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Addendum No. 2

To Interested Offerors:

Request for Proposal DD-005

Project C.O.R.E. – Demolition Services

Date Issued: July 8, 2019

This addendum is hereby made part of the Request for Proposals (RFP) dated June 21, 2019, on the subject work as though originally included therein. The following amendments, additions, and/or corrections shall govern this solicitation.

This addendum incorporates the following items:

1. The Closing Date and Time for this solicitation has been changed to July 26, 2019 at 11:00 a.m.
2. Section 1.9 Questions: **Remove** “July 8, 2019” **and replace with** “...July 15, 2019”.
3. Section 4.2.b.4. **Add** “Identify which non-porous materials would be separated and cleaned for disposal as construction waste or recycled. Detail the cleaning procedure to be used.”
4. **Remove** Attachment E - Scope of Work Item 12 **and replace with:** “12. Perform hazardous / regulated materials abatement services in accordance with the Contract Documents. The contractor is responsible for performing work under the supervision of a certified Industrial Hygienist and will be responsible for providing required clearance documentation. The property being removed was badly damaged during a previous fire. MSA will have a third-party testing agent present during the sorting and debris removal process. For base bidding and schedule purposes, the contractor is to assume removal of the entire structure as RACM. Alternate pricing will be requested for the cleaning of any non-porous waste to enable disposal as construction debris / recycling.”
5. Please find enclosed Attachment F – Pricing Form for RFP DD-005.
6. Please find enclosed Attachment G – Form Contract for RFP DD-005.

Note: All addenda must be acknowledged by the prospective Offeror in the Technical Proposal.

Christopher Deremeik

Christopher Deremeik
Procurement Officer

End of Addendum 2

ATTACHMENT F
Pricing Form
Deconstruction and Demolition Services - Project C.O.R.E.
RFP DD-005

Proposing Firm Name: _____

Proposal Date: _____

Summary	
I. Subtotal Base Bid (B1-B5)	
II. Subtotal Allowances (A1-A2)	
Subtotal Base Bid Plus Allowances	
III. Owner Contingency (10% to be used at the owner's discretion)	
BASE TOTAL	

IV. Alternate Services (Alt. 1)	
TOTAL IF ALTERATE ACCEPTED (BASE TOTAL + IV.)	

ATTACHMENT F
Pricing Form
Deconstruction and Demolition Services - Project C.O.R.E.
RFP DD-005

Base Services				
	Base Service Description	Base Cost *		Total Base Cost
B1	Perform rodenticide services in accordance with the requirements of the RFP.		/LS	
B2	Furnish, install, maintain and remove site security fencing and sediment erosion control measures in accordance with the requirements of the RFP.		/LS	
B3	Perform abatement / demolition and debris removal operations in accordance with the requirements of the RFP. Note that base service should assume removal of the entire structure as RACM.		/LS	
B4	Perform backfill, site stabilization (topsoil / seeding) operations in accordance with the requirements of the RFP.		/LS	
B5	Perform sidewalk replacement in accordance with the requirements of the RFP.		/LS	
Subtotal Base Services (B1-B5)				

Allowances					
	Allowance Description	Unit Cost *		Allow for	Total Allowance Cost
A1	Sanitary Line Abandonment. Service to be abandoned within the property line.		/Ea	3	/Ea
A2	Water Service Abandonment. Service to be abandoned at the main.		/Ea	3	/Ea
Subtotal Allowances (A1-A2)					

Alternate Services				
	Alternate Description	Alternate Cost *		Total Alternate Cost
Alt 1	Provide the delta cost to separate and clean non-porous waste, then dispose of cleaned waste as construction debris or recycled material (example steel beams).		/LS	

*Costs include required permitting, documentation and reporting requirements.

**Project C.O.R.E.
Abatement and Demolition Services**

AGREEMENT made as of ____ day of _____, 201____,

BETWEEN the Owner: Maryland Stadium Authority (MSA)
333 West Camden Street, Suite 300
Baltimore, MD 21201

And the Contractor:

The Project is: **Project C.O.R.E.
Abatement and Demolition Services**

The Consultant is:

The Owner and the Contractor hereby agree as follows:

ARTICLE 1 CONTRACT

1.1 **Contract Documents.** This Contract consists of the matters identified in this Section 1.1 (“**Contract Documents**”), all of which are part of this Contract as if fully set forth herein (all as amended from time to time):

- A. This Contract consists of pages 1 through _____ and all Exhibits thereto (the “Standard Contract”);
- B. Exhibit A: Request for Proposals dated _____, 201____, including all Attachments thereto (the “**RFP**”);
- C. Exhibit B: Contractor’s Technical Proposal and Price Proposal dated __, 201__ (together the “**Proposal**”);
- D. Exhibit C: Contract Affidavit (the “**Contract Affidavit**”).

If there are any inconsistencies between or among the Standard Contract or Exhibits A, B, or C, the Contract Documents shall control in the following order of priority: Standard Contract, then Exhibit A, then Exhibit B, then Exhibit C.

This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral.

ARTICLE 2 THE WORK AND CONTRACTOR RESPONSIBILITIES

2.1 The Contractor shall fully execute the Work described in the Contract Documents in strict accordance with the requirements stated therein. The “**Work**” generally includes, but is not limited to, the safe and efficient demolition, abatement and site clearance of a property or properties, as identified in the Contract Documents. The Work requires sub-tasks to be conducted to support the demolition of any buildings located on the subject property(ies), such as: abatement and control of asbestos-containing materials from properties; the disposal of lead-based paint from properties; the removal and disposal of polychlorinated biphenyls (PCBs), mercury containing waste materials and other universal or regulated wastes, such as lead batteries, unused hazardous products and/or potential hazardous wastes from properties. The term Work includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor’s obligations.

2.2 The Contractor shall fully execute the Work as more particularly set forth in the RFP Section 3 and as provided in the RFP Attachment E.

2.3 The Contractor shall undertake, manage, perform and complete the Work in strict compliance with the Contract Documents, including the specifications set forth in the Project Manual attached to the RFP as Attachment H.

2.4 By execution of this Contract the Contractor represents that he has visited the site and become familiar with local conditions under which the Work is to be performed, correlated personal observations with the Contract requirements; and identified the personnel, materials, equipment, and other items necessary to complete the Work.

2.5 Before commencing activities, the Contractor shall take all steps necessary in the ordinary course of preparing for the Work, such as taking field measurements and verifying conditions. The Contractor shall promptly notify Owner of any errors, inconsistencies or omissions discovered under § 2.4 this § 2.5.

2.6 The Contractor shall also:

(i) Supervise, coordinate, manage, direct and perform the Work, using Contractor’s best skill, including subcontracted work, and diligently perform all other acts and services necessary for completion of the Work in strict compliance with the requirements of the Contract Documents;

(ii) Provide all necessary personnel needed to meet its obligations under the Contract. Such personnel shall be qualified to perform in a first-class manner, and shall be knowledgeable in all applicable industry standards, practices and laws;

(iii) Furnish, directly or through subcontractors, all labor, materials, equipment, and tools. In the Contract Documents, the term “**subcontractors**” shall include all subcontractors, materialmen, middlemen, brokers, sales representatives, laborers, and suppliers of labor, any service or materials suppliers and suppliers of equipment and tools to accomplish the Work, and any engineers, surveyors or other professionals hired by subcontractors in connection with the Work;

(iv) Make, enact and enforce agreements with subcontractors (“**Subcontracts**”) and schedule and coordinate the performance of said Subcontracts;

- (v) Obtain all necessary licenses, permits and approvals for the Work;
- (vi) Provide the Owner, in writing, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor to whom the Owner has made an objection;
- (v) Promptly review, approve in writing and submit to the Owner any shop drawings, product data, samples and similar submittals required by the Contract Documents. Shop drawings, product data, samples and similar submittals are not Contract Documents; and
- (vi) Have sole responsibility for and control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work.

ARTICLE 2A INFORMATION PROVIDED BY THE OWNER

2A.1 The Owner has provided the Contractor with its requirements for the Work. The Owner will furnish reports or documents, such as hazardous material reports it has in its possession at the time of Contract execution. Unless the Owner has specifically agreed in writing, the Owner will not obtain, or pay for others to obtain, reports, surveys, or other documents for or in connection with the Work.

ARTICLE 3 CONTRACT COMMENCEMENT DATE AND TERM

3.1 The “**Commencement Date**” of the Work shall be the date stated in a Notice to Proceed (“NTP”) or a Task Order issued by the Owner to the Contractor.

3.2 The term of the Contract will be for a period necessary to complete the scope of work as agreed upon by MSA and the Contractor.

3.3 The schedule, cost and MBE participation associated with this Contract shall have been provided and agreed upon by MSA and the Contractor prior to Commencement Date.

ARTICLE 4 PAYMENT AND RETAINAGE

4.1 Cost and Price Certification. The Contractor has submitted cost or price information and certifies that, to the best of its knowledge, the information submitted is or will be accurate, complete and current as of the Commencement Date. The prices under the Contract or any Contract modification, including profit or fee, shall exclude price increases occurring because the Contractor furnished cost or price information that, as of the Commencement Date, was inaccurate, incomplete or not current.

4.2 Based on Contractor’s Application for Payment certified by the Owner or Program Manager, the Owner shall pay the Contractor in accordance with Article 5 as follows:

(i) Payments to the Contractor shall be subject to retainage of an amount equal to five percent (5%) of the payable amount of the Work; provided however, that if Owner determines that the Work performed by the Contractor (including Work performed by the Contractor’s Subcontractors), is not on time, will not be completed within the Contract price proposal amount, or that there are outstanding material defects in the Work, retainage of ten percent (10%) shall be withheld from future payments until Owner determines that these conditions no longer exist. The final retainage shall be released to Contractor at the time of final payment as provided in Article 5.7.

(ii) Contractor will receive all funds paid to Contractor hereunder in trust for proper application to the Project as provided in the Contract Documents. Contractor shall fulfill its obligations under § 9-201 of the Real Property Article of the Annotated Code of Maryland.

(iii) See Articles 25.1 and 25.3 for Contractor's obligation to pay subcontractors undisputed amounts and limitations and conditions of subcontractor retainage.

(iv) **Electronic Funds Transfer.** Contractor agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption from this method of payment. Contractor shall register using the COT/GAD X-10 Vendor Electronic Funds Transfer (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT-GAD X-10 form and must include the business identification information as stated on the form and reason for requesting an exemption.

4.3 If any payments that are due under the Contract Documents remain unpaid for more than forty-five (45) days following Owner's receipt of a properly documented Application for Payment, such amounts shall bear interest in accordance with §§ 15-104 and 15-105 of the State Finance and Procurement Article ("SFP") of the Annotated Code of Maryland. Charges for late payment of invoices, other than as prescribed by SFP Title 15, Subtitle 1 are prohibited.

ARTICLE 5 APPLICATION FOR PAYMENT AND COMPLETION

5.1 **Contract Sum.** The Contract Sum stated in the Contract, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work and includes all items and services necessary for the proper execution and completion of the Work.

The provisions of this section 5.1 are exclusive of any financial adjustment arising from either an approved change order or contract modification.

5.2 **RESERVED).**

5.2 **Applications for Payment.** At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment (a "**Payment Application**") for Work completed in accordance with the values stated in the applicable Contract, Contract modification, or Task Order.. Such Payment Application shall be supported by evidence substantiating the Contractor's right to payment as the Owner or Program Manager may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

5.3 The Contractor warrants that title to all Work covered by a payment from Owner will pass to the Owner no later than the time of such payment. The Contractor further warrants that upon submittal of a Payment Application, all Work for which payments have been previously approved by the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

5.4 **Approval of Payment.** The Owner or Program Manager will, within seven days after receipt of the Payment Application, either approve or deny payment. If payment is denied, Owner will notify Contractor in writing the reason for the denial.

5.5 Progress Payments

(i) After the Owner has approved payment, the Owner shall make payment in the manner provided in the Contract Documents.

(ii) Upon receipt of payment from the Owner, the Contractor shall promptly pay each subcontractor and supplier an amount determined in accordance with the terms of the applicable subcontracts

and purchase orders, and in accordance with § 4.2(iii).

(iii) Neither the Owner nor the Program Manager shall have responsibility for payments to a subcontractor or supplier.

(iv) A progress payment or partial or entire use or occupancy of a property by the Owner or the City, shall not constitute acceptance of Work which has not been executed in accordance with the requirements of the Contract Documents.

5.6 Substantial Completion

(i) Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, so the Owner can occupy or utilize the property upon which the Work is executed for its intended use and purpose.

(ii) When the Work or designated portion thereof is substantially complete, the City of Baltimore DHCD (the “City”) will inspect the subject property to determine whether the Work is substantially complete. Upon determination by the City that the Work is substantially complete, the City provides notice of its determination in writing (the “City Notice”). The City Notice shall be in the form the City elects to use, including via email or other method of formal or informal communication. Generally, the City Notice sets forth the date of Substantial Completion, identifies the Work the Contractor must complete, and fixes the time within which the Contractor shall finish all Work listed in or attached to the City Notice. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or designated portion thereof, unless otherwise provided in the Substantial Completion Certificate.

5.7 Final Completion and Final Payment

(i) Upon receipt of a final Payment Application, Owner, Program Manager or designated representative on behalf of the City will inspect the Work. When the Work is determined acceptable and the Contract fully performed, the Owner will promptly issue a final payment.

(ii) The State 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 under the Contract as a result of debarment of the subcontractor or supplier under Title 16 or Title 17, Subtitle 2 of State Finance and Procurement Article, Annotated Code of Maryland, or regulations adopted thereunder.

5.8 Correction of Work. The Contractor shall promptly correct Work rejected by Owner, Program Manager, or the City as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correction such rejected Work, including the costs of uncovering, replacement and additional testing as the circumstances may require.

ARTICLE 6 CHANGE ORDERS

In accordance with SFP § 15-112:

6.1 If Owner determines that a change in Work is required:

A. Owner shall issue a written change order for work under the Contract that specifies whether the work is to proceed in compliance with the terms of the Contract on:

- (i) an agreed-to price or agreed upon source of pricing;
- (ii) a force account;

- (iii) a construction change directive; or
- (v) a time and materials basis.

B. Until a change order is issued as described in A above, the Contractor is not required to begin change order work, and the Contractor may not require any subcontractor to being work.

C. If the Program Manager and the Contractor do not agree that work is included within the original scope and terms of the Contract, nothing in this section:

(i) Prohibits the Program Manager from issuing an order to the Contractor to perform work or furnish labor or materials determined by the Program Manager to be required by the Contract;

(ii) Authorizes a refusal to perform work or to furnish labor or materials that the Procurement Officer has order Contractor to perform or to furnish which the Procurement Officer has determined are required by the Contract;

(iii) Prejudices or impairs the right of the Contractor to submit a claim or dispute to the Program Manager, in accordance with applicable law and the Contract, seeking additional compensation for complying with the change order.

D. If the Contract, or part of the Contract requires Owner to pay using a unit methodology, a change order may not be required for work to continue and be completed beyond the estimated quantities in the contract. Upon completion of the Work, Owner will determine the actual quantity used to complete the Contract; and if necessary, issue a final adjustment change order.

E. Payments under an agreed upon change order that do not exceed \$50,000 shall be paid within 30 days after receipt of the invoice by Owner. All other requirements for submission of invoices and payment provisions apply to payments under change orders.

F. Contractor shall provide effected subcontractors with copies of the change order, the amount to be paid to subcontractor(s) based on the change order within five days after Contractor's receipt of the written change order from Owner.

ARTICLE 7 TESTS AND INSPECTIONS

7.1 At the appropriate times, the Contractor shall arrange for tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, statues, ordinances, codes, rules and regulations, or other lawful orders of public authorities. The parties' responsibility for payment is set forth in the Contract Documents.

7.2 If the Owner requires additional testing, the Contractor shall perform those tests.

ARTICLE 8 INSURANCE

8.1 Contractor shall comply with the Insurance requirements set forth in the RFP.

8.2 Unless specifically precluded by the City's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents and employees, each of the other; and (2) the Consultant, Consultant's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

ARTICLE 9 GENERAL PROVISIONS

9.1 Consultant's Documents. Documents prepared by the Consultant are instruments of the Consultant's service for use solely with respect to Work under this Contract. The Consultant shall retain all common law, statutory and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other projects or for additions to this Work under this Contract outside the scope of the Work without the specific written consent of the Consultant.

9.2 Contractor Warranties. The Contractor warrants to the Owner, the City, and DHCD that (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

9.3 Permitted Area. The Contractor shall confine operations at the site to areas permitted by law, ordinance, permits, the Contract Documents and the Owner.

9.4 Safety. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable

9.5 Debris, Trash. During the course of any construction, deconstruction, demolition, or installation, the Contractor shall (a) cause the area to be kept reasonably clean and free of trash and building debris; (b) immediately upon the completion of such activity, cause all such trash and debris, and machinery and equipment, to be removed from the property; and (c) refrain from discarding or depositing any dirt, trash or other debris upon the property.

9.6 Damages and Repairs. Contractor further agrees to repair or pay for any and all consequential damage including but not necessarily limited to: vehicles on adjoining properties, trees, lawns, fields, fences, shrubbery, plantings, beds, improvements, driveways and walkways arising from the its Work on a property under this Contract.

ARTICLE 10 MSA PROGRAM MANAGER

10.1 The Program Manager will assist with administration of the Contract as described in the Contract Documents. The Program Manager will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

10.2 The Program Manager will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

10.3 The Program Manager will not have control over or charge of, and will not be responsible

for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Program Manager will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

10.4 Based on the Program Manager's observations and evaluations of the Contractor's Applications for Payment, the Owner and/or Program Manager will review and approve the amounts due the Contractor.

10.5 The Program Manager has authority to reject Work that does not conform to the Contract Documents.

10.6 The Owner and/or Program Manager will assist the Owner to promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the requirement expressed in the Contract Documents.

10.7 The Program Manager will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request from either the Owner or Contractor.

10.8 Interpretations and decisions of the Program Manager will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

10.9 The Program Manager's duties, responsibilities and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner and Program Manager. Consent shall not be unreasonably withheld.

ARTICLE 11 SUBCONTRACT COMPLIANCE

All Subcontracts shall contain a provision requiring the Subcontractors to comply with the requirements of this Agreement and the Contract Documents. All Subcontracts shall contain a provision making each Subcontract assignable to the Owner, at the Owner's election, in the event the Contractor is terminated or fails to perform its obligations under the Contract Documents (including this Agreement).

ARTICLE 12 GENERAL STATE TERMS

12.1 AMENDMENT. This Contract may be amended by and only by an instrument executed and delivered by each party hereto

12.2 ASSIGNMENT. This Contract may not be assigned by either Party, in whole or in part without the written consent of the other; provided however, that MSA may assign any or all of its rights under this Contract to the State of Maryland, or any agency or department thereof.

12.3 INCORPORATION BY REFERENCE. All terms and conditions and any changes thereto, are made a part of this Contract.

12.4 NON-HIRING OF EMPLOYEES. No official or employee of the State as defined in 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 or term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12.5 APPLICABLE LAW. The provisions of this Contract shall be governed by the laws of the State of Maryland and the parties hereto expressly agree that the courts of the State of Maryland shall have jurisdiction to decide any question arising hereunder after all administrative remedies, if any, have been exhausted.

12.6 ARTICLES AND HEADINGS. The Article and Section headings contained in this Contract are solely for convenience of reference and shall not affect the meaning or interpretation of this Contract or provision thereof. .

ARTICLE 13 NONDISCRIMINATION PROVISIONS

13.1 NONDISCRIMINATION IN EMPLOYMENT. Contractor agrees not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap unrelated in nature and extent so as reasonably to preclude the performance of such employment and 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.

13.2 COMMERCIAL NONDISCRIMINATION. As a condition of entering into this agreement, the company 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, the company 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 the company retaliate against any person for reporting instances of such discrimination. The company 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 nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The company understands and agrees 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 the company 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.

As a condition of entering into this agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against the company under Title 19 of the State Finance and Procurement Article, as amended from time to time, the company agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the company 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 the contractor on each subcontract or supply contract. The company 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. The company understands and agrees that violation of this clause shall be considered a

material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

ARTICLE 14 DISCLOSURES AND ETHICS

14.1 FINANCIAL DISCLOSURE. Contractor shall comply with State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$200,000 or more during a calendar year shall, within 30 days of the time when the \$200,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

14.2 STATEMENT OF POLITICAL CONTRIBUTIONS. Contractor shall comply with the Election Law Article, Title 14 Subtitle 1, Md. Code Ann., which requires that a person doing public business with the State, shall file a statement with the State Board of Elections as provided in section 14-104. Generally, this applies to every person that enters into contracts, leases, or other agreements with the State of Maryland or a political subdivision of the State, including its agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more, shall file with the State Board of Election 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.

14.3 ANTI-BRIBERY. Contractor warrants that neither it nor any of its officers, directors, or partners nor any of its employees who are directly involved in obtaining or performing contracts with any public body has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government or has engaged in conduct since July 1, 1977, which would constitute bribery, attempted bribery, or conspiracy to bribe under the laws of any state or the federal government.

14.4 CONTINGENT FEES. Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this 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 Contract.

ARTICLE 15 MULTI-YEAR CONTRACTS

15.1 SUBJECT TO APPROPRIATIONS. In General: If funds are not appropriated or otherwise made available to MSA to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall terminate automatically as of the beginning of the fiscal year for which funds are not available. Contractor may not recover anticipatory profits or costs incurred after termination.

15.2 Specifically, funding for work under this Contract is provided through the Maryland Department of Housing and Community Development (“the Department”) which is responsible for administration of the Creating Opportunities for Renewal and Enterprise initiative, known as Project C.O.R.E. Funding appropriation, if any, shall be to the Department and not MSA.

ARTICLE 16 DRUG AND ALCOHOL FREE WORKPLACE

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

ARTICLE 17 TERMINATION, DEFAULT AND DISPUTES

17.1 TERMINATION FOR CONVENIENCE. The performance of work under this Contract may be terminated by MSA in accordance with this clause in whole, or from time to time in part, whenever MSA shall determine that such termination is in the best interest of MSA or the State. MSA will pay all reasonable costs associated with this Contract that Contractor has incurred up to the date of termination which were approved by MSA. However, Contractor will not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.

17.2 TERMINATION FOR DEFAULT

(1) MSA may, subject to the provisions of paragraph (3) of this regulation, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances: (a) If the Contractor fails to perform within the time specified herein or any extension thereof; or (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

(2) In the event MSA terminates this contract in whole or in part as provided in paragraph (1) of this clause, the State may procure substitute performance upon terms and in whatever manner the procurement officer may deem appropriate, and the Contractor shall be liable to the State for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

(4) If, after notice of termination of this contract 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 default 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 the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract 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, and if this contract does not contain a clause providing for termination for convenience of the State, the contract shall be equitably adjusted to compensate for such 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."

(5) If this contract is terminated as provided in paragraph (1) of this clause, the State, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the State; and the Contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the Contractor in which the State has an interest. Payment for completed supplies delivered to and accepted by the State shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the State and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and procurement officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The State may withhold from amounts otherwise due the Contractor hereunder such sum as the procurement officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

(6) The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(7) As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier."

17.3 DISPUTES

(1) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

(2) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

(3) A claim shall be made in writing and submitted to the procurement officer for decision within thirty days of when the basis of the claim was known or should have been known, whichever is earlier.

(4) When a claim cannot be resolved by mutual agreement, the contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.

(5) The contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

(6) The procurement officer shall render a written decision on all claims within 90 days of receipt of the contractor's written claim, unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 90 days, the procurement officer shall notify the contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the contractor, by certified mail, return receipt requested, or by any other

method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the MSA.

(7) The procurement officer's decision shall be final and conclusive without prejudice to the rights of the Contractor to institute suit after completion of the Work in a court of competent jurisdiction for losses incurred by Contractor as a result of the procurement officer's decision. Contractor hereby waives any rights that he may have at any time to institute suit or file other claims or causes of action, at law or in equity, prior to completing all of the Work under the Contract Documents.

(8) Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision.

ARTICLE 18 INDEMNIFICATION

Contractor shall be responsible for, and shall defend, indemnify and hold harmless the State of Maryland, the Department, MSA and the Baltimore City Department of Housing and Community Development (the "City"), and their members, officers, agents, and employees against and from, any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs, expenses, proceedings of any kind whatsoever, and costs of any kind or type (including but not limited to reasonable attorney's and expert's fees and costs), arising directly or indirectly from the Contractor's or its consultant's activities, or those of its subcontractors, sub-consultants, employees, and invitees, in connection with the work, except for any liability or responsibility arising from the intentional misconduct or gross negligence of MSA, the Department or the City. All amounts due thereunder shall be payable on demand;

MSA, the City, and the Department shall not assume any obligation to indemnify, hold harmless, or pay attorneys' fees that may arise from or in any way be associated with the performance of this Contractor.

ARTICLE 19 TAX EXEMPTION

MSA is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland Sales Tax and the exemption does not apply.

ARTICLE 20 COMPLIANCE WITH LAWS

The Contractor hereby represents and warrants that:

20.1 It is qualified to do business in the State of Maryland (whether a domestic business or a foreign corporation) pursuant to § 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, and that it will take such action as, from time to time hereafter may be necessary to remain so qualified;

20.2 It is not in arrears with respect to the payment of any moneys 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;

20.3 EPA compliance. Materials, supplies, equipment and other services shall comply in all

respects with the Federal Noise Control Act of 1972, where applicable.

20.4 Occupational Safety and Health (OSHA). All materials, equipment, supplies or services shall comply with the applicable U.S. and the Maryland Occupational Safety and Health Act Standards and related regulations; and

20.5 All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in this Contract; and

20.6 Contractor shall obtain and comply with, at no cost or expense to MSA, the City or DHCD, federal, State, and local permits, licenses, certifications, inspections, insurance, and governmental approvals, required in connection with the Work required under the Contract.

ARTICLE 21 NO DELEGATION OF AUTHORITY

Properties in and upon which the Contractor executes the Work are owned by, or under the control of Baltimore City or its housing authority. The Contractor shall not sign, approve, or execute any manifests, certificates, other documents required by the Environmental Protection Agency, or any state, for transport and deposit of materials deemed hazardous or certified non-hazardous.

ARTICLE 22 NON-LIABILITY

In no event shall MSA be liable to Contractor for any injury to persons, or damage to or theft of any property, unless and to the extent such injury, damage, or loss is proximately and is actually and solely caused by MSA's gross negligence or willful misconduct. Further, MSA shall not be liable to Contractor for any such damage caused by tenants, licensees, or persons in, upon, or about the premises; and neither MSA nor Contractor shall be liable to the other for any incidental, indirect, special punitive, or consequential damages arising out of, or as a result of the Work under the Contract Documents.

ARTICLE 23 GOVERNMENTAL IMMUNITIES

Nothing in the preceding provision, or in any other term or provision in this Agreement, shall waive, limit, or otherwise affect in any way the limitations, immunities or notice requirements applicable to claims against MSA as an agency of the State of Maryland.

ARTICLE 24 RETENTION OF RECORDS

The Contractor 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.

ARTICLE 25 SUBCONTRACTORS, RETAINAGE AND LIQUIDATED DAMAGES

25.1 PROMPT PAYMENT OF SUBCONTRACTORS. It is the policy of the State that a contractor shall promptly pay to a subcontractor any undisputed amount to which the subcontractor is entitled for work under a State procurement contract for construction.

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. References to “undisputed amount” “prime contractor” “contractor” and “subcontractor” have the meanings set forth 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 calendar 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.

d. A contractor shall include in its subcontracts for work under the contract, wording that incorporates the provisions, duties, and obligations of a-d.

25.2 LIQUIDATED DAMAGES

The Contract requires the Contractor to comply in good faith with the Minority Business Enterprise (“MBE”) Program and contract provisions. MSA and the Contractor acknowledge and agree that MSA will incur damages, including but not limited to the 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 requirements. The parties further acknowledge and agree that the damages MSA might reasonably anticipate to accrue as a result of such lack of compliance are difficult to ascertain with precision.

Therefore, upon issuance of a written determination by MSA that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or contract provisions, the Contractor shall pay liquidated damages to MSA or the State on behalf of MSA, as directed, at the rates set forth below. The Contractor expressly agrees that MSA may withhold payment on any invoices as 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 MSA 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): \$120.00 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/or amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for the specific MBE firm and the dollar value of the work performed by that MBE firm for the contract.

d. Failure to meet the Contractor’s total MBE participation goal and subgoal commitments: the

difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

e. Notwithstanding the assessment or availability of liquidated damages, MSA reserves the right to terminate the Contract and to exercise any and all other rights or remedies which may be available under the Contract or which otherwise may be available at law or in equity.

25.3 RETAINAGE

a. Contractor may not retain from any payment due a subcontractor a percent of the payment greater than the five percent for retainage retained by MSA from Contractor.

b. A subcontractor may not retain from any payment due a lower tier subcontractor a percent of the payment greater than the percent of payments retained from the subcontractor.

c. Contractor and a subcontractor are not prohibited by §§ a and b from withholding an amount in addition to retainage if the Contractor or subcontractor determines that a subcontractor's performance under the subcontract provides reasonable grounds for withholding the additional amount.

ARTICLE 26 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 or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

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

ARTICLE 27 SUSPENSION OF WORK

The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time as he may determine to be appropriate for the convenience of MSA.

ARTICLE 28 TORT CLAIMS ACTS

Contractor agrees for itself and for its insurers, that neither Contractor nor its insurers may raise or use any governmental immunity from or limitation of liability for torts (including under the Maryland Tort Claims Act and/or the Maryland Local Government Tort Claims Act) in the adjustment of claims or in the defense of suits against Owner or Client, unless requested by Owner.

ARTICLE 29 INDEPENDENT CONTRACTOR STATUS

The Contractor is an independent Contractor and neither the Contractor nor its employees, agents or

representatives shall be considered employees, agents or representative of the State or of MSA. Nothing contained in this Contract is intended or should be construed as creating the relationship of co-partners, joint venturers or an association between the State or MSA and the Contractor.

ARTICLE 30 NOTICE All notices required or permitted hereunder shall be in writing and delivered personally or by registered or certified mail (restricted delivery), return receipt requested, postage prepaid to the addresses set forth below:

If to the Owner:	Maryland Stadium Authority 333 West Camden Street, Suite 500 Baltimore, MD 21201 Attn:
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If to the Contractor

Any party may designate another addressee or change its address by notice given to the other party pursuant to this Article 30. All notices shall be deemed given upon receipt thereof or at the time delivery is refused.

LIST OF EXHIBITS:

- | | |
|-----------|---|
| EXHIBIT A | Request for Proposals dated _____ |
| EXHIBIT B | Contractor's Technical and Price Proposal |
| EXHIBIT C | Contract Affidavit |

ARTICLE 31 NO PERSONAL LIABILITY

No member and/or partner, director, officer, employee or representative of the Owner shall have any personal liability, in its, his or her individual capacity, or otherwise, arising under or related to this Contract.

This Agreement is entered into as of the date first written above.

OWNER

Maryland Stadium Authority

by: _____
Michael J. Frenz, Executive Director

CONTRACTOR

by: _____