING OF MATERIALS
- 5.03 SUBSTITUTIONS
- 5.04 APPROVED EQUAL
- 5.05 BUY AMERICAN STEEL

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES

- 6.01 LAWS TO BE OBSERVED
- 6.02 PERMITS AND LICENSES
- 6.03 PATENTS, COPYRIGHTS, TRADE SECRETS, AND
PROTECTED MATTER
- 6.04 LAND, AIR AND WATER POLLUTION, AND EROSION CONTROL
- 6.05 INSURANCE REQUIREMENTS
- 6.06 INTENTIONALLY OMITTED
- 6.07 SEPARATE CONTRACTS
- 6.08 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND
EMPLOYEES
- 6.09 NO WAIVER OF RIGHTS - STATE'S REMEDIES CUMULATIVE
STATE'S DAMAGES
- 6.10 SOLICITATION WARRANTY - CONTINGENT FEE PROHIBITION
- 6.11 ASSIGNMENT OF ANTITRUST CLAIMS
- 6.12 FEDERAL PARTICIPATION
- 6.13 DISPUTES AND CONTRACT CLAIMS
- 6.14 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATION
- 6.15 INTENTIONALLY OMITTED
- 6.16 STATE PROPERTY NOT SUBJECT TO LIEN
- 6.17 STATE NOT SUBJECT TO LIMITATIONS
- 6.18 CONFLICT OF INTEREST
- 6.19 CENTURY COMPLIANT SOFTWARE, ETC.
- 6.20 COMMERCIAL NONDISCRIMINATION POLICY

SECTION 7 - PROSECUTION, PROGRESS, AND QUALITY OF THE WORK

- 7.01 NOTICE TO PROCEED
- 7.02 PROJECT SIGNS AND INSPECTOR'S FIELD OFFICE
- 7.03 PUBLIC CONVENIENCE AND SAFETY
- 7.04 BARRICADES AND WARNING SIGNS
- 7.05 RESERVATION, PROTECTION AND RESTORATION OF PROPERTY
- 7.06 PROGRESS SCHEDULE -- DELAYS
- 7.07 TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, TIME EXTENSIONS
- 7.08 TERMINATION FOR DEFAULT - GROUNDS OTHER THAN FOR LACK OF
DILIGENCE
- 7.09 SUSPENSION OF THE WORK
- 7.10 STATE'S RIGHT TO TERMINATE FOR CONVENIENCE
- 7.11 PARTIAL ACCEPTANCE
- 7.12 SUBSTANTIAL COMPLETION
- 7.13 CLEANING UP
- 7.14 WARRANTY
- 7.15 NOTICE TO STATE OF LABOR DISPUTES

SECTION 8 - PAYMENTS

- 8.01 SCOPE OF PAYMENT
- 8.02 FORCE ACCOUNT WORK
- 8.03 CASH ALLOWANCES
- 8.04 CERTIFICATES OF PAYMENT; RETAINAGE
- 8.05 DEDUCTIONS FOR UNCORRECTED WORK
- 8.06 PAYMENTS WITHHELD

- 8.07 CORRECTION OF WORK BEFORE FINAL PAYMENT
- 8.08 FINAL PAYMENT
- 8.09 PAYMENT AND INTEREST
- 8.10 RETENTION OF RECORDS -- AUDITS BY THE STATE
- 8.11 CONTRACT COST PRINCIPLES AND PROCEDURES.
- 8.12 FINANCIAL DISCLOSURE
- 8.13 POLITICAL CONTRIBUTION DISCLOSURE

SECTION 9 - EMPLOYEES, SUBCONTRACTORS AND WORK CONDITIONS

- 9.01 EMPLOYEES AND WORKMANSHIP
- 9.02 NON-DISCRIMINATION IN EMPLOYMENT
- 9.03 SUBCONTRACTS
- 9.04 RELATION OF CONTRACTOR TO SUBCONTRACTORS AND SUPPLIERS
- 9.05 PREVAILING WAGE RATES
- 9.06 CONSTRUCTION SAFETY AND HEALTH STANDARDS
- 9.07 PROMPT PAYMENT OF SUBCONTRACTORS

SECTION 1 - DEFINITIONS AND RESPONSIBILITIES:

1.01 DEFINITIONS AND CONDITIONS:

A. The words and terms stated in subsection B have the meanings indicated.

B.

- (1) **Approved Equal** - Those materials, supplies or services, or compatible items of construction whose quality, design or performance characteristics are functionally equal or superior to an item specified and which meet all salient characteristics and other requirements of the contract as determined by MSA.
- (2) **The Architect** - The person commissioned by MSA to design the project and/or provide construction-phase architectural or engineering services. If the design was performed by an engineer rather than an architect, "architect" shall refer to the engineer. If the design was performed by MSA, "architect" shall refer to MSA. The Procurement Officer may exercise any power or authority of the architect under the contract.
- (3) **Breach** - Means material breach of the contract - Synonymous with "default."
- (4) **Change Order** - A written order or directive signed by the Procurement Officer, directing a Contractor to perform as specified, which the Changes clause of the contract authorizes the Procurement Officer to issue with or without the consent of the Contractor. An order of the Procurement Officer, by virtue of being called a "change order," does not necessarily constitute and shall not be construed to be a change in the scope of the contract or in the work required under the contract or to entitle the Contractor to additional compensation for performing the work which is the subject of the order.
- (5) **Claim** - Means a complaint by the Contractor or by MSA relating to the contract - also called a "dispute."
- (6) **Contract and Contract Documents** - Contract and Contract Documents - The written agreement executed between MSA and the Contractor by which the Contractor is bound to perform the work and furnish the labor, services, equipment and materials, and by which MSA is obligated to compensate him therefore at the mutually established and accepted rate or price. The contract includes solicitation documents, the construction bid form, contract forms and bonds, Instructions to Bidders, the executed Bid/Proposal Affidavit and Contract Affidavit, General Conditions, specifications, addenda, supplemental conditions and specifications, all special conditions and provisions, all technical provisions, all plans, the notice to proceed, any written change orders and supplemental agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all approved shop drawings (subject to Sections 3.02I and J and all other provisions of the contract) which are in accordance with the requirements of the other contract documents, and all other documents as provided in the contract. These documents which comprise the contract are sometimes referred to collectively as the "contract documents."
- (7) **The Contractor** - The person or organization having a direct contractual relationship with MSA for the execution of the work.
- (8) **Contract Completion Date** - The date upon which the Work of the Contract is to be completed. The Contract Completion Date is calculated by adding the Contract Time to the Start Date.

- (9) **Contract Time** - The number of calendar days, including weekends and holidays, within which the Contractor shall complete the Work of the Contract. The Contract Time shall commence upon the Start Date.
- (10) **Critical Path Method (CPM)** - Critical Path Method (CPM) - A scheduling/management tool recognizing a network of work elements or activities and a critical path for completion of a construction project.
- (11) **Day** - Means calendar day unless otherwise designated.
- (12) **Dispute** - Means a complaint by the Contractor or MSA relating to the contract - also called a "claim."
- (13) **Executive Director** – Means the Executive Director of MSA.
- (14) **Including** - Means "including but not limited to."
- (15) **Inspector** - A representative of MSA or the State assigned to review on-site construction activities for MSA in accordance with Section 4.06.
- (16) **MSA** – The Maryland Stadium Authority.
- (17) **Notice to Proceed** - A written notice to the Contractor of the start date on which he shall begin the prosecution of the work.
- (18) **Payment Bond** - The security in the form approved by MSA and executed by the Contractor and his surety, and paid for by the Contractor, as a guarantee that the Contractor will pay in full all his bills and accounts for materials and labor used in the construction of the work, as provided by law.
- (19) **Performance Bond** - The security in the form approved by MSA and executed by the Contractor and his surety, and paid for by the Contractor, guaranteeing for the benefit of MSA complete performance of the contract in accordance with its terms.
- (20) **Plans** - The official design drawings issued or accepted by MSA as part of the contract documents, including those incorporated into the contract documents by reference.
- (21) **Procurement Officer** - (a) Any person (i) authorized by MSA to formulate, enter into, or administer the contract or to make written determinations with respect to the contract and (ii) an authorized representative acting within the limits of the representative's authority; and (b) the Executive Director of MSA.
- (22) **Project Manager** – The individual designated by MSA to manage the project on behalf of MSA.
- (23) **Repair** - To restore after injury, deterioration, or wear; to mend; to renovate by such means as appropriate and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable; or to bring into conformity with contract requirements. Upon completion of such repair it must be, unless otherwise stated, rendered to such condition as to present a first-class finished work, or in instances where the repaired item serves as a base for additional finish, the repaired work must be such as to permit a first-class finish, to be applied without extra cost to MSA. When the word "repair" is used in connection with machinery or mechanical equipment it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient and ready for the normal use for which it was intended.

- (24) **The State** - The State of Maryland and/or MSA.
- (25) **Intentionally Omitted.**
- (26) **Solicitation Documents** - MSA's Invitation to Bid or Request for Proposals and any amendment(s) thereto.
- (27) **Start Date** - The date provided in the Notice to Proceed upon which the Work is authorized to commence.
- (28) **Subcontractor** - Except as is otherwise provided herein, "Subcontractor" means an entity having a direct contract with the Contractor to furnish a part of the work. It includes one who furnishes material worked to a special design according to the plans and specifications for the Work.
- (29) **Supervisory Personnel** - The individual(s) designated by the Contractor to direct or oversee the on-site work of the Contract. (30) **Surety** - The corporate body bound as required by law for the full and complete performance of the contract by the Contractor or for the payment by the Contractor to Subcontractors and suppliers.
- (31) **Work** - The furnishing of any and all labor, materials, equipment, services, utilities and other incidentals and the manufacture or fabrication of materials or equipment necessary to the successful completion of the project and the carrying out of all the duties and obligations imposed upon the Contractor by the contract.
- (32) **Written Notice** - Written notice shall be deemed to have been duly served on the Contractor if delivered in person to the individual or to the member of the firm or to an office of the corporation to whom it is directed, or if delivered or sent by regular or certified mail or by facsimile transmission to the last business address known to MSA. Written notice shall be deemed to have been given to MSA upon actual receipt of written notice.

1.02 CONTRACTOR'S RESPONSIBILITIES:

- A. The Contractor shall supervise and direct the work, using his best skill and attention. He shall be solely responsible (1) for all construction means, methods, techniques, sequences and procedures, (2) for coordinating all portions of the work under the contract, and (3) to the extent he or his Subcontractors or suppliers at any tier design or are required to design any portion of the work, for design. Contractor must aggressively and diligently pursue completion of the contract within the contract time.
- B. The Contractor shall be responsible to MSA for the acts and omissions of his employees, Subcontractors and suppliers at any tier, and their agents and employees performing any of the work to or for the Project.
- C. The Contractor shall not be relieved from its obligations to perform the work in accordance with the contract performance or nonperformance of inspections, tests or approvals by MSA or persons hired by MSA.
- D. The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the contract documents and shall not unreasonably encumber the site with any materials or equipment.

E. Cutting and Patching of Work:

(1) The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work or to make its several parts fit together properly.

(2) The Contractor shall not damage or endanger any portion of the work or the work of others or any separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of others or any separate Contractor except with the written consent of MSA and of such separate Contractor. The Contractor shall not unreasonably withhold his consent to cutting or otherwise altering the work.

F. The Contractor shall perform all work in accordance with the terms, provisions, conditions, lines, grades, typical cross-sections, dimensions, and other data in or required by the contract documents, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor, and all other items necessary for the satisfactory prosecution and completion of the project in full compliance with the requirements of the contract documents.

G. Indemnification.

(1) To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless MSA and the architect and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to actual or threatened bodily injury, sickness, disease or death, or to actual or threatened injury to or destruction of tangible property including the loss of use resulting therefrom, and including but not limited to purely economic loss, and (2) is caused in whole or in part by any failure by the Contractor or its Subcontractors or suppliers at any tier to perform any requirement of the contract or by any negligent act or omission on the part of the Contractor or its Subcontractors or suppliers at any tier, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this subsection.

(2) In any and all claims against MSA or the architect or any of their agents or employees by any employee of the Contractor, any Subcontractor or supplier at any tier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or supplier under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

(3) Except to the extent that the Contractor is also the architect, as provided in Section 1.01B, the obligations of the Contractor under this subsection shall not extend to the liability of the architect, his agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the architect, his agents or employees providing such giving or failure to give is the primary cause of the injury or damage.

H. Performance Evaluations

(1) The MSA will perform evaluations of the performance of the Contractor and Subcontractors and suppliers.

- (2) Performance evaluations may be used or reviewed by a Procurement Officer in the course of making a determination of responsibility under other procurements.
- (3) Unsatisfactory performance of this contract (or any part of it), whether or not the contract is terminated for default and whether or not an unsatisfactory report (interim or final) is issued, may result in a determination that the Contractor is not a responsible bidder or offeror.
- (4) Nothing in this contract shall be construed to limit or qualify the authority of a Procurement Officer.

SECTION 2 - CONTRACT DOCUMENTS - SHOP DRAWINGS:

2.01 CONTRACT DOCUMENTS:

A. The contract documents are complementary. That which is called for by any one shall be as binding as if called for by all.

(1) The intent of the contract documents is to include in the scope of the contract, at no additional cost to MSA, all work necessary for proper completion of the project ready for continual efficient operation including any work reasonably inferable.

(2) **Clarification:** Prior to bidding, the Contractor should obtain clarification of all questions which may have arisen as to intent of the contract documents, or any actual conflict between two or more items in the contract documents. Should the Contractor have failed to obtain such clarification, then MSA may direct that the work proceed by any method indicated, specified or required, in the judgment of MSA, by the contract documents. Such direction by MSA shall not constitute the basis for a claim for extra costs by the Contractor. The Contractor acknowledges that he had the opportunity to request clarification prior to submitting his bid to MSA and that he is not entitled to claim extra costs as a result of failure to receive such clarification.

(3) **Jargon:** Work described in words that have a well-known technical or trade meaning shall be held to refer to such recognized standard use.

(4) **Precedence:** In case of conflict between the specifications and the drawings, the specifications will control. Typewritten or printed text shall govern over handwritten or drafted notes.

B. **Drawings:** The Contractor shall do no work without proper drawings and/or instructions. Drawings may or may not be drawn to scale, and symbols may be used to indicate materials and structural and mechanical requirements. When symbols are used, those parts of the drawings are of necessity diagrammatic or schematic and it is not possible to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the work. Diagrammatic or schematic indications of piping, duct work and conduit and similar items in the work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, to avoid exposure in finished rooms and unsightly and obstructing conditions. The Contractor shall make these adjustments at no increased cost to MSA.

(1) **Copies at the Site/As-built Drawings:** The Contractor shall keep in the job site office a complete set of all drawings, specifications, shop drawings, schedules, etc., in good order and available to the architect and MSA. Additionally, one set of all contract drawings must be maintained as "as-built" drawings. These as-built drawings shall be marked up by the Contractor in the field on a regular basis (at least monthly) to record all changes in the work as they occur, and the exact location of all work and equipment, including exposed and concealed pipe runs, valves, plugged outlets, cleanouts and other control points including electrical conduits and ducts, in such manner as will provide a complete, accurate "as-built" record. The location of pipes or control points concealed underground, under concrete, in chases or above hung ceiling shall be dimensioned. Contractor will not be entitled to receive

progress payments unless the on-site as-built drawings are kept up to date as required by the Contract. "As- Built" drawings shall be delivered to the architect, in a condition satisfactory to him, as a condition precedent to Substantial Completion Inspection of the work. Final payment and release of final retainage, if any, will not be made until the as-built drawings are revised in accordance with the Architect's comments and these revised drawings are approved by the Architect.

(2) **Ownership:** All drawings remain the property of MSA. They shall not be used by the Contractor on other projects and they shall be returned to MSA, if requested, upon completion of the work.

C. **Large Scale Detail Drawings:** The architect shall furnish, when MSA directs, additional instructions, in the form of large scale developments of the drawings used for bidding, or to amplify the specifications for the proper execution of the work. These shall be true developments of the bidding documents and reasonably inferable therefrom. The work shall be executed in conformity therewith.

D. **Dimensions:** The Contractor shall carefully check all dimensions prior to execution of the particular work. Whenever inaccuracies or discrepancies are found, the Contractor shall consult MSA prior to any construction or demolition. Should any dimensions be missing, MSA must be consulted and it will supply them prior to execution of the work. Dimensions for items to be fitted into constructed conditions at the job will be taken at the job and will be the responsibility of the Contractor. The obvious intent of the documents or obvious requirement dictated by conditions existing or being constructed supersedes dimensions or notes which may conflict therewith. Whenever a stock size manufactured item or piece of equipment is specified or is proposed by the Contractor to be furnished, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space. No extra will be allowed by reason of work requiring adjustments in order to accommodate the particular item of equipment furnished by the Contractor.

2.02 SHOP DRAWINGS AND MATERIAL SUBMITTALS:

A. After checking and verifying all field measurements and after complying with applicable procedures specified in the contract documents, Contractor shall submit to the architect for review and approval, in accordance with the Contractor's schedule, shop drawings and other material submittals which will bear a stamp or specific written indication that the Contractor has satisfied its responsibility under the contract documents with respect to the review of such submissions. The data on the shop drawing or material submittal must be complete with respect to quantities, dimensions, specified performance and/or design criteria, materials and similar data to enable the architect to review the information as required. These documents shall be prepared in conformity with the best practice and standards for the trade concerned. Due regard shall be given to speed and economy of fabrication and erection.

B. All shop drawings and material submittals must show the name of the project and MSA's project number.

C. **Size of Drawings:** All shop drawings and details submitted to the architect for approval shall be printed on sheets of the same size as the contract drawings prepared by the architect. When a standard of a fabricator is of such size to print more than one drawing on a sheet of the size of the architect's drawings, this is acceptable. Sheets larger than the architect's drawings will not be accepted except when specifically permitted by MSA. Shop detail supplied on a sheet of letter size 8-1/2" x 11" is acceptable for schedules and small details.

D. **Items for which shop drawings will be required:** Shop drawings shall be required for all items which are specifically fabricated for the work or when the assembly of several items is required for a working unit. Shop drawings are required for all concrete reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster molds, moldings, marble and slate, special rough hardware and all heating, ventilating, plumbing and electrical items requiring special fabrication or detailed connections including refrigeration, elevators,

dumb waiters, laboratory equipment, ducts, fuel storage tanks, fire sprinkler systems, etc., or as indicated in the submittal register, if provided in the specifications.

E. Copies Required: Contractor shall supply ten (10) copies of shop drawings and material submittals for use by the architect and the MSA, in addition to such copies as the Contractor may desire to be returned for his own use.

F. Examination and Approval: The architect will examine and return shop drawings, material submittals, and requests for information with reasonable promptness noting desired corrections, or approving them with or without conditions, or rejecting them. The Contractor shall allow the architect and MSA up to 14 calendar days (unless a longer review time is identified in the contract documents) following receipt of each submittal or resubmittal of shop drawings, material submittals, and requests for information to review the documents and respond to the Contractor. The time for architect and MSA review shall be increased to the extent that additional time for review is needed due to the fault or responsibility of the Contractor or his Subcontractors and suppliers. The Contractor will be notified of the cause of the delay and advised of how long it will take to complete the review; provided however that mere failure to give the Contractor such notice shall not entitle the Contractor to compensation or a time extension.

G. Field Dimensions and Conditions: The Contractor is responsible for checking dimensions and existing conditions in the field. See also Section 3.04.

H. Resubmission: When the architect notes desired corrections, or rejects the drawings, the Contractor shall resubmit the drawings with proper corrective changes in a timely manner. MSA reserves the right to charge the Contractor its actual cost for review of resubmittals.

I. Contractor's Responsibility: Unless the Contractor has, in writing, expressly notified the architect and MSA to the contrary at the time of the submission, MSA and the architect may assume that shop drawings and other material submittals from the Contractor are in conformity with the contract documents and do not involve any change in the contract price, or any change which will alter the space within the structure, or alter the nature of the building or work from that contemplated by the contract documents, or constitute a substitution of materials or equipment or a change in the contract or the scope of work. If the Contractor fails to give notice strictly in accordance with this subsection, approval of any shop drawing or material submittal shall not be binding on MSA. See also Sections 5.01C and 5.03.

J. Notations by MSA or Architect: Should the Contractor consider any rejection or notation by MSA or architect on the shop drawings or other material submittals, or any other action or inaction of MSA or the architect, to cause an increase or decrease in the scope of the work from that required by the contract documents, the Contractor shall:

- (1) Desist from further action relative to the item he questions;
- (2) Immediately notify in writing the architect and MSA; and
- (3) Furnish both, within fourteen days, with a written statement of the increased or decreased cost involved.

No work shall be executed until the entire matter is clarified and the Contractor is ordered by MSA to proceed. Failure of the Contractor to serve written notice as above required shall constitute a waiver of any claim in relation thereto.

2.03 COST AND PRICE CERTIFICATION :

A. 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 smaller amount set by the Procurement Officer.

B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price 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.

SECTION 3 - SCOPE OF THE WORK:

3.01 INTENT OF THE CONTRACT DOCUMENTS:

It is the intent of the contract documents to show all of the work necessary to complete the project.

3.02 GENERAL CONDITIONS CONTROLLING:

In the 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. Nothing in the bid, proposal, or other submissions from the Contractor shall prevail over any contract documents unless expressly agreed to by the Procurement Officer in writing by a properly approved change order or contract modification.

3.03 DIFFERING SITE CONDITIONS:

A. The Contractor shall promptly, 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, or (2) unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Procurement Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work 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 (1) above; provided, however, the time prescribed therefore may be extended by MSA.

C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

3.04 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 MSA, 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. MSA assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by MSA.

3.05 CONDITIONS AFFECTING THE WORK:

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to MSA. MSA is not responsible for any representation or purported agreement concerning conditions or contract requirements made by any MSA employee or representative prior to the execution of this contract, unless such understanding or representation is expressly stated in the contract.

3.06 CHANGES:

A. Changes (COMAR 21.07.02.02)

(1) 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:

- (a) In the specifications (including drawings and designs);
- (b) In the method or manner of performance of the work;
- (c) In MSA-furnished facilities, equipment, materials, services, or site; or
- (d) Directing acceleration in the performance of the work.

(2) 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.

(3) Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(4) Subject to paragraph (6), 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 (2) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which MSA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(5) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he shall, within 30 days after receipt of a written change order under (1) above or the furnishing of written notice under (2) 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 MSA. The statement of claim hereunder may be included in the notice under (2) above.

(6) Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the 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.

(7) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

B. Miscellaneous

(1) In the event of a dispute between MSA and the Contractor as to whether any work is included in the scope of the contract such that the Contractor would be obligated to provide that work at no additional cost to MSA, the Procurement Officer may order the Contractor under this Section 3.06 to perform the work (a "Work Order"). If the Contractor considers such an order to be a change in the scope of the contract entitling the Contractor to additional compensation, a time extension, or other relief, the Contractor must provide the notice required by this section and initiate a claim therefore in accordance with contract requirements. An order of the Procurement Officer, by virtue of being called or referred to as a "change order," does not necessarily constitute a change in the scope of the contract or in the work required under the contract. The Contractor shall not be entitled to additional compensation, a time extension, or other relief for complying with an order of the Procurement Officer if the contract otherwise requires the Contractor to perform as stated in the order.

(2) A request by the Contractor for additional time or additional costs caused by the impact of an order of the Procurement Officer on the as-built critical path for completion must be accompanied by (a) a reasonably detailed description of the effect of the order on the adjusted as-planned/as-built critical path and (b) supporting documentation. The mere existence of a change order does not entitle Contractor to an extension of time, compensation for delay, or damages or costs associated with delay. Contractor's entitlement thereto shall depend upon the effect of the change order on the adjusted as-planned/as-built critical path for completion, even if a schedule other than a CPM schedule is used on the project, and shall be subject to the requirements of Section 7.06. A change order granting a time extension may provide (a) that the completion date will be extended only for specific critical activities, (b) that the remaining completion date(s) for all other portions of the work will not be altered, and (c) for an equitable adjustment of liquidated damages under the new required completion dates.

(3) Upon receipt of a signed written order of the Procurement Officer under this Section 3.06, the Contractor shall comply with the order promptly, within the requirements of the completion schedule, whether or not the Contractor signs or accepts the change order. Failure to comply with the order in a timely manner shall constitute a breach of the contract and grounds for termination for default or any other remedy available to MSA.

(4) MSA may issue a unilateral order on MSA's terms (including a promise to pay the Contractor a "not to exceed" ("NTE") amount) which the Contractor may then dispute in accordance with Sections 3.06A and 6.13. Pending resolution of such a dispute, Contractor must proceed diligently with performance of the contract as ordered by the Procurement Officer.

(5) The terms "not to exceed" and "NTE" when used in a change order mean that the amount of the change order (whether an increase or a decrease in the contract amount) will be a reasonable amount not to exceed the amount stated.

(6) The Change Order/Work Order form attached hereto is the form which will be used by MSA for all orders under this Section 3.06.

(7) Contractor shall use the attached PCO Cover Sheet when submitting all requests for change orders and contract modifications.

3.07 MODIFICATION OF CONTRACT PRICE:

When changes in the work require modification of the contract price, such modification shall be accomplished in accordance with the requirements of Section 3.06 and the following requirements:

- A. The Contractor shall promptly submit to MSA and to the architect a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.
- B. For all changes in the work to be performed by a Subcontractor, the Contractor shall furnish the Subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the Subcontractor authorized to act for the Subcontractor. If requested by MSA or the architect, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.
- C. Modification of the contract price, when required, shall be determined as follows:
 - (1) 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 twenty-five percent (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 due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Procurement Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of the delay, or within a further period of time which may be granted by the Procurement Officer before the date of final settlement of the contract, ascertain the facts and make the adjustment for extending the completion date as in his judgment the findings justify.
 - (2) A lump sum price agreed upon by both MSA and Contractor. This lump sum shall be supported by a fully itemized cost breakdown provided by the Contractor which shall include:
 - a) Labor;
 - (i) The wages to be paid for each and every estimated hour of work to be performed.
 - (ii) The estimated costs to be paid to or on behalf of workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work; and
 - (iii) An equitable percentage, to be determined by the Contractor and Procurement Officer, applied against the labor cost (premium pay and fringes excluded) for liability and worker's compensation insurance premiums, unemployment insurance contributions and FICA taxes on such labor cost.
 - b) Material; For materials to be used in accordance with the contract, acceptable to MSA, the Contractor shall document the estimated cost.

- c) Equipment; For any machine power tools or equipment (whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or those rates which may be specified elsewhere in the contract, or reasonable rates, whichever are less. Rates shall include fuel and lubricants which are necessary to execute the work required on the change.
- (3) If job conditions or circumstances, or the extent or nature of the change, or failure of MSA and the Contractor to agree upon a lump sum price or the application of unit prices, prevent the determination of the cost of any proposed change, the work shall be done on the basis of a Force Account, as hereinafter stated under Section 8.02 FORCE ACCOUNT WORK, if so ordered by MSA.
- (4) If the change involves a credit to MSA, unless the amount must be determined by the application of unit prices, then the amount of the credit shall be the greater of (a) the alternate or other itemized price for such work stated in Contractor's bid, or (b) a reasonable price, including overhead and profit.
- (5) If the change involves both a credit and a debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit.
- (6) The mark-up allowable to the Contractor for combined overhead and profit for work performed solely by the Contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs, excluding those items which may be included in overhead.
- (7) (a) The mark-up allowable to a Subcontractor for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the Subcontractor's overhead and five percent (5%) for the Subcontractor's profit, based upon the Subcontractor's costs of labor, materials, and equipment.
- (b) For work performed by a Subcontractor solely with his own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the Subcontractor's materials, equipment, and labor.
- (8) The cost of Supervisory Personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.
- (9) If the Contractor and MSA cannot agree as to the extent the contract time shall be increased for extra work or the extent the contract time shall be reduced for work omitted by MSA, the increase or decrease, as the case may be, shall be determined by the Procurement Officer based on the impact of the change, if any, on the as-built critical path for completion of the work, whether or not a CPM schedule is used.
- D. The allowable percentages of cost for overhead and profit as provided in 3.07C(6) and (7), 7.06P(3), and 8.02A, and all other applicable provisions of the contract, are deemed to include but not be limited to all costs and expenses of the following kinds: project management, supervision and coordination; job supervision and field office expenses required by the contract; expenses for supervisors, superintendents, managers, timekeepers, clerks and watchmen; cost of correspondence of any kind; insurance not specifically mentioned herein; all expenses in connection with the maintenance and operation of the field office; use of small tools (for purpose of definition, equipment with a new cost of \$500 or less will be considered "small tools.")), costs of vehicles generally used for transporting workmen, materials, tools, or equipment to job location, and other incidental costs; and all expenses of maintenance or operation of

Contractor's regularly established principal office, branch office, and similar facilities, and all other costs and expenses customarily classified as overhead.

- E. Contractor's entitlement to compensation or additional time for delays for which MSA is responsible or for which an extension is due the Contractor is also subject to Sections 3.06 and 7.06.
- F. No allowance shall be made to the Contractor for loss of anticipated profits on account of changes in the work.
- G. Execution of a written change order by Contractor, or failure of the Contractor to dispute the terms of a written order of the Procurement Officer strictly in accordance with contract requirements, shall be binding and conclusive and shall operate as an accord and satisfaction as to (a) all compensation payable to Contractor for the work associated with the change order, and (b) Contractor's right to an extension of the contract completion time. Contractor may not execute or accept a change order subject to any conditions or reservation of rights or claims which have not been agreed to in writing the Procurement Officer. Any attempt by the Contractor to impose such conditions or reservations shall not be binding on MSA. Contractor's sole remedy for disputing the terms of an order by the Procurement Officer or for making a claim is to strictly follow the procedures stated in this Section 3.07 and Sections 3.06 and 6.13.
- H. Whenever the Contractor is entitled to an increase in the contract price, the amount of the increase shall not include any amount for increased costs or premiums of bonds unless: (1) MSA requires an increase in the amount of the penal sum of the bond or bonds, (2) the Contractor actually incurs such cost, (3) the surety actually increases the penal sum of the bonds, and (4) MSA receives proof in satisfactory form that the surety has increased the penal sum of the bonds.

3.08 UNAUTHORIZED WORK:

The Contractor shall not be paid for any work outside the scope of the contract not authorized in writing by the Procurement Officer.

SECTION 4 - CONTROL OF THE WORK:

4.01 INTERPRETATION OF THE CONTRACT DOCUMENTS -- AUTHORITY OF THE ARCHITECT:

- A. The Procurement Officer shall be the final interpreter of the contract documents. He will furnish with reasonable promptness, through MSA or the architect, such clarifications as he may deem necessary for the proper execution of the work. Clarifications issued by the architect shall be consistent with the intent of the contract documents and, when in special instances the architect is authorized by MSA so to act, the architect has authority to stop work whenever such stoppage may be necessary to ensure the proper execution of the contract.
- B. Except as otherwise expressly provided in the contract documents, all decisions of the architect are subject to approval by MSA. The architect has no authority to waive or change the requirements of the contract documents except as provided in Section 3.07C(11) above.

4.02 CONFORMITY WITH CONTRACT REQUIREMENTS:

- A. All work performed and all materials furnished shall be in conformity with the contract requirements.

- B. In the event MSA finds the materials, or the finished product in which the materials are used or the work performed are not in complete conformity with the contract requirements and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.
- C. In the event MSA finds the materials or the finished product in which the materials are used are not in complete conformity with the contract requirements, but have resulted in a satisfactory product, it 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 will provide for an appropriate adjustment, if any, in the contract price.

4.03 ADJACENT WORK:

MSA shall have the right, at any time, to contract for and/or perform other work on, near, over or under the work covered by this contract. In addition, other work may be performed under the jurisdiction of another State agency. The Contractor shall cooperate fully with such other Contractors and carefully fit his own work to such other work as may be directed by MSA.

4.04 CONTROL BY THE CONTRACTOR:

The Contractor shall constantly maintain efficient supervision of the work, using his best skill and coordinating ability. He shall carefully study and compare all drawings, specifications and other instructions and check them against conditions existing or being constructed on the project. He shall at once report to MSA any error, inconsistency or omission which he may discover.

4.05 COORDINATION WITH UTILITIES:

- A. It is understood and agreed that the Contractor has considered in his bid all of the permanent and temporary utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by him due to any interference from the said utility appurtenances, the operation of moving them, the making of new connections thereto if required by the contract documents, or by other requirements of the utility company.
- B. The Contractor shall have responsibility for notifying all affected utility companies prior to performing any work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, water and power companies, or are adjacent to other property, damage to which might result in expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made by the Contractor.
- D. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication or rearrangement work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- E. In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authority and shall cooperate with the said authority in the restoration of service. No work shall be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

4.06 INSPECTIONS, TESTS, STATE INSPECTORS:

- A. As used in this section and elsewhere, wherever the context calls for it, “inspection” includes testing and/or approval of work.
- B. The Contractor shall, at his expense, maintain an adequate inspection system and perform, or cause to be performed, such inspections as are required by the contract (such as an electrical inspection from an independent (non-governmental) electrical inspection agency approved or licensed as required by law when required under the contract. The Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities - see General Condition Section 8.01E(2)(b)) or as otherwise will ensure that the work conforms to contract requirements. The Contractor shall maintain complete records of inspections and shall give MSA copies of these records as they are made. All work shall be conducted under the general direction of MSA and is subject to MSA inspection at all places and at all reasonable times to ensure strict compliance with the contract.
- C. If the contract, or any applicable laws, ordinances, regulations, or order of any public authority or agency having jurisdiction require any work to be specially inspected, tested or approved, the Contractor shall give MSA, the architect, and any other public authority or agency which must be present or which otherwise should be notified, timely notice (at least 14 calendar days) of readiness for inspection and, if the inspection is by an authority or agency other than MSA, the date of the inspection.
- D. MSA may charge the Contractor any additional cost of inspection when work is not ready at the time specified by the Contractor, or when prior rejection makes re-inspection necessary.
- E. All work, including fabrication and source of supply, is subject to inspection by the architect, MSA, and the State inspector. Inspectors for the State are not authorized to revoke, alter, or waive any requirements of the contract. Inspectors are authorized to call the attention of the Contractor to any failure of the work to conform to the contract, including but not limited to the existence of unsafe conditions, inadequate safeguards and exits, and nuisances. Inspectors are authorized to suspend the work or any portion of the work, at no additional charge to MSA, until resolution of issues concerning compliance with contract requirements.
- F. Inspections by MSA, State or the architect are for the sole benefit of MSA. Inspections by MSA, State or the architect, or the presence or absence of a State inspector or the architect at any inspection, or the failure of the State inspector or the architect to report any deviation by the Contractor from contract requirements shall not: (1) relieve the Contractor of responsibility for adequate quality control measures, compliance with contract requirements, or damage to or loss of material; (2) constitute or imply acceptance of any work; or (3) affect the continuing rights of MSA to hold Contractor responsible for failure to meet contract requirements.
- G. If MSA determines that any work requires special inspection not required by the contract, MSA may direct the Contractor to obtain such inspection and the Contractor shall do so. If the inspection reveals a failure of the work to comply with contract requirements, Contractor shall bear all costs of the inspection, including any additional compensation paid or payable to the architect and any other costs incurred by MSA. In all other cases, MSA shall bear such costs and an equitable adjustment shall be made to the contract price.
- H. Required certificates or other documentation of inspection shall be obtained by the Contractor and promptly delivered by him to the architect, MSA, and any other public authority or agency entitled thereto.

4.07 REMOVAL OF DEFECTIVE WORK:

- A. considered unacceptable.
- B. Any unacceptable or defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness, design error or omission by the Contractor or his Subcontractors and suppliers at any tier, or any other cause attributable to the Contractor or his Subcontractors or suppliers at any tier, shall be promptly removed and replaced by work and materials which shall conform to the contract requirements or shall be remedied otherwise in an acceptable manner authorized by MSA.
- C. Upon failure of the Contractor to comply promptly with the provisions of this section, MSA shall have authority to cause defective or unacceptable work to be remedied or removed and replaced and unauthorized work to be removed at the Contractor's expense.
- D. Any time lost by the Contractor for correction of work not in accordance with the contract shall be made up by the Contractor at his expense.

4.08 MAINTENANCE OF WORK DURING CONSTRUCTION:

- A. The Contractor shall maintain the work during construction and until Substantial Completion. This maintenance shall be continuous and effective, prosecuted with adequate equipment and forces to the end that all parts of the work be kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- B. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water, and material carried by such waters and such drainage shall be diverted or dispensed when necessary to prevent damage to excavation, embankments, surfaces, structures or property. Suitable measures shall be taken by the Contractor to prevent the erosion of soil in all construction areas where the existing ground cover has been removed. Such measures shall be in compliance with the requirements of any governmental entity having jurisdiction.
- C. All cost of maintenance work during construction and until Substantial Completion shall be included in the base bid and the Contractor will not be paid any additional amount for such work.
- D. In the event that the Contractor's work is halted by MSA under the provisions of the contract, the Contractor shall maintain the entire project as provided herein and provide such ingress and egress for local residents or tenants adjacent to the project site, for tenants of the project site, and for the general public as may be necessary during the period of suspended work or until the Contractor has been declared in default.
- E. On projects where traffic flow is maintained, the Contractor shall be responsible for repair and restoration of all traffic damage to the Work, either partially or totally completed, until such time as the Work is accepted by MSA.

4.09 FAILURE TO MAINTAIN ENTIRE PROJECT:

Failure on the part of the Contractor, at any time, to comply with the provisions of Section 4.08 may result in MSA notifying the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to remedy unsatisfactory maintenance promptly after receipt of such

notice, MSA may immediately proceed to maintain the project and the entire cost of this maintenance will be charged against the Contractor

4.10 STATE'S RIGHT TO DO WORK:

If the Contractor fails to prosecute the work properly or diligently or fails to perform any provision of the contract, MSA may make good such deficiencies at the Contractor's expense or terminate the contract for default under Sections 7.07 and/or 7.08, or both.

4.11 PROGRESS MEETINGS--SCHEDULING MEETINGS:

- A. **General** - The Contractor and his major Subcontractors shall hold and attend progress meetings with MSA and the architect (unless the architect's absence is excused by MSA) at the site at least monthly. MSA may require progress meetings to be held more frequently at no additional cost to MSA. Minutes of progress meetings shall be prepared and circulated by the architect.
- B. **Subcontractor Progress Meetings** - MSA and the architect must receive timely prior written notice of all progress meetings between the Contractor and its Subcontractors or suppliers at any tier. MSA and the architect may attend all such meetings. Contractor must keep minutes of all such meetings and must promptly provide MSA and the architect with copies of the minutes.
- C. **Scheduling Meetings** - See Section 7.06T.

SECTION 5 - MATERIALS

5.01 GENERAL:

- A. All materials shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the architect in writing, as soon as possible after execution of the contract by MSA, of the sources from which he proposes to obtain all materials requiring approval, testing, inspection, or certification prior to incorporation into the work.
- B. Materials include all: equipment; parts; products; methods of construction or of performing the work which may be the subject of a patent, copyright or other right or restriction governing its use; and processed and unprocessed natural substances required for completion of the contract. The Contractor, in accepting the contract, is assumed to be thoroughly familiar with the materials required and their limitation as to use and requirements for connection, setting, maintenance and operation. Whenever an article or material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed or accessory is normally considered essential to its installation in good quality construction, such shall be included as if fully specified. Nothing in these specifications shall be interpreted as authorizing any work in any manner contrary to applicable laws, codes or regulations.
- C. **Approval.** All materials are subject to the architect's approval as to conformity with the specifications, quality, design, color, etc. No work for which approval is necessary shall be used until written approval is given by the architect. Approval of a Subcontractor or supplier as such does not constitute approval of a material which is other than that included in the specifications. See also Sections 2.02I and 5.03.

- D. **New Materials.** Unless otherwise specified, all materials shall be new. Old or used materials must not be used as substitutes for new, regardless of condition or repair, unless approved in writing by MSA.
- E. **Quality.** Unless otherwise specified, all materials shall be of the best quality of the respective kinds.
- F. **Samples.** The Contractor shall furnish for approval all samples as directed and materials used shall be the approved samples.
- G. **Proof of Quality.** The Contractor shall, if requested, furnish satisfactory evidence as to the kind and quality of materials either before or after installation. He shall pay for any tests or inspections called for in the specifications and such tests as may be deemed necessary for "substitutions," as set forth in Section 5.03 of these General Conditions.
- H. **Standard Specifications.** When no specification or code is cited or otherwise applicable and the quality, processing, composition or method of installation of an item is only generally referred to, then:
- (1) For items not otherwise specified below, the applicable specification shall be the latest edition of the applicable American Society for Testing Materials specification.
 - (2) For items generally considered as plumbing and those items requiring plumbing connections, the applicable specification shall be the applicable portions of the latest edition of the State plumbing code.
 - (3) For items generally considered as heating, refrigerating, air-conditioning or ventilation, the applicable specifications shall be the applicable portions of the latest edition of the A.S.H.R.A.E. Handbook published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
 - (4) For items generally considered as electrical, the applicable specifications shall be the applicable provisions of the latest edition of the International Building Code and the National Electric Code.
 - (5) For items generally considered as fire protection, the applicable specifications shall be the applicable sections of the latest edition of the State Fire Prevention Code and the National Fire Protection Association Code.

5.02 STORAGE AND HANDLING OF MATERIALS:

- A. Materials shall be stored so as to assure the preservation of their quality and acceptability for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the project site may be used for storage purposes and for the placing of the Contractor's plant and equipment. At completion of the project such storage areas must be restored to their original condition by the Contractor at his expense.
- B. All mechanical and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors, which are not totally enclosed, and dry type transformers that are involved in the work, shall be stored in a heated area with a minimum temperature of fifty degrees Fahrenheit (50 F). All valves shall be stored under roof on wood pedestals, above ground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer and all requirements of the architect on oiling, protection and maintenance of equipment during storage. It shall be solely the Contractor's responsibility to safely store and care for all equipment and materials. Materials not properly stored prior to

installation shall not be considered for payment.

- C. Materials shall be handled in such a manner as to preserve their quality and acceptability for the work.
- D. Contractor shall confine his tools and equipment and the storage of materials to the area delineated in the contract documents as the "Limit of Contract."
- E. Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- F. **Explosives.**

- (1) Explosives shall not be stored upon any property belonging to MSA.
- (2) Should the Contractor desire to use explosives on any project he shall first receive written approval of MSA and obtain all permits required by law, at the Contractor's expense. The approval will stipulate the time, place and quantity to be used and manner of use.
- (3) The Contractor assumes all responsibility for injury to persons or property which may result from the use or transportation of explosives, as well as complying with any and all applicable statutes, ordinances, regulations and restrictions in relation to the use of explosives.

H. **Paints.**

- (1) Oil base paints and flammable liquids shall not be stored in large quantities on the project. Containers shall be limited to five gallon size. Any liquid with a flash point of less than one hundred (100) degrees Fahrenheit shall be contained in safety cans, UL approved. Liquid with a higher flash point shall be stored in rigid cans.
- (2) Oily rags, waste, etc., must be removed from the work site at the close of each working day.

5.03 SUBSTITUTIONS:

- A. Should the Contractor desire to substitute another material for one or more specified by name, he shall apply in writing for such permission and state the credit or extra involved with the use of such material.
- B. The Contractor shall not submit for approval materials other than those specified without a clear, express, written statement that such a substitution is proposed. Approval in any form or by any means of a substitute material by the architect or anyone else, when the Contractor has not so designated such material as a "substitute," shall not be binding on MSA nor release the Contractor from any obligations of his contract, unless MSA, in writing, expressly acknowledges the proposed substitution and approves it. See also Sections 2.02I and 5.01C.

5.04 APPROVED EQUAL:

- A. The terms "or equal," "equal," and "approved equal" are used as synonyms throughout the specifications. They are implied in reference to all manufacturers or products named in the specifications unless otherwise stated. MSA is the final judge as to equality. MSA does not represent or warrant under any circumstances that there exists an equal to any item specified or that an equal is readily available, even if the words "or equal" are used in the specifications.

- B. When several products or manufacturers are named in the specifications as acceptable for the same purpose or use, the Contractor may select any of those so named. However, all of the units of a given type required for and used in the project must be the same in material and manufacture.

5.05 BUY AMERICAN STEEL:

The Contractor must comply with the requirements of the Maryland Buy American Steel Act, Title 17, Subtitle 3 of SF&P and COMAR 21.11.02.

SECTION 6 - LEGAL RELATIONS AND RESPONSIBILITIES:

6.01 LAWS TO BE OBSERVED:

- A. The Contractor shall keep fully informed of all Federal, State, and local laws, ordinances, rules and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. He shall at all times observe and comply with all such laws, rules, ordinances, regulations, orders and decrees; he shall protect and indemnify MSA and its representatives against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by himself or his employees, Subcontractors or suppliers at any tier. Whenever the contract documents require the Contractor to comply with provisions of Federal, State, or local laws, regulations, ordinances or codes, Contractor must comply whether such laws, regulations, ordinances or codes are expressly incorporated into the contract or not.
- B. The Contractor must comply with the provisions of the Workers' Compensation Act and Federal, State and local laws relating to hours of labor.
- C. The provisions of this contract shall be governed by the laws of the State of Maryland.
- D. If the Contractor observes that the contract documents are at variance with any applicable law, ordinance or regulation, he shall promptly notify the Procurement Officer and the architect, and, except as provided in subsection E, any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice, he shall bear all costs arising therefrom.
- E. MSA is not responsible for the actions, orders or interpretations of Federal, county, municipal, or other local officials or representatives respecting the application to the work of Federal, State, or local laws, ordinances, regulations or codes. Contractor shall not be entitled to additional compensation for unanticipated costs of complying with any such actions, orders or interpretations.
- F. Compliance with Laws - the Contractor hereby represents and warrants that:
 - (1) 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;
 - (2) 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;

- (3) It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- (4) It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

6.02 PERMITS AND LICENSES:

- A. When required by law or the contract, MSA or its authorized representative will file with the appropriate local authority, drawings and specifications and any pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees to local authorities for inspection or for the privilege or right to execute the work as called for in the contract documents and he shall include the cost of said fees in his base bid. MSA shall not be responsible for the actions or interpretations of county, municipal, or other local agencies or officials respecting the application of Federal, State or local laws, rules, ordinances, regulations, codes, or policies to the work.
- B. The Contractor must be licensed as required by Title 17, Subtitle 6 or Title 8 of the Business Regulation Article, Annotated Code of Maryland.

6.03 PATENTS, COPYRIGHTS, TRADE SECRETS, AND PROTECTED MATTER:

- A. The Contractor assumes the risk that any materials, equipment, processes, or other items required under the contract or furnished by the Contractor (including the CPM software furnished to MSA under Section 7.06J(2)(1)) are subject to any patent, copyright, trademark, trade secret or other property right of another. The Contractor shall pay for all royalties and license fees and shall obtain all necessary licenses or permits to permit use of any such item by MSA. Contractor shall defend all suits or claims of infringement of any patent, copyright, trademark, trade secret or other property right of another and shall save MSA harmless from loss or expense on account thereof.
- B. When an item specified by MSA or furnished by the Contractor infringes or is alleged to infringe any patent, copyright, trademark, trade secret or other property right of another, the Contractor will, at his option, and at no additional cost to MSA, (1) procure for MSA the right to use the item; (2) replace the item with an approved, non-infringing equal; or (3) modify the item so it becomes non-infringing and performs substantially the same as the original item.

6.04 LAND, AIR AND WATER POLLUTION, AND EROSION CONTROL:

- A. The Contractor shall incorporate all permanent erosion control features into the work at the earliest practicable time and shall maintain them in proper condition during the course of the contract. Temporary pollution control measures will be used to correct conditions that develop during construction that were not foreseen during design, that are needed prior to installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices, but are not associated with permanent control features on the project.
- B. Temporary pollution control may include measures outside the project site where such work is necessary as a direct result of project construction. MSA shall be kept advised of all such off-site control measures taken by the Contractor. This shall not relieve the Contractor of responsibility for such work.

- C. The Contractor must submit evidence to MSA that the governing Federal, State and local air pollution criteria will be and were met. This evidence and related documents will be retained by MSA for on-site examination.
- D. If the performance of all or any part of the work is suspended, delayed, or interrupted due to an order of a court of competent jurisdiction as a result of environmental litigation, as defined below, or by the order of any State or Federal agency or official enforcing applicable laws, such suspension, delay, or interruption shall be considered as if ordered by the Procurement Officer under Section 7.09, Suspension of the Work. If it is determined that the suspension, delay, or interruption is due wholly or in part to acts or omissions of the Contractor in breach or violation of the terms of this contract or acts of the Contractor not required by this contract, Contractor shall be responsible for all additional costs and delays resulting from such acts or omissions.
- E. The term “environmental litigation,” as used herein, means a lawsuit alleging that the work will have an adverse effect on the environment or that MSA has not duly considered, either substantively or procedurally, the effect of the work on the environment.

6.05 INSURANCE REQUIREMENTS

- A. The Contractor shall maintain in full force and effect liability insurance necessary to cover claims arising from the Contractor’s operations under this Contract. The following types of insurance coverage shall be provided:
 - (1) Primary General Liability
 - (2) Umbrella Liability or Excess Liability
 - (3) Automobile Liability
 - (4) Workers’ Compensation
 - (5) Builder’s Risk (if expressly required by the Contract)
 - (6) Professional Design Errors & Omissions, if design services are provided by Contractor

Note: The Contract may require the Contractor to maintain other types of insurance.

- B. The insurance shall be kept in full force and effect until all work has been satisfactorily completed and accepted. Evidence of insurance shall be provided to MSA prior to the execution of the Contract by means of a Certificate of Insurance with copies of all endorsements attached or by certified copy of the complete policy with all endorsements. Failure to obtain or to maintain the required insurance or to submit the required proof of insurance shall be grounds for termination of the contract for default. Exclusion endorsement copies shall be attached to the Certificate of Insurance. The Certificate of Insurance shall be accompanied by a document (a copy of State License or letter from insurer) which indicates that the agent signing the certificate is an authorized agent of the insurer.
- C. The Contractor shall not commence work under this Contract until all the insurance required under this Subsection has been obtained and approved by MSA, nor shall the Contractor allow any Subcontractor to commence work on its subcontract until the insurance required of the Subcontractor has been obtained by the Subcontractor and approved by the Contractor. All Subcontractors shall be required in the subcontract documents to carry insurance for the line items described in the subcontract. The Contractor shall be responsible to determining appropriate limits for Subcontractors, and for enforcing insurance coverage requirements for its Subcontractors.

- D. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall be written on forms (including the actual wording of the policies and all endorsements) acceptable to MSA and with insurance companies that hold a current A.M. Best rating of A and that are duly licensed to transact the prescribed coverages in the jurisdiction in which the work of the Contract is to be performed.
- E. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall be endorsed to state that the insurance carrier shall provide at least sixty (60) days notice to MSA in the event of cancellation, non-renewal, or material change in the coverage, either by the insurance company or the Contractor.
- F. The General Liability and Umbrella Liability/Excess Liability insurance policies required by this Subsection or elsewhere in the contract Documents shall include endorsements stating that the State and MSA and any other entities designated by MSA are additional insured with respect to liability arising out of or resulting from the operations and completed operations of the named insured under the Contract.
- G. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall contain endorsements stating that such coverage as is provided by the policies for the benefit of the additional insured is primary and other coverage maintained by additional insured (if any) shall be non-contributing with the coverage provided under the policies.
- H. All insurance policies required by this Subsection or elsewhere in the Contract Documents shall contain waivers of subrogation in favor of the State and MSA and any other entity designated by MSA and shall provide that the bankruptcy or insolvency of the insured does not relieve the insurance company of its obligations under the policies.
- I. In the event any party maintains insurance with limits exceeding the limits required hereunder, the Certificates of Insurance provided to MSA shall state the full extent of the coverage available to the parties. Such excess liability coverage will inure to the benefit of the parties in the event of loss in excess of the minimum insurance required herein.
- J. If, during the term of the Contract, the Contractor fails to secure and maintain the required insurance, MSA shall have the right (without the obligation to do so) to secure the insurance in the amounts specified in the name of the Contractor, in which case, the Contractor shall pay all premiums, deductibles, self-insured retentions or other amounts associated with the insurance and shall furnish all information that may be required in connection with MSA purchasing such insurance.
- K. It is understood and agreed that the coverages and limits contained herein are the minimum requirements only. The Contractor is responsible for providing insurance coverage that meets the needs of the Contractor itself, its Subcontractors, sub-consultants, employees, and others as obligated in the Contract Documents. All insurance policies shall contain at a minimum the following provisions:
 - (1) Primary General Liability Insurance
 - (a) Coverage – The policy shall include provisions that offer protection against all risks and exposures, including without limitation:
 - (i) Premises and Operations Coverage
 - (ii) Products and Completed Operations Coverage
 - (iii) Blanket Contractual Liability Coverage, including any indemnity provisions
 - (iv) Broad Named Insured Endorsement
 - (v) Notice, Knowledge, and Unintentional Errors and Omissions Coverage

- (vi) Incidental Malpractice Coverage
- (vii) Independent Contractors Coverage
- (viii) Personal Injury Coverage
- (ix) Broad Form Coverage for damage to property of MSA, as well as other third parties resulting from the Contractor's Work
- (x) Any aggregate limits apply on a "per project" basis

(b) Limits of Liability – Minimum Limits of Liability dedicated to the Project of \$1,000,000 each occurrence.

(c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.

(d) Status of the State as Additional Insured – The Policy shall name the State and MSA and any other entities required by MSA as additional insured.

(e) Term of Coverage – The term of coverage shall be the full contract period. Contractor shall continue to name all additional insured for the entire Period.

(f) Other Coverage/Features – The Primary General Liability Insurance Policy and all Umbrella Liability/Excess Liability Policies are also subject to the following requirements:

(i) All policies shall include a provision that no act or omission of the Contractor or any party acting under its direction will affect or limit the obligations of the insurance company in respect of any additional insured.

(ii) All policies shall delete any warranty stating that coverage is null and void (or words to that effect) if the Contractor does not comply with the most stringent regulations governing the work under the Contract.

(iii) All policies must provide that the insurance company has the duty to adjust a claim and provide a defense.

(2) Umbrella Liability Insurance

(a) Coverage – Coverage shall be at least as broad as the underlying primary commercial general liability policy.

(b) Limits of Liability – Unless expressly modified by the Procurement Officer, Limit of Liability dedicated to the project in the amounts of \$1 million per occurrence shall be provided.

(c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.

(d) Status of the State as Additional Insured – The Policy shall name the State and MSA and any other entities required by MSA as additional insured.

- (3) Automobile Liability Insurance
- (a) Coverage – All vehicles used in conjunction with the Contract shall be insured.
 - (b) Limits of Liability – Minimum Limits of Liability, primary to Umbrella Liability coverage described above, in the amounts of \$1 million per occurrence and \$1 million aggregate shall be provided.
 - (c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.
- (4) Workers' Compensation
- (a) Coverage – Statutory Workers' Compensation as required by the State of Maryland. (b) Limits of Liability – Statutory.
- (5) Builder's Risk Insurance (and Installation Floater, if not included in Builder's Risk Coverage)
- (a) Named Insured – At a minimum the policy shall insure the Contractor, the State, MSA, and any other party with an insurable interest in the Project.
 - (b) Coverage – All risks of direct physical loss of or damage to the property (including without limitation perils of flood). Coverage shall be as broad as possible with respect to both covered property interests and covered locations. All covered locations shall be named, and shall include the contract number and project description. Coverage applies to all materials, supplies, and equipment that are consumed on or intended for specific installation in the Project while such materials, supplies and equipment are located at the Project site. If the Builder's Risk Policy does not cover materials onsite that have not yet been installed, Contractor shall also provide an Installation Floater. Contractor shall comply with any requirements in the Policy for project reports by the Contractor to the insurance company. The Builder's Risk Policy shall be endorsed: (i) waiving the insurance company's rights of recovery under subrogation against all insureds and additional insureds on the policy; (ii) to make MSA a Loss Payee for all claims; and (iii) to delete any provisions that void coverage with respect to MSA for acts or omissions of the Contractor or any other party.
 - (c) Limits of Liability – Full replacement cost of the structure under construction, plus debris removal coverage and ordinance coverage for all risk perils, and cost of materials onsite that have not yet been installed. Any sub-limits must be clearly identified, and are subject to prior approval by MSA.
 - (d) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.
- (6) Design Errors & Omissions (applicable only to projects where Contractor is also providing Design Services).
- (a) Coverage – Work done or to be done by or on behalf of the Contractor and covering errors and omissions.

- (b) Limits of Liability – Limits of Liability dedicated to the project in the amounts of \$1 million per occurrence and \$2 million aggregate shall be provided.
- (c) Deductibles/Self-Insured Retentions – The Contractor is responsible for payment of all deductibles or self-insured retentions and shall include and specifically identify in its bid any amounts that it expects to pay for deductibles and/or self-insured retentions.
- (d) Status of the State as Additional Insured – The Policy shall name the State and MSA and any other entities required by MSA as additional insured.

6.06 INTENTIONALLY OMITTED

6.07 SEPARATE CONTRACTS:

- A. MSA reserves the right to let other contracts in connection with or adjacent to this work. (See also Section 4.03.) The Contractor shall afford other Contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate his work with theirs. The Contractor is entitled to no overhead, profit, or other compensation for work done for MSA by other Contractors.
- B. If any part of the Contractor's work depends on proper execution or results of the work of any other Contractor, the Contractor shall inspect and promptly report to MSA and the Architect any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other Contractor's work as fit and proper for the reception of his work, except as to the defects which may develop in the other Contractor's work after the execution of his work.
- C. To ensure the proper execution of his subsequent work, the Contractor shall measure work already in place and shall at once report to the architect and MSA any discrepancy between the executed work and the drawings.

6.08 RELATIONSHIP OF CONTRACTOR TO PUBLIC OFFICIALS AND EMPLOYEES:

- A. In carrying out any of the provisions of the contract, or in exercising any power or authority granted to them by or within the scope of the contract, there shall be no liability upon the Procurement Officer or other authorized representatives of the State, it being understood that in all such matters they act solely as agents and representatives of the State.
- B. MSA may terminate the contract for default or hold the Contractor liable for damages for breach of the contract as provided in subsection C if it is found by the Procurement Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of MSA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending of the contract, or the making of any determinations with respect to the performance of the contract.
- C. In the event this contract is terminated for default or the Contractor is held liable for damages as provided in subsection B hereof, MSA shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a termination for default or a breach of the contract by the Contractor, and (2) in addition to any other damages to which it may be entitled, to exemplary damages in an amount (as determined by the Procurement Officer) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

- D. Non-hiring of officials and employees - No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee 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.

6.09 NO WAIVER OF RIGHTS -- STATE'S REMEDIES CUMULATIVE -- STATE'S DAMAGES:

- A. MSA shall not be precluded or estopped by any measurement, estimate, change order, contract modification, certificate of payment, or payment from showing the true amount and character of the work furnished by the Contractor, or from showing that any measurement, estimate, change order, contract modification, certificate of payment, or payment is untrue or was incorrectly made, or from showing that the work does not in fact conform to the contract. MSA may recover from the Contractor or his sureties, or both, such damages, loss, or additional expense incurred as a result of any such error in measurement, estimate, change order, contract modification, certificate of payment, or payment as a result of such failure to conform to the contract. MSA's rights in this respect shall not be waived or barred by any inspection, acceptance or approval of the work, or by payment therefore, or by granting an extension of time, or by taking possession, or by execution of a change order based on the erroneous measurement, estimate, or change order, contract modification, certificate of payment, or payment.
- B. The activities of the architect and MSA personnel respecting this contract, including inspection of the work, review of submittals, monitoring of progress, and so forth are for the benefit of MSA only and are not for the benefit of the Contractor. MSA's failure to bring to the attention of the Contractor deficiencies in the work or the Contractor's performance will not constitute waiver or excuse of the Contractor's failure to comply strictly with contract requirements.
- C. The waiver by the Procurement Officer of any breach of contract by the Contractor shall not operate as a waiver of any other or subsequent breach.
- D. The rights and remedies of MSA and the obligations of the Contractor under various provisions of the contract documents and under provisions of applicable law are cumulative and not exclusive.
- E. For any claim or cause of action accruing to MSA as a result of or arising out of this contract, MSA may collect damages of any kind, including consequential damages and damages for purely economic loss.

6.10 SOLICITATION WARRANTY -- CONTINGENT FEE PROHIBITION:

The Contractor, architect, or engineer (as applicable) 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, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

6.11 ASSIGNMENT OF ANTITRUST CLAIMS:

The Contractor sells, transfers and assigns to the State of Maryland all rights, title and interest of, in and to any causes of action arising at any time before the date of this assignment or during the performance of this contract under the antitrust laws of the United States, including Section 1 of the Sherman Act, and the antitrust laws of Maryland relating to the purchase by Contractor or the State of Maryland of any products from any supplier or source whatever that is incorporated in the structure built under the terms of this contract. The Contractor hereby certifies that the above causes of action are lawfully owned and that no previous assignment of same has been made nor has the same heretofore been attached or pledged in any manner whatsoever.

6.12 FEDERAL PARTICIPATION:

When the United States government pays all or any portion of the cost of a project, the work may be subject to inspection by Federal agencies. Such inspection shall in no sense make the Federal government a party to this contract.

6.13 DISPUTES AND CONTRACT CLAIMS:

- A. All disputes arising under or as a result of a breach of the resulting Contract which are not disposed of by mutual agreement shall be resolved in accordance with this Section 6.13.
- B. When a controversy cannot be resolved by mutual agreement, the Contractor shall submit a written request for a final decision to the Executive Director. The written request shall set forth all of the facts surrounding the controversy.
- C. The Executive Director shall render a written decision within 90 days of receipt of the Contractor's written request for final decision, unless the time is extended by mutual agreement of the parties to this Contract. This decision shall be furnished to the Contractor by certified mail, return receipt requested or by any other method that provides evidence of receipt. The decision shall be deemed the final action of MSA. If a decision is not issued within 90 days, or within such extension of time as may be agreed upon by the parties to the Contract, it shall be deemed a decision not to grant the relief requested by the Contractor.
- D. Pending resolution of the claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's direction.

6.14 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATION :

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. MSA 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.

6.15 INTENTIONALLY OMITTED

6.16 STATE PROPERTY NOT SUBJECT TO LIEN:

Neither the Contractor nor any Subcontractor or supplier at any tier may have or acquire any lien against State property.

6.17 STATE NOT SUBJECT TO LIMITATIONS:

The State is not bound by laches or any statute of limitations or repose, and Contractor may not assert laches, limitations, or a statute of repose as a defense against any claim or action brought by the State.

6.18 CONFLICT OF INTEREST:

The contract is subject to the provisions of Section 13-212 of SF&P and COMAR 21.05.08.08, Conflict of Interest.

6.19 CENTURY COMPLIANT SOFTWARE, ETC.:

A. "Century compliant" means that a product or item:

- (1) Is able to process date data accurately including date data century recognition, calculations that accommodate same century and multi-century formulas and date values (including leap year factors), and date data interface values that reflect century when used either in a stand-alone configuration or in combination with other century compliant products used by MSA; and
- (2) Will not abnormally terminate its function or provide or cause invalid or incorrect results due to incompatibility with the calendar year.

B. The Contractor warrants that the electronic products and components, including computers, software, and other devices and materials, provided or developed under this contract are century compliant. Contractor agrees to promptly repair or replace any product furnished under this contract that is not century compliant, provided MSA give Contractor notice of breach of the warranty within a reasonable time after discovery.

C. The warranty provided by this section is in addition to any other warranties provided by law or this contract.

6.20 COMMERCIAL NONDISCRIMINATION POLICY:

A. As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for Subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, 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.

Note: Paragraph 6.20A must be incorporated into every subcontract entered into under this contract.

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

SECTION 7 - PROSECUTION, PROGRESS, AND QUALITY OF THE WORK:

7.01 NOTICE TO PROCEED:

After the contract has been executed, MSA will issue to the Contractor a "Notice to Proceed" and this notice will stipulate the start date on which the Contractor is expected to begin work. The specified contract time shall begin on the start date stated in the "Notice to Proceed." Except as provided in Section 7.06Q(1), any work started or materials ordered before the start date stated in the "Notice to Proceed" shall be at the risk of the Contractor. The Contractor is prohibited from doing any work on the site without the insurance required by this contract.

7.02 PROJECT SIGNS AND INSPECTOR'S FIELD OFFICE:

A. Project Sign:

- (1) At its discretion, MSA may provide a project sign for each major entrance to the project. If MSA requires signs in the project specifications, the Contractor shall be responsible for transportation of the sign from its place of origin, placement and maintenance of the sign. The location of signs will be directed by MSA.
- (2) Posts for sign(s) shall be supplied by the Contractor and made of 4 x 4 inch construction-grade lumber, pressure preservative treated, 10 feet long. The sign(s) shall be bolted to the posts using at least two 1/2 inch bolts per post. Washers shall be used between the bolts and the sign faces and the posts and nuts. The posts shall be set into the ground to a depth of three feet, six inches with the bottom of the signs two feet six inches above the ground. (3) The Contractor shall be responsible for removing the sign(s), restoration of the site and disposal of the sign(s) as directed by MSA.

B. Inspector's Field Office:

If MSA requires in the project specifications, the Contractor shall furnish and maintain, at his cost and for MSA's exclusive use, an inspector's field office. Specific requirements will be described in the specifications.

7.03 PUBLIC CONVENIENCE AND SAFETY:

The Contractor at all times shall conduct the work in such a manner as to create the least practicable obstruction to all forms of traffic. The convenience of the general public, tenants, and of the residents along and/or adjacent to the improvement shall be respected. Material stored upon the project site shall be placed so as to cause a minimum of obstruction to the public. Sprinkling to inhibit dust shall be performed by the Contractor at no additional cost to MSA. The Contractor shall, unless otherwise specified, provide and maintain in passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction and shall provide and maintain in a safe condition temporary approaches to, and crossings of, the project. Existing facilities planned to be removed, but which might be of service to the public during construction, are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire apparatus at all times, and no material or obstruction shall be placed within 15 feet of any such hydrant. Work closed down for the winter or at any other times shall be left entirely accessible at all points to fire apparatus. All footways, gutters, sewer inlets and portions of the project under construction shall not be obstructed more than is absolutely necessary.

7.04 BARRICADES AND WARNING SIGNS:

- A. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other control devices, and shall take all necessary precautions for the protection of the work and safety of the public. All highways and other facilities closed to traffic shall be protected by effective barricades, and obstructions shall be illuminated during hours of darkness with electric lights.
- B. The Contractor shall erect warning signs prior to any place on the project where operations may interfere with the use of the facility by vehicular or pedestrian traffic, and at all other points where the new work crosses or coincides with an existing roadway or traffic lane(s). Such warning signs shall be constructed and erected in accordance with the FHWA Manual on Uniform Traffic Control Devices, or as directed.
- C. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular or pedestrian traffic, the Contractor will, at no additional cost to MSA, provide suitable guardrails.

7.05 PRESERVATION, PROTECTION AND RESTORATION OF PROPERTY:

- A. The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the State property from injury or loss arising in connection with this contract. He shall repair and indemnify MSA and the State against any such damage, injury or loss, except such as may be directly and solely due to errors in the contract documents or caused by agents or employees of MSA. He shall adequately protect adjacent property as provided by law and the contract documents.
- B. The Contractor shall box all trees which are liable to be injured by the moving, storing and working up of materials. He shall use no tree for any attachment or anchorage.
- C. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

- D. To the extent permitted by law, in any emergency affecting the safety of life, or of the work, or of the adjoining property, the Contractor, without special instruction or authorization, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury.

7.06 PROGRESS SCHEDULE -- DELAYS:

- A. (1) All time limits in the contract documents are of the essence of the contract.
- (2) Contractor and MSA agree that the time stated in the contract for the completion of the work is a reasonable time, considering the climatic range and the usual business conditions prevailing in the locality of the project. The contract time shall be the full time allowed or required for completion of every task involved in completion of the work, including lead-time for ordering and fabrication of equipment and materials.
- (3) This project is subject to limited funding and tight budgeting. MSA's budgeting, including budgeting for expenses of operation after completion and for payment to the architect and others working on the project, is based on the contract extending for the full time allowed by the contract for completion. MSA is not obligated (a) to accept an early completion schedule from the Contractor, or (b) to accept the project prior to the completion date of the contract. MSA will not be liable for any claims based on the Contractor's assertion of an intention to finish early.

B. Preliminary Network Diagram.

- (1) Unless the contract documents expressly state otherwise, the Contractor is to furnish a preliminary network diagram.
- (2) Within 14 days of the execution of the contract, Contractor must submit a preliminary critical path network (CPM) diagram outlining activities for the first 90 days of construction. Include a skeleton diagram for the remainder of the work with the preliminary diagram. This preliminary diagram must be approved prior to the first requisition being process. Include each significant construction activity. Coordinate each activity in the network with other activities. Schedule each construction activity in proper sequence.
- (3) The diagram must be cost-loaded and will be used as the basis for approval of requisitions. Requisitions submitted must be accompanied by an updated, cost-loaded schedule. The requisition amount must agree with the amount shown by the cost-loaded CPM.
- (4) With submission of the preliminary network diagram, include a tabulation by date of submission of submittals required during the first 90 days of construction. List those required to maintain orderly progress of the work, and those required early because of long lead time for manufacture or fabrication.
- (5) Distribute the preliminary network diagram to all parties that need to know about construction activities that are scheduled early, including the Architect and MSA.

C. Completion Schedule.

- (1) Within 30 days after contract execution and at such other times as required by subsections E and H on next page, the Contractor shall submit a schedule indicating the time allocated by the Contractor for the performance of each portion of the work, the submittal information required by subsection D, the dollar value of each work item (dollar loading) properly and reasonably sequenced, and the Contractor's labor

requirements (labor loading) for achieving each task shown on the schedule. The schedule shall show completion of the work within the contract time. MSA may decline to issue a Notice to Proceed until Contractor has submitted the required schedule and it is approved by MSA. Nothing in this section shall be construed to require MSA to issue Notice to Proceed when the required schedule has been submitted and approved.

- (2) (a) Contractor shall also submit, with the schedule required under (1) above,
 - (i) a written narrative explaining the bases of Contractor's determinations of durations and prices for major work activities and describing Contractor's approach for meeting the completion dates for major work activities and contract completion;
 - (ii) a listing of the major items of construction equipment planned for use on the project (including type, number of units, unit capacities, and a schedule showing the proposed time each piece of equipment will be on the job, keyed to the activities on which the equipment will be used);
 - (iii) identification of activities which may be expedited by use of overtime or additional shifts;
 - (iv) identification of sequencing and other restraints such as manpower, material, and equipment;
 - (v) a listing of the proposed work days, holidays and any special non-work days being used for the computer reports (schedules and updates).
 - (b) If required by MSA, such explanation shall include (at no additional cost to MSA) estimated quantities and production rates, hours per shift which are proposed, unit prices of materials, and prices of installed equipment.
- D. The Contractor's schedule shall include as separate work activities, all necessary activities relating to submittals, including but not limited to the work or materials covered by the submittal, the Subcontractor involved, the submittal required, the activity or event number as shown in the CPM schedule (if required), and all necessary dates for submittal, review and response, resubmittal (if necessary), and final approval by MSA.
- E. Subject to the requirements of subsection J, Contractor shall submit with each application for payment a revised schedule accurately updated to reflect all: (1) revisions to the schedule; (2) changes made or planned in the construction sequence; (3) actual construction activities to date including (i) commencement and completion dates for activities started or completed during the reporting period, (ii) current progress of activities started in prior reporting periods including completion dates for activities completed during the reporting period; (4) delays and their effects on the critical path (whether or not a CPM schedule is required); (5) extensions of time granted by MSA; (6) the Contractor's planned schedule for completing remaining activities; and (7) adjustments to the dollar loading and labor loading associated with items (1) through (5) above. This required schedule update shall be furnished monthly whether or not Contractor submits an application for payment in that month.
- F. All of Contractor's schedules, including monthly schedule updates and recovery schedules under subsection H, shall be reviewed by the architect and MSA and shall be approved or rejected by MSA. Approval by MSA of any schedule submitted under this Section 7.06 shall constitute approval of the schedule only for general conformity with contract requirements and shall not constitute approval, acceptance, or admission of the reasonableness, accuracy, achievability, or feasibility of the schedule or of the Contractor's ability to meet the schedule, or waiver or excuse of default or delay by the Contractor, extension of the time for completion, waiver or modification of contract requirements, admission of fault or responsibility for delay on the part of MSA or the architect, or acceptance or admission on the part of MSA of any

liability or responsibility for the schedule or for acceleration or other costs or delay damages of the Contractor which are inferable from the Contractor's schedule or update.

- G. Contractor agrees that accurate schedules and updates are critical to MSA's ability to complete the project efficiently and economically; to judge the impact of alleged delays, differing site conditions, change orders and other events; and to deal fairly with the Contractor. If the Contractor fails to submit reasonable and accurate preliminary network diagrams, schedules, or revisions, including recovery schedules under subsection H, as required by the contract: (1) MSA is not obligated to pay the Contractor for work completed until proper, accurate diagrams, schedules, and updates are furnished as required; and (2) MSA is not liable for and Contractor is not entitled to damages, compensation, or time extensions for delays starting, occurring or continuing during the period when an accurate and reasonable schedule or update was due but not furnished by the Contractor.
- H. Whenever the project shall be behind schedule or alleged by either party to be behind schedule, MSA may require the Contractor to furnish, at no additional cost to MSA, a revised schedule (hereinafter called a "recovery schedule") showing how the Contractor will finish the work by the contract completion date. This revised schedule shall include all of the information required under subsection E above, subject to the requirements of subsection J.
- I. The Contractor's construction schedule shall begin with the Start Date provided in the Notice to Proceed and conclude with the date of contract completion. Except as provided in Section 7.06B(2), float or slack time available in the schedule at any time shall not be for the exclusive use or benefit of either the Contractor or MSA, but is jointly owned. Delay for which MSA is responsible in any portion of the work shall not automatically mean that the extension of the contract completion date is warranted or due the Contractor. Contractor agrees that a delay in any given activity at any given time may not necessarily affect critical activities and may not necessarily cause non-critical activities to become critical. The effect of any given delay may be only to absorb float and may not necessarily delay critical activities. Subject to Section 7.06B(2), extensions of time for delays for which MSA is responsible will be granted only to the extent that affected activities exceed the total float along their paths on the current approved CPM schedule.
- J. **CPM Scheduling.**
 - (1) Unless the contract documents expressly permit the Contractor to use a schedule other than a CPM schedule, the schedules to be furnished by the Contractor under this Section 7.06 shall be CPM schedules. Contractor's CPM schedule must be submitted within 30 days after the contract is executed. Following rejection by MSA or conditional approval subject to correction, Contractor shall make the necessary corrections, and resubmit proper schedules within 14 calendar days. Contractor may use only CPM schedule software approved by MSA.
 - (2)
 - (a) Scheduling of construction is the responsibility of the Contractor. CPM scheduling is required to assure adequate planning and execution of the work and to assist MSA, the architect and the Contractor in evaluating the progress of the work and the impact on the schedule of events which could affect the completion date.
 - (c) Logic or network diagrams shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. These diagrams must show how the start of a given activity is dependent on preceding activities and how its completion restricts the start of following activities.
 - (d) Detailed logic or network activities shall include, in addition to construction

activities, the submittal and approval of samples of materials and shop drawings, the procurement of critical materials and equipment and their installation and testing. All activities of MSA and the architect that affect progress, and contract required dates for completion of all or part of the work will be shown.

- (d) The selection and number of activities shall be subject to MSA approval. Logic or network diagrams need not be time scaled but shall be drafted to show continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event number, description of the activity, cost loading, labor loading, and activity duration in calendar days. Schedules shall be plotted so they can be displayed on a wall eight feet high. A summary schedule, plotted on a single sheet, shall be provided also.
- (e) The mathematical analysis of the network shall include a tabulation of each activity. The following information will be furnished, at a minimum, for each activity:
 - (i) I, J numbers if Arrow Diagramming Method (ADM) is used.
 - (ii) Activity and Precedence relationships if Precedence Diagramming Method (PDM) is used.
 - (iii) Activity Description.
 - (iv) Estimated duration of activity (in calendar days).
 - (v) Percent of activity completed.
 - (vi) Earliest start date (by calendar date).
 - (vii) Earliest finish date (by calendar date).
 - (viii) Actual start date (by calendar date).
 - (ix) Actual finish date (by calendar date).
 - (x) Latest start date (by calendar date).
 - (xi) Latest finish date (by calendar date).
 - (xii) Float or slack (in calendar days).
 - (xiii) A monetary value of each activity.
 - (xiv) Subcontractor responsible for each activity.
 - (xv) Labor requirements for each activity.
- (f) Work elements should be broken down into activities of durations of from 1 to 21 calendar days. No activity should ever represent more work than can be accomplished in 21 calendar days.
- (g) The analysis shall list the activities in sorts or groups as follows:
 - (i) By the preceding event number from lowest to highest and then in order of the following event number; (ii) By the amount of float, then in order of preceding event number;
 - (iii) In order of latest allowable start dates, then in order of preceding event numbers; and
 - (iv) In order of latest allowable finish dates, then in order of preceding event numbers.
- (h) In addition to the requirements of subsection E, updates shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payments made to the Contractor will be based on the total value of such activities completed or partially completed after verification by MSA and the architect, and this updated

schedule analysis shall be used as a basis for partial payment. The update will state the percentage of the work actually completed and scheduled as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative float shall also be reported. The Contractor also shall submit a narrative report with the updated analysis which shall include but not be limited to a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.

- (i) Sheet size of diagrams shall be 30 by 42 inches. Each updated copy shall show a date of the latest revision, and the date of the latest updating.
 - (j) All schedules, including the initial schedule, recovery schedules, and monthly updates, shall be submitted in three (3) paper copies and one (1) copy on diskette.
 - (k) The Contractor shall be prepared to effect schedule revisions in the network in response to changes to the contract under the terms thereof, at the direction of MSA. In the event that change orders are experienced, they shall be reflected as new activities in the network, or as changes in logic and/or time framing of existing activities. They shall be introduced at the next updating after receipt of a change order, and shall be subject to the approval of MSA. Change order logic shall affect only those activities and performance dates directly concerned. Adjustments to the completion date for those activities, or to the completion date for the contract as a whole, will be considered only to the extent that there is not sufficient remaining float to absorb the additional time which may be authorized for completion of individual activities.
- (3) When the first schedule is furnished, Contractor shall also furnish to MSA, for MSA's permanent use and retention, the CPM scheduling software used by the Contractor for scheduling the project and one copy of an operating or user's manual for using the software.
- (4) (a) CPM schedules and updates, including recovery schedules, shall include the following:
- (a) lists of activities showing early and late start and finish dates;
 - (b) a brief time-impact comparison in graph form (preferably on one page) comparing the critical path as-built to date and as-planned for the remainder of the work (as shown on Contractor's last schedule or update) with the critical path as-built and as-planned as of the time of the schedule or update currently being submitted; and
 - (c) all other information normally provided in a reasonable CPM schedule or update.
- (b) Logic or network diagrams must be furnished
- (1) with the first schedule submitted under this subsection J,
 - (2) with recovery schedules submitted under subsection H,
 - (3) if requested by MSA with each monthly update submitted under subsection E, and
 - (4) whenever the Contractor changes the sequence of work, whether diagrams are requested by MSA or not.

- K. Delays set forth in Section 7.07D(1) shall be noncompensable even if an extension of time is granted.
- L. Except as may be expressly agreed otherwise by the Procurement Officer in writing, no action or inaction by MSA or its representatives shall constitute a grant of an extension of the completion date or the waiver of a delay or other default by the Contractor or agreement of MSA to pay for alleged delays or acceleration of construction, including: (1) a request for a revised schedule, a recovery schedule, or an anticipated completion date from Contractor; (2) allowance, approval or acceptance of any schedule; (3) failure to terminate for default at an earlier date; or (4) demand that the Contractor finish the project by the required completion date or by any subsequent date promised by the Contractor.
- M. Contractor must take all reasonable action to avoid or to mitigate the effects of delays, including but not limited to: (1) rescheduling or resequencing the work, (2) accepting other work and (3) reassigning personnel. When the Contractor is responsible for any delay, MSA may order the Contractor to accelerate construction, work overtime, add additional shifts or manpower, work on weekends, or to do anything else reasonably necessary in order to finish on time, at no additional cost to MSA. The Contractor does not have the unilateral right to complete the work late and pay liquidated or other damages.
- N. Failure of the Contractor to request, as required by Section 3.06B and this Section 7.06, a time extension to which he might otherwise be entitled, shall constitute a waiver of Contractor's right to an extension of the required completion date.
- O. Liquidated Damages
- (1) 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 if applicable to the project 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.
- (2) Prior to and after the contract completion date, MSA may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgment of MSA, is behind schedule so as not reasonably to be able to complete the contract on time. Due account may be taken of excusable delays and for delays for which MSA is responsible, provided that the Contractor has properly requested time extensions therefor. After submission of a bid, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.
- P. (1) The term "delay" shall mean any act, omission, occurrence, event, or other factor which necessarily extends the time reasonably required for completion of the contract. This Section 7.06 covers every such act, omission, occurrence, event, or other factor, whether called delay, disruption, interference, impedance, hindrance, suspension, constructive suspension, extension or otherwise.
- (2) Whenever MSA shall be liable to the Contractor for an equitable adjustment for delay, the amount of the equitable adjustment shall be determined in accordance with this subsection P and other applicable provisions of this Section 7.06.

- (3) Only the following items may be recoverable by the Contractor as compensation or damages for delay: (a) direct costs, consisting of (i) actual additional salaried and non-salaried on-site labor expenses; (ii) actual additional costs of materials; (iii) actual additional equipment costs, based solely on actual ownership costs of owned equipment or actual reasonable costs of rented or leased equipment; (iv) actual additional extended field office expenses, excluding those which are to be included in overhead; (v) actual additional reasonable costs of Subcontractors and suppliers at any tier for which the Contractor is liable, subject to 3.07C(7)(a); (b) actual additional costs, proven by clear and convincing evidence, resulting from labor or other inefficiencies proven by clear and convincing evidence; and (c) an additional percentage, determined in accordance with Section 3.07C(6) and (7)(b), of the total of items (a)(i) through (v) above, for overhead and profit.
- (4) No other compensation or damages are recoverable by Contractor for compensable delays or extensions of the completion time except as expressly stated in this subsection P. In particular, MSA will not be liable for the following (by way of example and not of limitation) whether claimed by the Contractor or by a Subcontractor or supplier at any tier: (a) profit in excess of that provided herein; (b) loss of profit; (c) home office or other overhead in excess of that provided herein; (d) overhead calculated by use of the Eichleay formula or similar formulae; (e) consequential damages of any kind, including loss of additional bonding capacity, loss of bidding opportunities, and insolvency; (f) indirect costs or expenses of any nature except those expressly provided for herein; and (g) attorneys fees, costs of claims preparation and presentation, and costs of litigation.
- (5) There shall be deducted from the compensation payable to the Contractor under this section for delay any and all costs, expenses, and overhead recovered or recoverable by the Contractor under change orders issued to the Contractor or otherwise recovered or recoverable by the Contractor.
- (6) Contractor shall be entitled to no compensation or damages for delay unless, within ten (10) calendar days of the act, omission, occurrence, event or other factor alleged to have caused the delay, the Contractor notifies the Procurement Officer in writing of (a) the alleged delay and its anticipated duration, and (b) the act, omission, occurrence, event or other factor allegedly causing the delay. Knowledge on the part of MSA of the act, omission, occurrence, event, or other factor, or of the delay allegedly resulting therefrom, shall not excuse Contractor's failure to give the Procurement Officer the notice required by this subsection P(6).

Q. (1) Except as provided in paragraph 2 below, if MSA fails to issue a Notice to Proceed within 90 days following execution of the contract by MSA, or by such date later than 90 days as may be contemplated by the solicitation documents, the Contractor will have as its sole remedy the option of: (a) declaring the contract void without any liability or obligation on the part of MSA except that if MSA fails to issue a Notice to Proceed for reasons unrelated to submission, review, and acceptance of the submittals required by Section 7.06(B)&(C), MSA shall reimburse the Contractor its actual costs of developing same; or (b) accepting an extended period, at no additional cost to MSA, for issuance of a Notice to Proceed.

(2) If the failure of MSA to issue a Notice to Proceed within 90 days following execution of the contract by MSA, or by such date later than 90 days as may be contemplated by the solicitation documents, is caused, wholly or in part, by breach or default of the Contractor or other fault of the Contractor or his Subcontractors or suppliers at any tier, the

Contractor shall be entitled to no relief under paragraph (1) above based on delay in issuance of the Notice to Proceed. In such a case, the Contractor shall be bound to perform the contract within the time allowed following actual issuance of the Notice to Proceed, at no additional cost to MSA.

- R. Requests for time extensions must be filed and supported as provided in Section 3.06 and other applicable provisions of the contract.

S. Weather

(1) Definition of rain days and drying days.

(a) Rainfall sufficient to result in a workday being potentially lost due to rain (rain day) shall be defined as liquid precipitation greater than .10 inch.

(b) It shall be considered normal for the workday immediately following a rain day of precipitation greater than 1.00 inch to potentially be lost due to wet ground conditions (drying day). MSA may allow additional drying days if deemed reasonable, in its discretion.

(2) Unusually severe weather.

(a) Rain. To qualify as unusually severe weather due to rain, the number of actual weekdays lost due to rain days and drying days must be greater than that calculated for the month in question using the following procedure:

(i) Using the last ten (10) years of weather data for the project location from the National Oceanic and Atmospheric Administration (NOAA) or similar source, Contractor shall compute the average number of weekdays lost due to rain days and drying days for the month in question and the standard deviation from the average.

(ii) Contractor shall then add the average number of weekdays lost to the standard deviation. The sum (the average plus the standard deviation) shall be considered normal for the month in question.

(iii) Actual weather impact shall be calculated by first determining the actual lost rain weekdays during each month in question. If any of the following conditions existed on a given weekday, the day will be deducted from the total actual rain days for the month to determine the net number of weekdays lost to rain:

- rainfall occurred on a non-work weekday such as a holiday;
- rainfall occurred at a time when no weather-dependent work was in progress or occurred during planned or unplanned shutdowns due to other (non-weather) circumstances such as equipment failure, strikes, delays, etc.; or
- Contractor was still working or able to work on all weather dependent activities to the extent that production was or could have been within actual normal levels established on the project (average plus or minus the standard deviation).

(b) Time adjustments for rain. If the net number of weekdays lost to rain is less than the normal number in question (average rain days and drying days plus one standard deviation), no time adjustment will be made. If the net number of weekdays lost to rain is more than the normal number for the month in question, an excusable and noncompensable time extension will be granted. No adjustments will be made for

the time between the start date stated in the Notice to Proceed and the first day of the following month or for the last partial month.

- (3) Other weather conditions. Time extensions for delays due to unusual weather conditions other than rain (such as snow, extreme cold or heat, high winds, etc.) will be considered only to the extent Contractor can prove (a) conditions were unusually severe, and (b) they caused actual delay to the adjusted as-planned/as-built critical path.

T. Scheduling Meetings

The Contractor shall meet with MSA and the architect (unless the architect's absence is excused by MSA) at least monthly to discuss in detail the Contractor's updating of the schedule, the necessity for revisions or corrections in the schedule or updates, and all other issues or matters relating to the scheduling of the project and the Contractor's obligations under the project respecting scheduling. This meeting shall be in addition to the progress meetings required by 4.11.

7.07 TERMINATION FOR DEFAULT, DAMAGES FOR DELAY, TIME EXTENSIONS :

- A. If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, MSA may, by written notice to the Contractor, terminate his right to proceed with the work or the part of the work as to which there has been delay. In this event MSA may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work the materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to MSA resulting from his refusal or failure to complete the work within the specified time.
- B. If fixed and agreed liquidated damages are provided in the contract and if MSA so terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until a reasonable time as may be required for final completion of the work together with any increased costs occasioned MSA in completing the work.
- C. If fixed and agreed liquidated damages are provided in the contract and if MSA does not so terminate the Contractor's right to proceed, the resulting damage shall consist of these liquidated damages until the work is completed or accepted.
- D. The Contractor's right to proceed may not be so terminated nor the Contractor charged with resulting damages if:
 - (1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of MSA in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with MSA, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of Subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the Subcontractors or suppliers; and
 - (2) The Contractor, within 10 days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of

fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

- E. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of MSA, be the same as if the notice of termination had been issued pursuant to the clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of MSA, the contract shall be equitably adjusted to compensate for the termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes"
- F. The rights and remedies of MSA provided in this clause are in addition to any other rights and remedies provided by law or under this contract.
- G. As used in paragraph D (1) of this clause, the term "Subcontractors or suppliers" means Subcontractors or suppliers at any tier.
- H. MSA may terminate for default under this Section 7.07 at any time when the Contractor is in default or breach of any material obligation of the contract, including after substantial completion, such as for failure in a timely manner to complete a punch list, to perform warranty work, or to perform any other substantial requirement of the contract.

7.08 TERMINATION FOR DEFAULT -- GROUNDS OTHER THAN FOR LACK OF DILIGENCE:

- A. If the Contractor fails to perform any provisions of the contract not governed by Section 7.07 of these General Conditions, MSA may terminate the whole or any part of the contract for default by written notice of default to the Contractor. Termination for default in such a case shall be governed by subsections (2) through (7) of COMAR 21.07.01.11B, which are incorporated into and made a part of the contract.
- B. Except as may be expressly agreed otherwise by the Procurement Officer in writing, no action or inaction by MSA or its representatives or the architect shall constitute waiver of any default by the Contractor.
- C. MSA may terminate for default under this Section 7.08 at any time when the Contractor is in default or breach of any material obligation of the contract, including after substantial completion.

7.09 SUSPENSION OF THE 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 a period of time as he may determine to be appropriate for the convenience of MSA.
- 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 failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the

cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, 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 of negligence of the Contractor or (2) for which an equitable adjustment is provided for excluded under any provision of this contract.

- C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the contract.

7.10 STATE'S RIGHT TO TERMINATE FOR CONVENIENCE:

The provisions of COMAR 21.07.02.09 respecting the State's right to terminate the contract for convenience are incorporated into and made a part of this contract.

7.11 PARTIAL ACCEPTANCE:

- A. If, in its sole discretion, MSA desires to accept any portion of the project, then MSA shall have the right to accept and use those portions of the project which in the opinion of MSA can be used for their intended purpose. The conditions of occupancy, use, and the responsibilities of the Contractor and MSA for maintenance, heat, light, utilities, and insurance shall be established. MSA has no obligation to accept the project in portions.
- B. Partial Acceptance shall in no way relieve the Contractor of his responsibilities under the contract.
- C. If MSA accepts the work in portions then warranties on the accepted portions do not begin to run until substantial completion of the whole project is deemed to be achieved.

7.12 SUBSTANTIAL COMPLETION:

- A. When the Contractor reasonably believes the work satisfies the requirements of 7.12B, the Contractor shall notify the Regional Manager of the Construction Division and the architect in writing that the work will be ready for Substantial Completion Inspection and testing on a definite date. Reasonable notice shall be given by the Contractor to permit MSA to schedule the Substantial Completion Inspection. The Contractor shall not request Substantial Completion Inspection until the work is in fact substantially complete. The Contractor shall deliver to the Inspector, on the scheduled Substantial Completion Inspection date, a complete, comprehensive set of field mark-up drawings accurately documenting the As-Built Project and all of the Operation and Maintenance (O&M) Manuals required under the contract and shall have completed all required training and demonstration of equipment as required by the contract documents.
- B. MSA shall establish the date of substantial completion and shall fix the time(s) at which the warranties will begin if, on the basis of the Substantial Completion Inspection, MSA determines that, at a minimum and in accordance with the contract documents:
 - (1) all electrical, mechanical, and life safety systems have been completed and successfully tested and successfully inspected for conformity to all requirements of the contract documents and all applicable codes and standards;

- (2) complete, comprehensive field mark-up drawings of the As-Built Project, and all of the Operation and Maintenance (O&M) Manuals required under the contract, have been delivered to MSA;
 - (3) all other requirements for substantial completion, including the completion of required training and demonstration of equipment, have been met; and
 - (4) the project appears able to be occupied and usable for its intended purpose.
- C. The work shall not be deemed substantially complete if, in the absolute discretion of MSA, completion of unfinished work, whether called punch list work or otherwise, would cause inconvenience to or interfere with the use of the premises by using agency personnel or others using the premises.
- D. If MSA determines that substantial completion has been achieved, MSA shall fix the time within which the Contractor shall complete any remaining items of work which will be indicated on a list (the "punch list"). All punch list work shall be completed within thirty (30) days after the date of substantial completion determined by MSA, unless MSA establishes a different period for completion of the punch list work. If the Contractor fails to complete the remaining items so listed in the time stipulated MSA shall have the undisputed right to complete the work at the Contractor's expense. The Contractor may be required to complete multiple punch lists, which may be prepared by MSA, by the architect, or by the using agency, until the contract is performed in its entirety. Failure to complete punch list work in a timely manner shall constitute grounds for termination of the contract for default.
- E. Prior to the granting of substantial completion by MSA, the architect may prepare lists of work requiring completion or requiring completion as a prerequisite to the granting of substantial completion. These "work lists" shall not constitute punch lists and shall not be construed as indicating that the work has been completed to the extent that it is substantially complete.
- F. Final payment shall not be made until all contract work including all punch list work is complete to the satisfaction of the MSA.
- G. Acceptance of the work as substantially complete shall not excuse or waive any failure of the Contractor to complete the contract as required by the contract documents.

7.13 CLEANING UP:

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work shall remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of MSA. Upon completion of the construction, the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to MSA.

7.14 WARRANTY:

- A. Except to the extent that the contract documents impose longer warranty obligations on the Contractor for all or any part of the work, the Contractor warrants for a two year period commencing on the date of substantial completion of the project as a whole or on such other date agreed between the parties:
- (1) that the work contains no faulty or imperfect material or equipment or any imperfect, careless,

or unskilled workmanship;

- (2) that all mechanical and electrical equipment, machines, devices, etc., shall be adequate for the use to which they are intended, and shall operate with ordinary care and attention in a satisfactory and efficient manner;
- (3) found not to be as guaranteed by this section or otherwise not in conformity with the contract and that he will make good all damages caused to other work or materials in the process of complying with this section;
- (4) that the entire work shall be water-tight and leak-proof in every particular.

B. This Section 7.14 provides for a period during which the Contractor is bound to replace work in addition to being liable for failure to perform the contract in accordance with its terms. Nothing herein releases or limits the Contractor's liability for latent defects or for any substantial failure to perform the work in accordance with the contract, even if such defects or failure are discovered after the expiration of the warranty period provided by this section.

7.15 NOTICE TO STATE OF LABOR DISPUTES:

- A. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Procurement Officer.
- B. The Contractor must insert the substance of this clause, including this subsection B, in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify his next higher tier Subcontractor, or the prime Contractor, as the case may be, of all relevant information with respect to such dispute.

SECTION 8 - PAYMENTS:

8.01 SCOPE OF PAYMENT:

- A. Payments are made on the valuation of work accomplished and on account of materials delivered to the site for incorporation in the work which are suitably stored and protected.
- B. Payments shall also be made on account of materials or equipment for incorporation in the work but stored at some off-site location agreed upon by MSA, such payment to be conditioned upon submission by the Contractor of bills of sale or such other documentation satisfactory to MSA to establish MSA's title to such materials or equipment or otherwise to protect MSA's interest, including proof of applicable insurance, transportation to site, and freedom from liens and security interests.
- C. Prior to application for first payment, the Contractor shall submit to MSA and the architect a schedule of values of the various parts of the work, including quantities, aggregating the total sum of the contract, and based upon the dollar loadings of the approved schedule. This schedule shall be so divided as to facilitate payments to Subcontractors. This submission shall be in the standard MSA form and shall be supported by such evidence as to its correctness as MSA may direct. This schedule shall be used as a basis for certificates of payments unless at a later date the schedule is found to be in error, in which case the schedule will be corrected.
- D. Application for payment shall be submitted on or about the 25th day of each month but not

before ten days of job operation.

- E. In applying for payments the Contractor shall submit a requisition, based upon the dollar loadings of the approved schedule, itemized in such form and supported by such evidence as MSA may require, showing the Contractor's right to the payment claimed. Each requisition shall prominently display the Contractor's Federal Employers Tax Identification Number or Social Security number.

- (1) In applying for all payments, or final payment, the Contractor shall submit in addition to the above a certificate that he has paid:
 - (a) All labor to date,
 - (b) All vendors and material suppliers in full for all items received, and
 - (c) All Subcontractors in full, less the retained amount.
- (2) In applying for the final payment, the Contractor shall also submit the following:
 - (a) Such evidence as MSA may demand to establish MSA's title to materials and to give reasonable assurance that liens and security interests of others do not exist. Nothing in this subsection shall be construed to allow anyone to obtain a lien on State property.
 - (b) An electrical certificate from an independent (non-governmental) electrical inspection agency approved or licensed required by law. The Contractor must make application for the inspection, coordinate same, and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities (see also General Condition Section 4.06B).
 - (c) All other guarantees as called for by the contract.
 - (d) All required equipment, operation, training, maintenance, and other manuals and parts lists.
 - (e) If the Architect provides comments on the field mark-up drawings submitted at Substantial Completion Inspection, a complete set of revised field mark-up drawings documenting the as-built project shall be resubmitted to the Architect.

8.02 FORCE ACCOUNT WORK:

- A. When the Contractor is required to perform work as a result of or alleged by the Contractor to be an addition or change to the contract for which there are no applicable unit prices in the contract, MSA and Contractor shall attempt to agree upon a price for the performance of such work. If an agreement cannot be reached, MSA may require the Contractor to do such work on a force account basis to be compensated as follows:

- (1) Labor. The Contractor shall be paid as follows:
 - (a) The actual wages for each and every hour work is performed.
 - (b) The actual costs paid to or on behalf of workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the work; and

- (c) An equitable percentage, to be determined by the Contractor and Procurement Officer, applied against the labor cost (premium pay and fringes excluded) for liability and worker's compensation insurance premiums, unemployment insurance contributions and FICA taxes on such labor cost.
- (2) Materials. For materials in accordance with the contract, accepted by MSA and used, the Contractor shall receive the actual cost of such materials.
- (3) Equipment. For any machine power tools or equipment (whether rented or owned), the Contractor shall receive the rates agreed upon in writing before such work is begun, or those rates which may be specified elsewhere in the contract, or reasonable rates, whichever are less. Rates shall include fuel and lubricants which are necessary to execute the work required on the change.
- (4) Materials and Supplies Not Incorporated in the Work. For materials and supplies expended in the performance of the work (excluding those required for rented equipment), the Contractor shall receive the actual cost of such materials and supplies used.
- (5) Bond - Whenever the Contractor is entitled to an increase in the contract price, the amount of the increase shall not include any amount for increased costs or premiums of bonds unless:
 - (1) MSA requires an increase in the amount of the penal sum of the bond or bonds,
 - (2) the Contractor actually incurs such cost,
 - (3) the surety actually increases the penal sum of the bonds, and
 - (4) MSA receives proof in satisfactory form that the surety has increased the penal sum of the bonds
- (6) Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided. The cost of Supervisory Personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.
- (7) The mark-up allowable to the Contractor for combined overhead and profit for work performed solely by the Contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs (excluding items includable in overhead).
- (8) Subcontractors. For work done solely by a Subcontractor, the Subcontractor's costs shall be determined as stated in subsections A(1) through (6) above.
- (9) (a) The mark-up allowable to a Subcontractor for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the Subcontractor's overhead and five percent (5%) for the Subcontractor's profit, based upon the Subcontractor's costs of labor, materials, and equipment.

(b) For work performed by a Subcontractor solely with his own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the Subcontractor's materials, equipment, and labor.

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

C. Statements. No payment will be made for work performed on a force account basis until the Contractor furnishes MSA duplicate itemized statements of the cost of such force account work detailed as to the following:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for such workmen.
- (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) Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax.
- (6) Payments of items under (3) and (4) above shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account work are not specifically purchased for such work but are taken from the 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. MSA may require additional proof as to costs, ownership, title, non-existence of liens, etc., to the same extent as provided in Section 8.01E(2)(a).

D. Any other claims of the Contractor arising from work done on a force account basis that are not expressly addressed in this Section 8.02, including (but not limited to) requests for time extensions, are subject to other applicable provisions of the contract.

8.03 CASH ALLOWANCES:

Whenever an allowance is mentioned in the specifications, then the Contractor shall include in his contract sum the entire amount of such specified allowances. The expenditure of these allowances is to be at MSA's direction. However, the allowance expenditure is limited to items properly inferable from the title and description of the allowance. Unexpended balances are to be credited to MSA. Compensation payable to the Contractor for expenditure of allowances directed by MSA shall be based on the cost to the Contractor as shown by actual invoices or receipts, and no additional overhead or profit shall be payable to the Contractor for such allowances.

8.04 CERTIFICATES OF PAYMENT; RETAINAGE:

- A. If the Contractor has made application as above, MSA shall, not later than the date when such payment falls due, issue to the Contractor a certificate for such amount as it decides to be properly due. In approving such partial payments, there shall be retained five percent (5%) of the estimated amount due until completion and acceptance of all work covered by the contract.
- B. If retainage is to be placed in an interest bearing account, the Contractor shall be required to complete the Internal Revenue Service's Form W-9, "Payer's Request for Taxpayer Identification Number."
- C. No certificate issued nor payment made to the Contractor, nor partial or entire use or occupancy of the work by MSA, shall be an acceptance of any work or materials not in accordance with this contract.

8.05 DEDUCTIONS FOR UNCORRECTED WORK:

If MSA deems it inexpedient to correct work not in accordance with the contract, an equitable deduction from the contract price shall be made therefor.

8.06 PAYMENTS WITHHELD:

- A. MSA may withhold payment or, on account of subsequently discovered evidence, nullify or reduce the whole or part of any certificate or payment on account of:
 - (1) the cost (measured by the contract value or fair market value, whichever is greater) of completing unfinished or defective work not remedied or deductions or amounts due MSA under the contract;
 - (2) failure of the Contractor to perform any material contract requirement;
 - (3) claims filed or likely to be filed against MSA for which the Contractor may be liable to MSA;
 - (4) failure of the Contractor to make payments properly to Subcontractors or suppliers for material or labor (see, however, Section 9.03C) or amounts claimed by the Contractor's surety or insurer under any right of subrogation;
 - (5) a reasonable doubt that the contract can be completed for the balance then unpaid;
 - (6) damage to another Contractor;
 - (7) liquidated damages or other damages or compensation due MSA for claims of MSA against the Contractor;
 - (8) any claim of MSA against the Contractor or debt or obligation owed to MSA or claimed by MSA to be owed by the Contractor to MSA arising from any other cause or contract;
 - (9) retainage as provided in Section 8.04A;
 - (10) failure to maintain as-built drawings as required by Section 2.01(B)(2); (11) failure to update schedules properly as required by Section 7.06; and (12) the cost of completing unfinished warranty work.

- B. The failure of Contractor to complete the construction by the required completion date shall be prima facie evidence of MSA's right to withhold liquidated damages after the expiration of the contract time for completion. Nothing in this subsection shall be construed to limit MSA's right to withhold an amount equal to liquidated damages prior to the expiration of the contract time as provided in subsection 7.06 O.

8.07 CORRECTION OF WORK BEFORE FINAL PAYMENT:

- A. The Contractor shall promptly remove from the premises all work failing to conform to the contract, whether or not incorporated in the structure or premises. The Contractor shall promptly replace and re-execute such work in accordance with the contract and without expense to MSA and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- B. If the Contractor does not remove such condemned work within a reasonable time, MSA may remove it and may store materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal or storage within ten days time thereafter, MSA may sell such materials and shall account for the net proceeds thereof, after deducting all the costs and expenses incurred by MSA.

8.08 FINAL PAYMENT:

- A. (1) Upon completion of the Work, the Contractor shall prepare final payment forms and submit them. (2) MSA will promptly proceed to make any necessary final surveys, to complete any necessary computations of quantities, and to complete other activities necessary to determine the Contractor's right to final payment. MSA will then reply to the Contractor's request for final payment, informing the Contractor of the amount of final payment considered to be due the Contractor. Such reply shall inform the Contractor of all deductions, damages, costs, back charges, and other charges assessed against the Contractor by MSA and the reasons therefor.
- B. Notwithstanding subsection A(1) above, prior to or in the absence of a request from Contractor for final payment, MSA may determine under subsection A(2) the amount of the final payment it considers to be due the Contractor.
- C. If the Contractor disputes the amount determined by MSA to be due him, he shall initiate a claim under the disputes procedures.
- D. Acceptance by the Contractor of any payment identified by MSA as being final payment shall operate as an accord and satisfaction and a general release of all claims of the Contractor against MSA arising out of or connected with the contract, except as may be expressly agreed otherwise in writing between the Contractor and the Procurement Officer.
- E. No claims by the Contractor may be asserted for the first time after final payment is made by MSA.

8.09 PAYMENT AND INTEREST:

- A. Payment of State Obligations - Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.
- B. A proper invoice or requisition shall include a description of items or services provided; the date the goods were received by MSA; or the inclusive dates the services were rendered; the price agreed upon pursuant to the contract; the basis for the billing; the purchase order or contract identification number; the Contractor's Federal Employers Identification Number or Social Security Number; and the name and address of the proper invoice recipient for MSA.
- C. For purposes of this contract, an amount will not be deemed "due and payable" and interest payments will not be authorized for late payments unless the following conditions have been met:
 - (1) The amount invoiced is consistent with the amount agreed upon by the parties to the contract pursuant to the contractual agreement.
 - (2) The goods and/or services have been received by MSA and the quantity received agrees with the quantity ordered.
 - (3) The goods and/or services meet the qualitative requirements of the contract and have been accepted by MSA, subject to Section 6.09 hereof.
 - (4) The proper invoice has been received by the party or unit of government specified in the agreement.
 - (5) The invoice is not in dispute.
 - (6) If the contract provides for progress payments, the proper invoice for the progress payment has been submitted pursuant to the approved schedule of values.
 - (7) All conditions for release of retainage have been met.

8.10 RETENTION OF RECORDS -- AUDITS BY THE STATE:

- A. The Contractor and its Subcontractors and suppliers at any tier shall retain and maintain all records and documents relating to this contract for three 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 designee, at all reasonable times.
- B. If Contractor or his Subcontractors or suppliers at any tier fail to retain for the period of time required by this section original documents used, made, or relating to the preparation or calculation of Contractor's bid to MSA or of bids, quotes or estimates of Subcontractors or suppliers at any tier, Contractor shall be entitled to no damages, compensation, or equitable adjustments (including time extensions) for any claims based on calculations, assumptions, understandings, or beliefs allegedly made at the time of preparation of such bids, quotes, or estimates.

- C. In the event a claim is initiated by either party under Section 6.13, Contractor and his Subcontractors or suppliers at any tier shall retain such books, papers, records and other documents until expiration of the aforesaid three-year period or until final, unappealable resolution of the claim, whichever is later.

8.11 CONTRACT COST PRINCIPLES AND PROCEDURES:

The contract is subject to the applicable contract cost principles and procedures set forth in COMAR 21.09.

8.12 FINANCIAL DISCLOSURE (COMAR 21.07.01.19):

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

8.13 POLITICAL CONTRIBUTION DISCLOSURE (COMAR 21.07.01.20):

The Contractor shall comply with Election Law Article, §§14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$200,000 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 31.

SECTION 9 - EMPLOYEES, SUBCONTRACTORS AND WORK CONDITIONS:

9.01 EMPLOYEES AND WORKMANSHIP:

- A. Qualification of Employees. All Contractor/Subcontractor personnel shall be subject to a security background check. Before or after award of the contract, at the sole discretion of the State, those persons found to be unfit to work on State contracts may be excluded from the job site at no additional cost to the State. Only personnel thoroughly trained and skilled in the tasks assigned them may be employed on any portion of the work. Any employee found to be unskilled or untrained in his work shall be removed from the work.
- B. Licensed Employees. When municipal, county, State or federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, then all such personnel employed on the work shall be so licensed.
- C. Quantity of Labor. The Contractor shall employ on the work, at all times, sufficient personnel to complete the work within the time stated in the contract.
- D. Work Areas. The Contractor shall confine the operations of his employees to the limits as provided by law, ordinance, permits or directions of MSA. Generally, the work area will be the same as the "Limit of Contract" line indicated in the construction documents.

E. Methods and Quality.

F.

- (1) Whenever the method of the work or manner of procedure is not specifically stated in the contract documents, the best practice shall be followed. Unless the contract documents expressly require stricter standards for application, installation, connection, erection, use, cleaning or conditioning, recommendations of the manufacturers of approved materials shall be considered as a part of these specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as so called for thereby. If any such manufacturer's recommendations are defective, faulty, inaccurate, or negligently made, Contractor shall be responsible for all loss resulting therefrom, including liability for loss incurred by MSA.
- (2) All materials shall be accurately assembled, set, etc., and when so required in good construction, shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work shall any material be applied over another which has not been thoroughly cleaned, sanded, or otherwise treated so as not to impair the finish, adhesion, or efficiency of the next applied item.
- (3) All methods, procedure and results are subject to the approval of the architect and the Procurement Officer as to the quality of the finished result to be obtained; provided that this is not to be interpreted as placing upon the architect or the Procurement Officer any responsibility for management of the Contractor or his work.

G. Scheduling and Coordination.

- (1) The Contractor shall so schedule and coordinate the work as to ensure efficient and uninterrupted progress and to hold to an absolute minimum the cutting and patching of new work. All cutting, patching and digging necessary to the execution of the work is included.
- (2) The Contractor shall so schedule the construction performed by each group or trade that each installation or portion of the construction shall member with and join with every other new or old work as required for a complete installation, all according to accepted good construction practice.

H. Superintendent: The Contractor shall keep full-time on the site, at all times during the progress of the work, a competent superintendent fluent in English and any necessary assistants, all approved by MSA prior to commencement of the work. The Contractor shall submit in writing to MSA the name of the person it intends to employ as superintendent for the execution of this contract with a statement of the proposed superintendent's qualifications. This data will be reviewed by MSA and an approval or rejection given in writing. Persons who have previously proven unsatisfactory on work executed for the State of Maryland, or who are without proper qualifications, will not be approved. Should it be necessary to change the superintendent, this procedure will be repeated. A single superintendent will be permitted to superintend two or more jobs located at the same institution or close to each other only when approved by MSA in writing. The superintendent shall represent the Contractor. All directions given to the superintendent shall be deemed to have been given to the Contractor and shall bind the Contractor. Directions shall be confirmed in writing by MSA on written request. Should the superintendent be complained of by MSA for cause (including but not limited to: inexperience; incompetence; negligence; failure to properly superintend, manage, or coordinate the work; threats to MSA personnel or others; failure to follow contract requirements; and failure to cooperate reasonably with MSA), he shall be removed from the work and a new superintendent obtained and approved

as described above, at no cost to MSA.

- I. Discipline. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ or permit to remain on the work any unfit person. He shall enforce all instructions relative to use of water, heat, power, no smoking, and control and use of fires as required by law and MSA. Employees must not be allowed to loiter on the premises before or after working hours.
- J. Employee Safety. The Contractor shall designate a responsible member of his organization on the work site whose duty it shall be, in addition to his other duties, to prevent accidents and to enforce the standards of Section 9.06. The name and position of the person so designated shall be reported to MSA, with a copy to the architect, by the Contractor prior to commencement of the work.
- K. The Contractor, Subcontractors, and agents of both insofar as possible, shall secure labor through the Maryland Job Service of the Maryland Department of Business and Economic Development, except where the Contractor has entered into a collective bargaining agreement under which labor is to be provided by the union. In that case, the Contractor is not required to conform to these provisions unless the Contractor and the union arrange with the Maryland Job Service for referral of such labor as they may mutually agree shall be referred. The Contractor shall be the sole judge of the competency or fitness and for satisfactory service of any laborer referred to him by the Maryland Job Service.
- L. This contract may be identified, in other parts of the solicitation documents, for inclusion in the hiring agreement program of the Department of Human Resources under Section 13-224 of the State Finance and Procurement Article of the Annotated Code of Maryland. If this contract is so identified, Contractor shall comply with the hiring agreement requirements provide in the solicitation documents.

9.02 NON-DISCRIMINATION IN EMPLOYMENT (COMAR 21.07.01.08) AND AFFIRMATIVE ACTION:

- A. Contractor agrees:
 - (1) 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 disability of a qualified individual with a disability;
 - (2) to include a provision similar to that contained in subsection (1), above, in any subcontract except a subcontract for standard commercial supplies or raw materials; and
 - (3) 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. Contractor shall be subject to and shall comply with all other requirements of 13-219 of SF&P, which are incorporated into and made a part of the contract.
- C. Contractor shall comply with all other applicable Federal, State, and local laws, regulations and ordinances respecting illegal discrimination and civil rights.

9.03 SUBCONTRACTS:

- A. The Contractor shall, as soon as practicable and before the execution of the contract, notify the architect and MSA in writing, of the names of Subcontractors proposed for the principal parts of the work and for such others as MSA or the architect may direct. Contractor shall not employ any Subcontractor that is debarred, incompetent, unfit, unsatisfactory, or is otherwise not eligible to conduct business in or with the State.
- B. The Contractor is fully responsible to MSA for the acts and omissions of its Subcontractors and suppliers at any tier and persons either directly or indirectly employed by them, as well as for the acts and omissions of itself and persons directly employed by it.
- C. Nothing contained in the contract documents shall create any contractual relation between any Subcontractor or supplier at any tier and MSA, and nothing in the contract documents is intended to make any such entity a beneficiary of the contract between MSA and the Contractor. No Subcontractor or supplier at any tier shall have or make any claim or cause of action directly against MSA.
- D. The Contractor shall not subcontract the contract as a whole or by trades or other portions in an amount of more than 75% of the monetary value of the contract. The remaining 25% shall be executed by the Contractor with labor and materials directly purchased and paid for by the Contractor. Costs of bonds, insurance, overhead, supervision, mobilization, etc., shall not be claimed as a portion of the 25% mentioned above. The execution of work by a subsidiary of the Contractor will not be considered direct employment unless the Procurement Officer agrees otherwise.

9.04 RELATION OF CONTRACTOR TO SUBCONTRACTORS AND SUPPLIERS:

- A. The Contractor must bind every Subcontractor and supplier and will see that every Subcontractor agrees to be bound by the terms of the contract, as far as applicable to his work, unless specifically noted to the contrary in a subcontract approved in writing by the Procurement Officer.
- B. The Contractor must include the following provisions in all subcontracts and supply contracts applicable to the work:
 - (1) Subcontractor or supplier agrees to be bound to the Contractor by the terms of the contract between the Contractor and MSA, and to assume toward him all obligations and responsibilities that the Contractor, by those documents, assumes toward MSA.
 - (2) The Subcontractor or supplier agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Section 8 of these General Conditions.
 - (3) The Subcontractor or supplier agrees to make all claims for extras, for extensions of time, and for damages for delays or otherwise, to the Contractor in the manner provided in the General Conditions for like claims by the Contractor upon MSA, except that the time for making claims by the Subcontractor or supplier to the Contractor for extra cost shall be five days.
 - (4) The Subcontractor or supplier agrees, upon completion of his work, to promptly pay all labor, material suppliers, vendors, Subcontractors and others, to permit simultaneous final payment by the Contractor.
 - (5) The provisions required by 9.06A through D.
- C. (1) Except as provided in (2) below, Contractor shall not be relieved of any obligation to MSA under the contract by any action, inaction, delay, default, breach, omission, or neglect, on the part of Contractor's Subcontractors and suppliers at any tier or by any defect in their materials, whether the Subcontractors, suppliers, or materials were selected or specified by MSA or by the Contractor.

- (2) If the contract or MSA requires the Contractor to furnish a certain product or material and no other, then and only then will MSA be responsible for damages and delays caused by a design defect or other defect in the product; provided, however, that in such event MSA shall be subrogated to all rights and claims of the Contractor and his Subcontractors and suppliers at any tier against the seller, the manufacturer, the designer of the product, and any other entity which may be liable for the defect.

D. The Contractor also agrees:

- (1) To pay the Subcontractor or supplier promptly upon the payment of certificates, if issued under the schedule of values described in Section 8 of these General Conditions, the amount allowed to the Contractor on account of the Subcontractor's or supplier's work to the extent of the Subcontractor's or supplier's interest therein.
- (2) To pay the Subcontractor or supplier, upon the payment by MSA, so that at all times the Subcontractor's or supplier's total payments shall be as large in proportion to the value of the work done by him as the total amount certified to the Contractor is to the value of the work done by him.
- (3) To pay the Subcontractor or supplier promptly to such extent as may be provided by the contract documents or the contract between the Contractor and the Subcontractor or supplier, if either of these provides for earlier or larger payments than the above.
- (4) To pay the Subcontractor or supplier on demand for his work or materials as far as executed and fixed in place, less the retained percentage, at the time payment is due from MSA, whether or not payment is made wholly or in part by MSA, unless MSA's failure to issue payment wholly or in part is due to the fault or unsatisfactory work or materials of the Subcontractor or supplier.
- (5) To pay the Subcontractor or supplier an equitable share of any insurance money received by the Contractor on account of damage to the work.
- (6) To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the contract between the Contractor and the Subcontractor or supplier.
- (7) To give the Subcontractor or supplier an opportunity to be present and to submit evidence in any matter involving his rights.
- (8) To fulfill Contractor's obligations under 9-201 et seq., and 9-301 et seq. of the Real Property Article of the Annotated Code of Maryland.

E. Every Subcontractor, supplier, or other entity at any tier furnishing any work, labor, services, materials or supplies to or for use in the project, by virtue of furnishing same shall be bound to and does accept and agree to all terms and provisions of the contract between Contractor and MSA.

F. MSA will not be liable to the Contractor for any loss or additional cost suffered as a result of the inability of any Subcontractor or supplier at any tier to continue work on the contract as a result of debarment of the Subcontractor or supplier under Title 16 or Title 17, Subtitle 2 of SF&P, or regulations adopted thereunder.

- G. Contractor may not withhold from any Subcontractor or supplier, wholly or in part, any payment otherwise due and owing to the Subcontractor or supplier for labor or material furnished for this contract, on account of any claim of the Contractor against the Subcontractor or supplier or any debt owed or claimed to be owed by the Subcontractor or supplier to the Contractor to the extent the claim or debt arose out of contracts, disputes, or other transactions between the Contractor and the Subcontractor or supplier which did not arise out of this contract between MSA and the Contractor.
- H. When MSA withholds money from the Contractor under Section 8.06 for delays or other causes, the Contractor may withhold payment from a Subcontractor or supplier, on account of the amount withheld by MSA from the Contractor, only to the extent that the Subcontractor or supplier contributed to the delay or other cause for which MSA withheld payment from the Contractor. For example, if MSA withholds from the Contractor liquidated damages for delay, the Contractor may withhold payment only from those Subcontractors and suppliers who caused or contributed to the delays; all other Subcontractors and suppliers shall be paid promptly by the Contractor notwithstanding MSA's withholding from the Contractor.

9.05 PREVAILING WAGE RATES:

- A. All contracts in the amount of \$500,000 or more shall be subject to the provisions of 17-201, et seq., of SF&P and COMAR 21.11.11, respecting prevailing wages. Where an original contract is in an amount less than \$500,000, this section shall not apply, even where subsequent change orders increase the total contract to be in excess of \$500,000. Wage rates applicable to projects of \$500,000 or more are attached to the specifications. Federal wage rates shall be in effect where applicable.
- B. When prevailing wage rates apply, the Contractor shall submit a copy of his payroll records and the payroll records of each of his Subcontractors to the Department of Labor, Licensing and Regulation, Division of Labor and Industry, 1100 North Eutaw Street, Maryland 21201. The Contractor shall also provide to MSA Procurement Officer a copy of the Contractor's and its Subcontractor(s) payroll records. These payroll records must be submitted within two weeks after each payroll period, and shall contain the following employee information: name, address and social security number, work classifications, hours straight time and overtime worked each day, total hours worked, rate of pay and gross amount earned. The Contractor shall be responsible for the submission of all Subcontractors' payroll records covering work performed directly at the work site. Each copy of the payroll records shall be accompanied by a statement signed by the Contractor or the Subcontractor indicating that the payroll records are correct, that the wage rates contained therein are not less than those established by the Commissioner as set forth in the contract, that the classification set forth for each workman or apprentice conforms with the work he performed and that the Contractor or the Subcontractor has complied with the provisions of this section. In the event of any conflict between this Section and Title 17, Subtitle 2 of SF&P, or regulations adopted thereunder, the provisions of Title 17, Subtitle 2 or the regulations will prevail.

9.06 CONSTRUCTION SAFETY AND HEALTH STANDARDS:

- A. The Contractor shall provide and maintain work environments and procedures which will:
 - (1) Safeguard the public, workers on the site, and MSA personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;
 - (2) Avoid interruptions of MSA operations and delays in project completion dates; and
 - (3) Control costs in the performance of this contract. B. For these purposes, the Contractor shall:
 - (1) Provide appropriate safety barricades, signs, and signal lights;
 - (2) Comply with the provisions of the Maryland Occupational Safety and Health Act;
 - (3) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
 - (4) Comply with all requirements of the contract and any additional safety measures the Procurement Officer determines to be reasonably necessary.
- B. Whenever MSA becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public, workers on the site, or MSA personnel, MSA shall notify the Contractor orally, with written confirmation, and demand immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representatives at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Procurement Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.
- C. Contractor shall include in all subcontracts a provision imposing on all Subcontractors the same obligations to the Contractor as the Contractor has to MSA under subsections A through D of this Section 9.06.
- D. (1) This subsection E applies to all contracts in the amount of \$500,000 or greater and to all other contracts determined by the MSA to pose higher than normal safety or health risks. (2) Before commencing the work, the Contractor shall:
 - (a) Submit to MSA a written Employer Safety and Health Program for implementing this clause, following the MOSH "Suggested Employee Safety and Health Program" format and including an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and
 - (b) Meet with MSA to discuss and develop a mutual understanding of the overall safety and health program for the project.

9.07 PROMPT PAYMENT OF SUBCONTRACTORS (COMAR 21.07.02.05-2):

- A. This contract and all subcontracts issued under this contract are subject to the provisions of State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08. In §§A—D, the terms "undisputed amount", "prime Contractor", "Contractor", and "Subcontractor" have the meanings stated in COMAR 21.10.08.01.
- B. A Contractor shall promptly pay its Subcontractors an undisputed amount to which a Subcontractor is entitled for work performed under this contract within 10 days after the Contractor receives a progress payment or final payment for work under this contract.
- C. If a Contractor fails to make payment within the period prescribed in §B, a Subcontractor may request a remedy in accordance with COMAR 21.10.08.

A Contractor shall include in its subcontracts for work under this contract, wording that incorporates the provisions, duties, and obligations of §§A—D, State Finance and Procurement Article, §15-226, Annotated Code of Maryland, and COMAR 21.10.08.

ATTACHMENT M – CONTRACT

THIS CONTRACT (the “Contract”) is made this ____ day of ____ 2019 by and between the MARYLAND STADIUM AUTHORITY, (hereinafter referred to as MSA) and _____ (hereinafter referred to as Contractor).

In consideration of the promises and the covenants herein contained, 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 ____.
- 1.2 “COMAR” means Code of Maryland Regulations.
- 1.3 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) 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 _____.
- 1.4 “IFB” means the Invitation for Bids for Fire Sprinkler System Modifications, MSA 20-032, and any amendments, addenda, and attachments thereto issued in writing by MSA.
- 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 Capitalized terms not defined herein shall be as ascribed the meaning given them in the IFB.
- 1.8 “MSA” means the Maryland Stadium Authority.
- 1.9 “Procurement Officer” means the MSA employee identified in Key Information Summary Sheet of the IFB as the Procurement Officer.
- 1.10 “State” means the State of Maryland.

2. Scope of Contract

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-C, 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 IFB;

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the RFP. 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 While the Procurement Officer may, at any time, by written change order, make unilateral changes in the work within the general scope of the Contract as provided in Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; and (b) all required approvals are obtained.
- 2.4 Change Order Mark-Up
- 2.4.1 The mark-up allowable to the Contractor for combined overhead and profit for work performed solely by the Contractor with his own forces shall be a reasonable amount not to exceed fifteen percent (15%) of the Contractor's costs, excluding those items which may be included in overhead.
- 2.4.2 (a) The mark-up allowable to a Subcontractor for overhead and profit for work performed solely with his own forces shall be a reasonable amount not to exceed ten percent (10%) for the Subcontractor's overhead and five percent (5%) for the Subcontractor's profit, based upon the Subcontractor's costs of labor, materials, and equipment.
- (b) For work performed by a Subcontractor solely with his own forces, the Contractor is entitled to a reasonable mark-up for combined overhead and profit, not to exceed five percent (5%) of the cost of the Subcontractor's materials, equipment, and labor.
- 2.4.3 The cost of Supervisory Personnel may be added only when the modification makes necessary the hiring of additional supervisory personnel or makes necessary their employment for time additional to that required by the contract.

3. Period of Performance.

- 3.1 The term of this Contract begins on the earlier to occur of: (a) the issuance of a Notice to Proceed; or (b) the date the Contract is signed by the Executive Director, following any required approvals of the Contract, including approval by the Authority, if such approval is required. The Contract shall terminate upon project completion and final acceptance by MSA, in accordance with the schedule outlined in the Contract Documents.
- 3.2 Audit, confidentiality, document retention, and indemnification obligations under this Contract 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 MSA shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Bid Form (Attachment B). Unless properly modified (see above Section 2.3), payment to the Contractor pursuant to this Contract, shall not exceed __\$_____.

Contractor shall notify the Contract Monitor, in writing, at least sixty (60) days before payments reach the above specified amount. After notification by the Contractor, if the MSA fails to increase the Contract amount, the Contractor shall have no obligation to perform under this Contract after payments reach the stated amount; provided, however, that, prior to the stated amount being reached, the Contractor shall: (a) promptly consult with the MSA and work in good faith to establish a plan of action to assure that every reasonable effort has been undertaken by the Contractor to complete MSA -defined critical work in progress prior to the date the stated amount will be reached; and (b) when applicable secure databases, systems, platforms, and/or applications on which the Contractor is working so that no damage or vulnerabilities to any of the same will exist due to the existence of any such unfinished work.

- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the MSA's receipt of a proper invoice for services provided by the Contractor, acceptance by the MSA of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is _____ (Contractor's FEIN or SSN). Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, §15-104 are prohibited. Invoices shall be submitted to the Contract Monitor. 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 MSA is not evidence that services were rendered as required under this Contract.
- 4.4 Contractor's eMarylandMarketplace Advantage vendor ID number is _____.

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 MSA and shall be available to the MSA at any time. The MSA 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, 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 MSA 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 of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the MSA to the place designated by the Procurement Officer.

6. Exclusive Use

The MSA 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 MSA shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the MSA.

7. Patents, Copyrights, and Intellectual Property

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, 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 MSA to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the MSA alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the MSA against that claim at Contractor's expense and will pay all damages, costs, and attorneys' fees that a court finally awards, provided the MSA: (a) promptly notifies the Contractor in writing of the claim; and (b) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: (a) procure for the MSA the right to continue using the applicable item; (b) replace the product with a non-infringing product substantially complying with the item's specifications; or (c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

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 the implementation of 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) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents, and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored, and disseminated only as provided by and consistent with the law. 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 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.
- 8.2 This Section 8 shall survive expiration or termination of this Contract.

9. Loss of Data

In the event of loss of any MSA data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating 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. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and/or applications with which the Contractor is working hereunder.

10. Indemnification

- 10.1 The Contractor shall hold harmless and indemnify the MSA and the Baltimore Ravens Limited Partnership ("Ravens"), their agents and employees from and against any and all losses, damages, claims, suits, actions, liabilities, and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 This indemnification clause shall not be construed to mean that the Contractor shall indemnify the MSA against liability for any losses, damages, claims, suits, actions, liabilities, and/or expenses that are attributable to the sole negligence of the MSA and their respective employees.
- 10.3 The MSA has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.
- 10.4 The MSA has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's performance under this Contract.

- 10.5 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the MSA in the defense or investigation of any claim, suit, or action made or filed against the MSA as a result of, or relating to, the Contractor's performance under this Contract.
- 10.6 This Section 10 shall survive termination of this Contract.

11. Non-Hiring of Employees

No official or employee of the MSA, 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 MSA, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

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 Md. Code Ann., Commercial Law Article, Title 22, Maryland Uniform Computer Information Transactions Act, does not apply to this Contract or to any purchase order or Notice to Proceed issued under this Contract.
- 13.3 Any and all references to the Maryland Code, Annotated 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 MSA's rights or the 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 MSA 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. MSA 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 Cause

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, MSA 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 MSA's option, become MSA's property. MSA 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 MSA 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 MSA in accordance with this clause in whole, or from time to time in part, whenever the MSA shall determine that such termination is in the best interest of MSA. MSA 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; provided, 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

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, interruptions, interferences, 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 MSA in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the MSA, 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 MSA 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 MSA.

21. Pre-Existing Regulations

MSA Procurement Policies and Procedures in effect and regulations set forth in COMAR Title 21 applicable to this contract at the time of its execution shall apply to this contract, subject to amendments to the Policies and Regulations notwithstanding.

22. Financial Disclosure

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person 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 thirty (30) days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of the State 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.

24. Documents Retention and Inspection Clause

The Contractor and subcontractors shall retain and maintain all records and documents relating to this Contract for a period of five (5) years after final payment by MSA hereunder or any applicable statute of limitations or federal retention requirements (such as HIPAA), whichever is longer, and shall make them available for inspection and audit by authorized representatives of the MSA, including the Procurement Officer or designee, at all reasonable times. All records related in any way to the Contract are to be retained for the entire time provided under this section. In the event of any audit, the Contractor shall provide assistance to the MSA, without additional compensation, to identify, investigate, and reconcile any audit discrepancies and/or variances. This Section 24 shall survive expiration or termination of the Contract.

25. Compliance with Laws

The Contractor hereby represents and warrants that:

- 25.1 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;
- 25.2 It is not in arrears with respect to the payment of any monies due and owing the State, or any MSA 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;
- 25.3 It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- 25.4 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.

26. Cost and Price Certification

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its Bid/Proposal.

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/Proposal, was inaccurate, incomplete, or not current.

27. Subcontracting; Assignment

The Contractor may not subcontract any portion of the services provided 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 provided, however, that a Contractor may assign monies receivable under a contract after due notice to the MSA. 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 MSA shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

28. Liability

- 28.1 For breach of this Contract, negligence, misrepresentation, or any other contract or tort claim, Contractor shall be liable as follows:
- a. For infringement of patents, copyrights, trademarks, service marks, and/or trade secrets, as provided in Section 7 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, losses, costs, expenses, suits, or actions in any way related to this Contract, regardless of the form. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the MSA is not immune from liability for claims arising under Section 10.

29. Intentionally Omitted

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 at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the MSA, in all subcontracts.
- 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 Md. Code Ann., State Finance and Procurement Article, Title 19, as amended from time to time, Contractor agrees to provide within sixty (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's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, 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.

31. Prompt Pay Requirements

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MSA, 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;
 - 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 MSA, concerning a withheld payment between the Contractor and a subcontractor under this provision, 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 MSA and the Contractor in any other proceeding; or
 - c. Result in liability against or prejudice the rights of the MSA.

32. Damages

3.2.1 Liquidated Damages. (MBE Program Compliance)

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

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

- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): \$60.00 per day until the monthly report is submitted as required.

- (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$60.00 per MBE subcontractor.
- (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
- (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
- (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$95.00 per day until the undisputed amount due to the MBE subcontractor is paid.

Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

32.2 Direct Damages

32.1.1 MSA may deduct for direct damages sustained as a result of Contractor's failure to perform as required under this Contract.

32.3 Payment Adjustments.

32.3.1 MSA shall notify the Contractor of each payment adjustment due to the imposition of liquidated or direct damages.

32.3.2 MSA shall provide the Contractor with such evidence as MSA determines is adequate to justify each adjustment.

32.3.3 If the Contractor does not agree with the adjustment or the action taken to obtain the adjustment, the Contractor's sole remedy to resolve the issue is as provided in Article 12 (Disputes) of this Contract.

33. Contract Monitor and Procurement Officer

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Procurement Officer for determination.

34. Novation or Change of Name

A. No Assignment

An MSA contract is not transferable, or otherwise assignable, without the written consent of the procurement officer and approval of the Executive Director provided, however, that a Contractor may assign monies receivable under a contract after due notice to the MSA.

B. Recognition of a Successor in Interest Novation

When in the best interest of the MSA, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

- a) The transferee assumes all of the transferor's obligations;
- b) The transferor waives all rights under the contract as against the MSA; and
- c) Unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

C. Change of Name

When a Contractor requests to change the name in which it holds a contract with the MSA, the procurement officer, upon receipt of a document indicating the change of name (for example, an amendment to the articles of incorporation of the corporation) may enter into an agreement with the requesting Contractor to effect the change of name contingent upon the approval of the Executive Director. The agreement changing the name specifically shall indicate that no other terms and conditions of the contract are changed.

35. 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 MSA:

John F. Samoryk
Maryland Stadium Authority
333 West Camden Street, Suite 500
Baltimore, Maryland 21201

If to the Contractor:

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

CONTRACTOR

MARYLAND STADIUM AUTHORITY

By: _____

By: Executive Director

Date

Date

ATTACHMENT N – CONTRACT AFFIDAVIT

A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

Name and MSA ID Number:

_____ Address: _____

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

Name and Department ID Number:

_____ Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

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

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$200,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

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

I CERTIFY THAT:

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

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

(a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;

(b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;

(c) Prohibit its employees from working under the influence of drugs or alcohol;

(d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;

(e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;

(f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;

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

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

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

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

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

- (i) Take appropriate personnel action against an employee, up to and including termination; or
- (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

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

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

(4) I acknowledge and agree that:

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

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

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

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated _____, 2020, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Date: _____ By: _____
(printed name of Authorized Representative and Affiant)

(signature of Authorized Representative and Affiant)

SUBMIT THIS FORM UPON NOTICE OF AWARD OF CONTRACT

ATTACHMENT O –BOND FORMS

**BID BOND
M&T BANK STADIUM
FIRE SPRINKLER SYSTEM MODIFICATION
PROJECT NO. 20-032**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____ as Principal, and _____ as Surety, are held and firmly bound unto the Maryland Stadium Authority as Owner, in the Sum of \$ _____ (an amount equal to Five Percent (5%) of the Maximum Total Bid Submitted) (the "Penal Sum"), for payment of which Penal Sum, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, firmly by these presents.

The condition of the above obligation is such that WHEREAS the Principal has submitted to the Maryland Stadium Authority a certain Bid, attached hereto, and hereby made a part hereof, to enter into a Contract, in writing, for:

NOW THEREFORE,

1. If said Bid shall be rejected, or
2. If said Bid shall be accepted and the Principal shall execute and deliver a Contract in the form of Contract attached hereto (properly completed in accordance with said Bid), and shall furnish a Bid for his faithful performance of Contract and for the payment of all persons performing labor or furnishing materials in connection therewith and shall in other respects perform the Agreement created by the acceptance of the Bid;

THEN, in either of such events, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the Penal Sum.

If the Bid should be accepted and the Principal fails to:

1. execute and deliver the Contract, or
2. furnish bonds acceptable to the Owner for his faithful performance of the Contract and for payment of all persons performing labor or furnishing materials in connection therewith, or
3. perform in any other respects the Agreement created by the acceptance of the Bid;

THEN, in any of such events, the Principal shall pay the Penal Sum to the Owner within ten (10) days after demand therefore, failing which the Surety shall pay it.

The Surety, for valued received, hereby stipulates and agrees that the obligations of said Surety and its Bond shall be in no way impaired or affected by any extension of time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and Surety have hereunto set their Hand and Seals, and such of them as are corporations have caused their Corporate Seals to be hereto affixed and these presents to be signed by their proper Offices, this _____ day of _____, 2020.

ATTEST:

SIGN: _____

NAME: _____

TITLE: _____

ATTEST:

SIGN: _____

NAME: _____

TITLE: _____

AGENT (COMPANY):

AUTHORIZED BY:

NAME: _____

PRINCIPAL:

SIGN: _____ (SEAL)

NAME: _____

TITLE: _____

SURETY:

SIGN: _____ (SEAL)

NAME: _____

TITLE: _____

TITLE: _____

**PERFORMANCE BOND
M&T BANK STADIUM
EXPANSION JOINT REPLACEMENT
PROJECT NO. 20-032**

PERFORMANCE BOND

PRINCIPAL:

BUSINESS NAME

BUSINESS ADDRESS

SURETY:

BUSINESS ADDRESS

A Corporation of the State of _____ authorized to do business in the State of Maryland.

SUM OF BOND (Equal to Contract Price):

SUM OF _____ Dollars (\$_____)

CONTRACT:

CONTRACT NUMBER AND IDENTIFICATION

_____, 2020

DATE BOND EXECUTED

OBLIGEE

Maryland Stadium Authority
its Successors and/or Assigns,
OBLIGEE NAME

333 W. Camden Street, Suite 500
Baltimore, Maryland 21201-2435
BUSINESS ADDRESS

_____, 2020

DATE OF CONTRACT

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY are held and firmly bound unto the OBLIGEE in full and just sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL is entering into a certain Contract with the OBLIGEE described and dated, as shown above and attached hereto, and is required to give a Bond conditioned as hereinafter set forth.

NOW, THEREFORE, if the PRINCIPAL shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the OBLIGEE, notice of such extensions to the SURETY being hereby waived and during the terms or terms of any maintenance, repair, guaranty and warranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any duly authorized modifications of said contract that may hereafter be made, notice of which modification to the SURETY being hereby waived, and shall indemnify and save harmless the OBLIGEE, its agents and employees, may be subjected by reason of any wrong doing, misconduct, want of care or skill, negligence or default on the part of the PRINCIPAL, its agents or employees, or in any manner arising directly or indirectly from any and all causes whatsoever, or about the execution or performance of the Contract, during the original term of said Contract and/or any extension or modification thereof and/or during the term or terms of any maintenance, repair, guaranty, and warranty required under the Contract, then this obligation shall be null and void; otherwise to remain in full force and affect.

Whereas PRINCIPAL shall be, as declared by OBLIGEE to be in default under the Contract, the SURETY shall promptly remedy the default, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by SURETY of the lowest responsible bidder, or, if the OBLIGEE elects, upon determination by the OBLIGEE and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and OBLIGEE and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the costs of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the face amount set forth above. The term "balance of the contract price" as used in this paragraph, shall mean the total amount payable by OBLIGEE to PRINCIPAL under the Contract and any amendments thereto, less the amount previously paid by OBLIGEE to PRINCIPAL.

None of the following shall be defense to any claim under the Bond:

1. Failure of the OBLIGEE to withhold retainages pursuant to the Contract;
2. Failure of the OBLIGEE to withhold other payments from the PRINCIPAL pursuant any right of the OBLIGEE so to do;
3. Waiver by the OBLIGEE of, or failure by the OBLIGEE to enforce, any right remedy against the PRINCIPAL, and
4. Withholding by OBLIGEE of any payment(s) from the PRINCIPAL under a claim of a contractual right to do so, provided that, in the case of (.4), any amount so withheld is approved by the Architect under the Contract or is reasonable under the circumstances and is withheld in good faith.

No right of action shall accrue on the bond to or for the use of any person or corporation other than the OBLIGEE or the successors or assigns of OBLIGEE.

IN WITNESS WHEREOF, the parties have executed this instrument under their several Seals on the dated indicated above, the Name and Corporation Seal of each Corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

SIGN: _____

NAME: _____

TITLE: _____

PRINCIPAL:

SIGN: _____ (SEAL)

NAME: _____

TITLE: _____

ATTEST:

SIGN: _____

NAME: _____

TITLE: _____

SURETY:

SIGN: _____ (SEAL)

NAME: _____

TITLE: _____

AGENT (COMPANY): _____ (SEAL)

AUTHORIZED BY: _____

NAME: _____ **TITLE:** _____

**PAYMENT BOND
M&T BANK STADIUM
FIRE SPRINKLER SYSTEM MODIFICATIONS
PROJECT NO. 20-032**

LABOR AND MATERIAL PAYMENT BOND

PRINCIPAL:

BUSINESS NAME

BUSINESS ADDRESS

SURETY:

BUSINESS ADDRESS

OBLIGEE:

Maryland Stadium Authority
its Successors and/or Assigns,
OBLIGEE NAME

333 W. Camden Street, Suite 500
Baltimore, Maryland 21201-2435
BUSINESS ADDRESS

_____, 2020
DATE BOND EXECUTED

A Corporation of the State of _____ authorized to do business in the State of Maryland.

SUM OF BOND (Equal to Contract Price):

SUM OF _____ Dollars (\$_____)

CONTRACT:

_____, 2020
DATE OF CONTRACT

KNOW ALL MEN BY THESE PRESENTS, That we, the PRINCIPAL and SURETY are held and firmly bound unto the OBLIGEE in full and just sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL is entering into a certain Contract with the OBLIGEE described and dated, as shown above and attached hereto, and is required to give a Bond conditioned as hereinafter set forth.

NOW, THEREFORE, the condition of this obligation is such that if the PRINCIPAL shall promptly make payments to all persons supplying labor, material, and/or services in the prosecution of the Work ("claimant") provided for in said contract and any and all duly authorized extension and/or modifications of said contract that may hereafter be made, notice of such extension and/or modifications to the SURETY being hereby waived, and any maintenance, repair, guaranty and warranty required under the Contract, then this obligation to be null and void; otherwise to remain in full force and effect.

The PRINCIPAL and SURETY hereby jointly and severally agree with the OBLIGEE that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last such claimant's work or labor was done or performed, or materials or services were furnished by such claimant, may sue on this bond for the use of claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereof. The OBLIGEE shall not be liable for the payment of any costs or expenses of any such suit.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by SURETY of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond. A suit or action commenced hereunder shall comply with applicable Provisions of the Public General Laws of Maryland. No suit or action shall be commenced hereunder against the OBLIGEE, its successors and assigns, nor shall OBLIGEE be liable for any costs or expenses of such suit.

None of the following shall be a defense to any claim under the Bond:

1. Failure of the OBLIGEE to withhold retainages pursuant to the Contract;
2. Failure of the OBLIGEE to withhold other payments from the PRINCIPAL pursuant to any right of the OBLIGEE so to do;
3. Waiver by the OBLIGEE of, or failure by the OBLIGEE to enforce, any right remedy against the PRINCIPAL; and
4. Withholding by OBLIGEE of any payment(s) from the PRINCIPAL under a claim of a contractual right to do so, provided that, in the case of (iv), any amount so withheld is approved by the Architect under the Contract or is reasonable under the circumstances and is withheld in good faith.

IN WITNESS WHEREOF, the parties have executed this instrument under their several Seals on the dated indicated above, the Name and Corporation Seal of each Corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

ATTEST:

SIGN: _____

NAME: _____

TITLE: _____

PRINCIPAL:

SIGN: _____(SEAL)

NAME: _____

TITLE: _____

ATTEST:

SURETY:

SIGN: _____

NAME: _____

TITLE: _____

SIGN: _____(SEAL)

NAME: _____

TITLE: _____

AGENT (COMPANY): _____(SEAL)

AUTHORIZED BY: _____

NAME: _____

TITLE: _____

ATTACHMENT P – SUSTAINABILITY POLICIES

Camden Yards Sports Complex LEED Existing Building: Operations and Maintenance

Solid Waste Management Policy



Solid Waste Management Policy
LEED for Existing Buildings: Operations and Maintenance

SECTION 1: POLICY SCOPE

This policy applies to the collection, sorting, diversion, and disposal of ongoing consumables, durable goods, and building materials associated with facility alterations and additions accrued in the operations of The Maryland Stadium Authority's facilities that are within the building and site management's control.

This policy will apply to, but is not limited to, the following types of materials:

- Ongoing Consumables, including but not limited to:
 - Paper
 - Cardboard
 - Glass
 - Plastic
 - Metals
 - Landscape waste
 - Batteries
- Mercury-containing lamps
- Durable Goods, including but not limited to:
 - Electronic equipment
 - Furniture
- Building Materials used in facility alterations and additions, including but not limited to:
 - Building components and structures (wall studs, insulation, doors, windows)
 - Panels
 - Attached finishings (drywall, trim, ceiling panels)
 - Carpet and other flooring material
 - Adhesives
 - Sealants
 - Paints and coatings

SECTION 2: POLICY GOALS

To manage solid waste in a manner that will:

- protect the environment and public health
- conserve natural resources
- minimize landfilling and/or incineration and reduce toxicity

SECTION 3: PERFORMANCE METRIC

The successful implementation of this policy will be measured by the ongoing recycling rate achieved. The recycling rate is derived by comparing the amount of consumables diverted from the landfill to those consumables sent to the landfill over a given time period. The policy's initial performance metric will be to achieve the reuse, recycling and/or composting of:

- At least 50% of the ongoing consumable waste stream (by weight or volume)
- At least 80% of discarded batteries
- 100% of all mercury-containing lamps within the building and site management's control
- At least 75% of the durable goods waste stream (by weight, volume, or replacement value)
- At least 70% of waste (by volume) generated by facility alterations and additions

SECTION 4: PERFORMANCE EVALUATION

Monthly reports, including waste recycling and/or disposal receipts, must be provided by the waste haulers/vendors to allow for ongoing documentation, monitoring and assessment of the program results.

The responsible party will, whenever possible, compile the reports and include an evaluation of the performance, safety, cost and environmental/public health benefits achieved through source reduction, reuse, recycling and composting. Reports should also relate the progress in meeting the stated objectives of The Maryland Stadium Authority as set forth under Sections (2) and (3).

SECTION 5: RESPONSIBLE PARTY

Jeff Provenzano, Vice President Sports Complex Facilities, shall implement this policy within Camden Yards Sports Complex in coordination with other appropriate organization personnel, including but not limited to, the building's janitorial staff and any contracted waste haulers. Jeff Provenzano shall coordinate training, education and outreach programs throughout the organization, with the aim of promoting and maintaining the goals of this policy.

Due to the nature of this building, contracts are constantly being reevaluated and new bids from other providers are always being reviewed for economic value. All requests for bids for contractors, and current contractors, specific to waste management will receive this plan and be required to adhere to the requirements.

SECTION 6: PROCEDURES AND STRATEGIES

The following table lists recyclable wastes at the building site, their disposal method and handling procedures.

Source/Consumables	Disposal Method	Handling Procedure
Glass, Plastic, Metals (commingled)	Building occupants dispose of these recyclables in separately provided collection points periodically placed around the stadium and in suites.	Amounts are tracked and taken away by hauler on a regular basis (same schedule as current waste pickup) for recycling.
Mercury-containing Lamps	Maintenance staff collects fluorescent lamps and stores the unbroken lamps for disposal.	Taken away or dropped off to an authorized hauler for safe disposal, in accordance with local regulations on disposal of products containing mercury.
Cardboard/Paper/newspapers	Building occupants dispose of paper/newspapers in separately provided collection points periodically placed around the stadium and in suites.	Amounts are tracked and taken away by hauler on a regular basis (same schedule as current waste pickup) for recycling.
Batteries	Building occupants deliver batteries to a specially-designated collection point for disposal.	Taken away/ dropped off to an authorized hauler on a regular basis for proper disposal.
Durable Goods (Electronic Waste and Furniture)	Building management provides a secure collection area to store durable goods that have reached the end of their life within the building but still have value and may be donated/re-used.	Amounts are tracked and taken away/ dropped off to an authorized hauler or re-use center on a regular basis for recycling.
Building Materials	Building management coordinates with contractors to collect construction waste for re-use/recycling.	Amounts are tracked and taken away by an authorized hauler at the end of the demolition/construction period for recycling.

SECTION 7: TIME PERIOD

With respect to the Time Period, this Solid Waste Management Policy was established in March 2012 and is currently in effect. This plan is to remain in effect for the life of the building and to be regularly evaluated for any improvements. During the life of this policy, the Solid Waste Management Policy will, at a minimum, address the diversion of waste and toxins generated through building operations from landfills and incineration facilities that are within the building and site management's control.

Camden Yards Sports Complex LEED Existing Building: Operations and Maintenance

Sustainable Purchasing Policy



LEED for Existing Buildings: Operations and Maintenance Sustainable Purchasing Policy

SECTION 1: POLICY SCOPE

This policy applies to the sustainable purchasing at Camden Yards Sports Complex's sites that are within the building and site management's control.

This policy applies to sustainable purchasing of the following types of products:

- Ongoing Consumables
- Durable goods
- Building materials used in facility alterations and additions
- Mercury-containing lamps

Food and beverages are not included in the scope of this policy.

SECTION 2: POLICY GOALS

To purchase ongoing consumables in a manner that will:

- protect the environment and public health
- conserve natural resources
- minimize waste, including landfilling and incineration, and reduce toxicity

SECTION 3: PERFORMANCE METRIC

Sustainable Purchasing of Ongoing Consumables

The Maryland Stadium Authority mandates that at least 60% of the Stadium's total ongoing consumables purchases (by cost) are to be sustainable. Sustainable purchases are those that meet one or more of the following criteria:

- Purchases contain at least 10% postconsumer or 20% postindustrial material.
- Purchases contain at least 70% material salvaged from off-site or outside the organization.
- Purchases contain at least 70% material salvaged from on-site, through an internal organization materials and equipment reuse program.
- Purchases contain at least 50% rapidly renewable material.
- Purchases contain at least 50% Forest Stewardship Council (FSC) certified wood.
- Purchases contain at least 50% material harvested and processed or extracted and processed within 500 miles of the project.
- Batteries are rechargeable and contain low levels of mercury and heavy metals.

Sustainable Purchasing of Durable Goods

The term "durable goods" refers to higher-cost-per-unit materials that are replaced infrequently and/or may require capital outlays to purchase. These products may include, but are not limited to: office equipment (such as computers, monitors, printers, copiers, fax machines), appliances (refrigerators, dishwashers, water coolers), external power adaptors, televisions, and furniture. The purchasing criteria for these products fall into the following two categories.

Furniture

The Maryland Stadium Authority mandates that at least 40% of total purchases of furniture (by cost) must be sustainable. Sustainable purchases are those that meet one or more of the following criteria:

- Purchases must contain at least 10% post consumer or 20% post industrial material.
- Purchases must contain at least 70% material salvages from off-site or outside the organization.
- Purchases contain at least 70% material salvaged from on-site, through an internal organization materials and equipment reuse program.
- Purchases contain at least 50% rapidly renewable material.
- Purchases contain at least 50% Forest Stewardship Council (FSC) certified wood.

- Purchases contain at least 50% material harvested and processed or extracted and processed within 500 miles of the project.

Electronics and Appliances

The Maryland Stadium Authority mandates that at least 40% of total purchases of electric powered equipment (by cost) must be sustainable. Sustainable purchases are those that meet one or more of the following criteria:

- The purchased equipment is ENERGY STAR® qualified (for product categories with developed specifications).
- The purchased equipment (either battery or corded) replaces conventional gas-powered equipment.

Sustainable Purchasing: Facility Alterations and Additions (when applicable)

The Maryland Stadium Authority mandates that at least 50% of the Stadium's total facility alteration purchases (by cost) are to be sustainable. Sustainable purchases are those that meet one or more of the following criteria:

- Adhesives and sealants have VOC content less than the current VOC content limits of SCAQMD Rule #1168, or sealants used as fillers meet or exceed the requirements of the Bay Area Air Quality Management District Regulation 8, Rule 51.
- Paints and coating have VOC emissions not exceeding the VOC and chemical component limits of Green Seal's Standard GS-11 requirements.
- Non-carpet finished flooring is FloorScore-certified and constitutes a minimum of 25% of the finished floor area.
- Carpet meets the requirements of the CRI Green Label Plus Carpet Testing Program.
- Carpet cushion meets the requirements of the CRI Green Label Testing Program.
- Composite panels and agrifiber products contain no added urea-formaldehyde resins.

Sustainable Purchasing: Toxic Material Source Reduction – Reduced Mercury in Lamps

To reduce the mercury level in lamps the Maryland Stadium Authority is committed to purchasing manufacture specified low mercury content or NEMA partner bulbs. 90% of the Stadium's total bulb purchases (by cost) are to be manufacture specified low mercury content or NEMA partner bulbs.

The Responsible Party shall confirm that product purchases are sustainable and conform to the mandates of the USGBC and the Sustainable Purchasing Policy, and keep track of the purchasing orders, receipts, and product data sheets/MSDS necessary to document the extent of the sustainable purchases.

SECTION 4: PERFORMANCE EVALUATION

The Maryland Stadium Authority and/or vendor will record and track purchases on a monthly basis. The Maryland Stadium Authority personnel and/or vendor responsible for purchasing will report purchases to the appropriate Maryland Stadium Authority representative.

SECTION 5: RESPONSIBLE PARTY

The Responsible Party for implementation of this Policy and for initial measurement and evaluation of performance is Jeff Provenzano, Director of Sports Complex Facilities, and John Samoryk, Vice President of Procurement, employed by The Maryland Stadium Authority. They will, in the course of the day to day managerial duties, supervise those other individuals and teams involved in implementing the Sustainable Purchasing Policy, including tasks from placing orders for environmentally preferable Durable Goods (electronic and furniture); to monitoring Facility Additions and Alterations for compliance; to specifying reduced mercury lamps.

SECTION 6: PROCEDURES AND STRATEGIES

This policy covers purchases that are within the building and site management's control. The Maryland Stadium Authority personnel may use any qualifying vendor to procure the products described in Section (3), and are encouraged to also consider the following areas of interest:

Packaging

The Maryland Stadium Authority desires to reduce waste generated at Camden Yards Sports Complex through daily operations and recognizes that such reduction begins with the material that enters each facility/site. The Maryland Stadium Authority will request that all items purchased be packaged and delivered with minimal packaging material. The Maryland Stadium Authority reserves the right to request that vendors alter the packaging of goods delivered, when appropriate and/or possible.

Recycled Content

The Maryland Stadium Authority requests that all vendors provide recycled content options for goods when available. If a product is available with recycled content, vendor will disclose that option to the appropriate Maryland Stadium Authority representative. Recycled content targets may be overridden at the discretion of the responsible party if certain products with recycled content present themselves as cost-prohibitive.

SECTION 7: TIME PERIOD

With respect to the Time Period, this Sustainable Purchasing Policy was established in March 2012 and is currently in effect. This plan is to remain in effect for the life of the building and to be regularly evaluated for any improvements. During the life of this policy, the Sustainable Purchasing Policy will, at a minimum, cover those product purchases that are within the building and site management's control.

APPENDIX I - ABBREVIATIONS AND DEFINITIONS

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

- a. **Authority** – The MSA members.
- b. **Baltimore Ravens** – Baltimore Ravens Limited Partnership.
- c. **Intentionally Omitted.**
- d. **Bid** – A statement of price offered by a Bidder in response to an IFB.
- e. **Bidder** – An entity that submits a Bid in response to this IFB.
- f. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days exclude State Holidays (see definition of “Normal State Business Hours” below).
- g. **COMAR** – Code of Maryland Regulations available on-line at www.dsd.state.md.us.
- h. **Contract** - The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of **Attachment M**.
- i. **Contract Administrator (CA)** – The MSA representative for this Contract that is primarily responsible for Contract Administration functions, including issuing written direction, compliance with terms and conditions, monitoring this Contract to ensure compliance with the terms and conditions of the Contract and to assist the CM in achieving on budget/on time/on target (e.g., within scope) completion of the Contract requirements. MSA may change the CA at any time by written notice to the Contractor.
- j. **Contract Commencement** - The date the Contractor is authorized to proceed with the work following any required approvals of the Contract, including approval by the Authority or Board of Public Works, if such approval is required.
- k. **Contract Monitor (CM)** – The MSA 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 compliance, and achieving completion of the Contract on budget, on time, and within scope.
- l. **Contractor** – The selected Bidder that is awarded a Contract by MSA.
- m. **eMMA** – eMaryland Marketplace Advantage (see IFB Section 4.2).
- 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. **MSA** – Maryland Stadium Authority.
- p. **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.

- q. **Normal Business Hours** - Normal business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday.
- r. **Notice to Proceed (NTP)** – A written notice from the Procurement Officer that, subject to the conditions of the Contract, work under the Contract is to begin as of a specified date.
- s. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the MSA for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M- Contract**), including being the only MSA representative who can authorize changes to the Contract. MSA may change the Procurement Officer at any time by written notice to the Contractor.
- t. **Procurement Policies and Procedures** – Procurement Policies and Procedures means the rules adopted by the Authority that govern the procurement process that is to be followed by MSA. The Procurement Policies and Procedures are available for review on MSA's website at www.mdstad.com.
- u. **State** – The State of Maryland.
- v. The Bidder's total price for services in response to this solicitation, included in the Bid in Attachment B – Bid Form, and used in determining the recommended awardee (see IFB Section 6.3).

Maryland Stadium Authority's Contract Compliance System



SYSTEM ACCESS

Vendor Account Look Up:

Find your account and retrieve your password at

<https://mdstadiversitycompliance.com/FrontEnd/UserSearchPublic.asp>

CONTRACT COMPLIANCE & REPORTING

For Prime Contractor

Prime contractors receive regular reporting notices by email. Simply click the link provided to log in, and enter payments made to the list of subcontractors displayed.

For Subcontractors

Once the prime contractor reports their payments, an email notice is sent to each subcontractor.

The subcontractor clicks the link provided to log in, and then confirms the payment reported by the prime has been received.

Additional Contractor Benefits

Immediate visibility to contract goal achievement at the overall contract level.

Visibility to subcontractors that may not be reporting in a timely basis. Integrated messaging to support communication with your contract compliance officer.

Online subcontractor addition/substitution request process.

Getting Started with Subcontractor Utilization Reporting

An email with instructions will be sent to contractors when online reporting starts.

Before then you can determine if an account has been set up for your company through the Account Lookup link on the portal.

APPENDIX IV – REFERENCE DRAWINGS
(see attached)

APPENDIX V – BID DRAWINGS

APPENDIX VI – MAP FOR PRE-BID MEETING



