

## **ATTACHMENT B – SAMPLE – FINANCIAL PROPOSAL**

### **MARYLAND STADIUM AUTHORITY REQUEST FOR FINANCIAL PROPOSALS**

#### **On-Call Architectural and Engineering Indefinite Delivery Contract MSA Project No. 22-008**

Your firm has been selected to submit a financial proposal for the above referenced contract. This form must be completed in its entirety in order to be considered for award of a contract. The financial proposal will include a current schedule of hourly rates, which will establish billing rates for project assignments awarded under the contract for each category identified for the three (3) year term of the contract. For option year renewals, the MSA will consider adjustments on labor rates only based upon wage increases in the Consumer Price Index (CPI), as published by the Bureau of Labor & Standards. Increases in excess of five percent (5%) will not be considered. All firms will be required to provide this information at the time of any rate increase request.

All billing rates shall be inclusive of direct salaries, fringe benefits, overhead, profit, materials, and all other cost, direct and indirect, except reproduction beyond formally scheduled design submissions to MSA, and out-of-area mileage, exceeding 75 mile radius of the consultant's office. Ultimately, the approved rates will be used to negotiate A/E fees for services to be rendered for a specific project or projects as they become defined by MSA.

MSA reserves the right to make multiple contract awards as a result of this solicitation. The A/E fees for the total number of projects awarded to any one firm may not exceed \$500,000 without required approvals from MSA. In the event that multiple awards are made, the opportunity for project tasks will be generally rotated among the firms selected for award, subject to exclusions as noted herein.

The basis of assignments for task orders will be as follows: Task orders shall be generally rotated among firms receiving awards under this solicitation starting in the order of ranking of the firms during selection, unless MSA determines that: (a) the firm is unable to perform the assignment, (b) the hours or fees proposed by the firm cannot be successfully negotiated to an amount MSA considers fair and reasonable, (c) another firm has special experience or qualifications, including geographic proximity to the site for which services are needed, (d) assignment to another firm would balance to a greater extent, the fees paid or payable for assignments previously issued, or (e) in the sole discretion of MSA, assignment to another firm is in the best interest of MSA.

Projects normally will be initiated by MSA requesting a cost proposal to provide services based on a scope of work defined by MSA. The proposal would include a cost breakdown based on established hourly rates and MBE participation goals. MSA will review the proposal, accept it, or negotiate a revised proposal with the firm. Upon joint agreement of a fixed "not-to-exceed" fee, the firm shall be issued a written order to proceed with the work.

Notwithstanding anything to the contrary herein, MSA reserves the right to reject any cost proposal submitted and to have the services performed by others. Additionally, should a firm decline or otherwise fail to submit a cost proposal as requested, it will lose its turn in the rotation and may be removed altogether.

Each cost proposal shall be based upon the following format of personnel and your proposed billing rates. The billing rates shall be inclusive of direct salaries, fringe benefits, overhead, profit, materials and all other costs, direct and indirect. Mileage, within a 75 mile radius of the consultant's office, will not be compensated and the costs therefore must be reflected in the multiplier.

	<b>Manpower Rates - Basic Scope Requirements</b>				
<b>Category</b>	<b>Proposed Hourly Rates X Multiplier = Billing Rates</b>				
	<b>Hourly Rate</b>		<b>Multiplier</b>		<b>Billing Rate</b>
Principal		X		equals	\$0.00
Project Architect		X		equals	\$0.00
Architectural Designer		X		equals	\$0.00
Architectural Draftsperson		X		equals	\$0.00
Civil Engineer		X		equals	\$0.00
Civil Designer		X		equals	\$0.00
Civil Draftsperson		X		equals	\$0.00
Electrical Engineer		X		equals	\$0.00
Electrical Designer		X		equals	\$0.00
Electrical Draftsperson		X		equals	\$0.00
Mechanical Engineer		X		equals	\$0.00
Mechanical Designer		X		equals	\$0.00
Mechanical Draftsperson		X		equals	\$0.00
Plumbing Engineer		X		equals	\$0.00
Plumbing Designer		X		equals	\$0.00
Plumbing Draftsperson		X		equals	\$0.00
Structural Engineer		X		equals	\$0.00
Structural Designer		X		equals	\$0.00
Structural Draftsperson		X		equals	\$0.00

The Offeror represents, and it is a condition precedent to acceptance of this offer, that the offeror has not been a party to any agreement to submit a fixed or uniform price.

Offeror:

Address:

Federal ID#:

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

Printed Name:

Title:

Telephone:

Email:

The Offeror represents, and it is a condition precedent to acceptance of this offer, that the offeror has not been a party to any agreement to submit a fixed or uniform price.

Offeror:

Address:

Federal ID#:

Signature:

Printed Name:

Title:

Telephone:

Email:

## **Attachment C - Bid/Proposal Affidavit**

### **A. AUTHORITY**

I hereby affirm that I, \_\_\_\_\_ (name of affiant) am the \_\_\_\_\_ (title) and duly authorized representative of \_\_\_\_\_ (name of business entity) 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):

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**D. AFFIRMATION REGARDING OTHER CONVICTIONS**

I FURTHER AFFIRM THAT:

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

- (1) Been convicted under state or federal statute of:
  - (a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or
  - (b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;
- (2) Been convicted of any criminal violation of a state or federal antitrust statute;
- (3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of Bids/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):
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**E. AFFIRMATION REGARDING DEBARMENT**

I FURTHER AFFIRM THAT:

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

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**F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES**

I FURTHER AFFIRM THAT:

- (1) The business was not established and does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and
  - (2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):
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**G. 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:
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**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: \_\_\_\_\_

*Title*

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

*Date*

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

### 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 unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.**

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

MBE participation goal, including up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the Contract.

- ✓ In order to receive credit for self-performance, an MBE prime must be certified in the appropriate NAICS code to do the work and must list its firm in the MBE Participation Schedule, including the certification category under which the MBE prime is self-performing and include information regarding the work it will self-perform.
  - ✓ For the remaining portion of the overall goal and the remaining subgoals, the MBE prime must also identify on the MBE Participation Schedule the other certified MBE subcontractors used to meet those goals or request a waiver.
  - ✓ These guidelines apply to the work performed by the MBE Prime that can be counted for purposes of meeting the MBE participation goals. These requirements do not affect the MBE Prime's ability to self-perform a greater portion of the work in excess of what is counted for purposes of meeting the MBE participation goals.
  - ✓ Please note that the requirements to meet the MBE participation overall goal and subgoals are distinct and separate. If the contract has subgoals, regardless of MBE Prime's ability to self-perform up to 50% of the overall goal (including up to 100% of any subgoal), the MBE Prime must either commit to use other MBEs for each of any remaining subgoals or request a waiver. As set forth in Attachment 1-B Waiver Guidance, the MBE Prime's ability to self-perform certain portions of the work of the Contract will not be deemed a substitute for the good faith efforts to meet any remaining subgoal or the balance of the overall goal.
  - ✓ In certain instances where the percentages allocated to MBE participation subgoals add up to more than 50% of the overall goal, the portion of self-performed work that an MBE Prime may count toward the overall goal may be limited to less than 50%. Please refer to the Governor's Office of Small Minority & Women Business Affairs' website for the MBE Prime Regulations Q&A for illustrative examples.  
[http://www.goMDsmallbiz.maryland.gov/Documents/MBE\\_Toolkit/MBEPrimeRegulation\\_QA.pdf](http://www.goMDsmallbiz.maryland.gov/Documents/MBE_Toolkit/MBEPrimeRegulation_QA.pdf)
6. Subject to items 1 through 5 above, when a certified MBE performs as a participant in a joint venture, a procurement agency may count a portion of the total dollar value of the Contract equal to the distinct, clearly-defined portion of the work of the Contract that the certified MBE performs with its own forces toward fulfilling the Contract goal, and not more than one of the Contract subgoals, if any.
7. The work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Please refer to COMAR 21.11.03.12-1 for more information regarding these requirements.
8. **Materials and Supplies: New Guidelines Regarding MBE Participation.**
- ✓ Regular Dealer (generally identified as a wholesaler or supplier in the MDOT Directory): Up to 60% of the costs of materials and supplies provided by a certified MBE may be counted towards the MBE participation goal(s) if such MBE is a Regular Dealer of such materials and supplies. Regular Dealer is defined as a firm that owns, operates, or maintains a store, a warehouse, or any other establishment in which the materials, supplies, articles, or equipment are of the general character described by the specifications required under the contract and are bought, kept in stock, or regularly sold or leased to the

public in the usual course of business; and does not include a packager, a broker, a manufacturer's representative, or any other person that arranges or expedites transactions.

*Example for illustrative purposes of applying the 60% rule:*

*Overall contract value: \$2,000,000*

*Total value of supplies: \$100,000*

*Calculate Percentage of Supplies to overall contract value: \$100,000 divided by \$2,000,000 = 5%*

***Apply 60% Rule - Total percentage of Supplies/Products 5% x 60% = 3%***

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

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

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

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

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

11. If you have any questions as to whether a firm is certified to perform the specific services or provide specific products, please contact MDOT's Office of Minority Business Enterprise at 1-

800-544-6056 or via email to [mbe@mdot.state.md.us](mailto:mbe@mdot.state.md.us) sufficiently prior to the submission due date.

### **Subgoals (if applicable)**

Total African American MBE Participation:	_____ %
Total Asian American MBE Participation:	_____ %
Total Hispanic American MBE Participation:	_____ %
Total Women-Owned MBE Participation:	_____ %

### **Overall Goal**

Total MBE Participation (include all categories):	_____ %
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## **PART 2 - MBE UTILIZATION AND FAIR SOLICITATION AFFIDAVIT & MBE PARTICIPATION SCHEDULE**

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

In connection with the bid/proposal submitted in response to Solicitation No. \_\_\_\_\_, I affirm the following:

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

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

- \_\_\_\_\_ percent for African American-owned MBE firms
- \_\_\_\_\_ percent for Hispanic American-owned MBE firms
- \_\_\_\_\_ percent for Asian American-owned MBE firms
- \_\_\_\_\_ percent for Women-owned MBE firms

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**

☐ After making good faith outreach efforts prior to making this submission, 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

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

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

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

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

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

CONTINUE ON SEPARATE PAGE IF NEEDED

## **PART 4 – SIGNATURE PAGE**

**To complete Affidavit committing to MBE(s) or requesting waiver,  
Bidder/Offeror must sign below:**

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

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

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Date

**SUBMIT THIS AFFIDAVIT WITH BID/PROPOSAL**

## 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:
  - (a) dollar difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (b) percentage difference between the MBE subcontractor's quote and the average of the other subcontractors' quotes received by the Offeror;
  - (c) percentage that the MBE subcontractor's quote represents of the overall contract amount;
  - (d) number of MBE firms that the Offeror solicited for that portion of the work;
  - (e) whether the work described in the MBE and Non-MBE subcontractor quotes (or portions thereof) submitted for review is the same or comparable; and
  - (f) number of quotes received by the Offeror for that portion of the work.
4. The above factors are not intended to be mandatory, exclusive, or exhaustive, and other evidence of an excessive or unreasonable price may be relevant.
5. The Offeror may not use its price for self-performing work as a basis for rejecting an MBE Firm's quote as excessive or unreasonable.
6. 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.
7. 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 made reasonable efforts to assist interested MBE Firms in obtaining:

1. The bonding, lines of credit, or insurance required by the procuring agency or the Offeror; and
2. 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 Solicitation No. \_\_\_\_\_  
in \_\_\_\_\_ County by \_\_\_\_\_  
(Name of Prime Contractor's Firm)

\*\*\*\*\*

2. \_\_\_\_\_ (Minority Firm), is either unavailable for the work/service or unable to prepare a 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)

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

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

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

Company:

Company Name (please print or type)

By:

Signature of Authorized Representative

Printed Name:

Printed Name

Title:

Title

Date:

Date

Address:

Company Address

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

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
Offeror Company Name, Street Address, Phone		<b>Solicitation #:</b>

Identify those items of work that the Offeror made available to MBE Firms. This includes, where appropriate, those items the 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 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 Proposal items identified during the goal setting process as possible items of work for performance by MBE Firms, the Offeror should make all of those items of work available to MBE Firms or explain why that item was not made available. If the 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 Offeror normally self-perform this work?	Was this work made available to MBE Firms? If no, explain why not.
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No

☐ Please check if Additional Sheets are attached.

# GOOD FAITH EFFORTS DOCUMENTATION TO SUPPORT WAIVER REQUEST

## PART 2 – IDENTIFIED MBE FIRMS AND RECORD OF SOLICITATIONS

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

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 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 Offeror should solicit all of those MBE Firms or explain why a specific MBE was not solicited. If the 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 Offeror that the MBE contractor refused to sign the Minority Contractor Unavailability Certificate (**Attachment D-1B - Exhibit A**). If the Offeror used a Non-MBE or is self-performing the identified items of work, Part 4 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.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: _____ <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: _____ <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: _____ Spoke with: _____ <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing
Firm Name: _____ MBE Classification (Check only if requesting waiver of MBE subgoal.) <input type="checkbox"/> African American-Owned <input type="checkbox"/> Hispanic American- Owned <input type="checkbox"/> Asian American-Owned <input type="checkbox"/> Women-Owned <input type="checkbox"/> Other MBE Classification		Date: _____ <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Date: _____ <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail	Time of Call: _____ Spoke with: _____ <input type="checkbox"/> Left Message	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Used Other MBE <input type="checkbox"/> Used Non-MBE <input type="checkbox"/> Self-performing

☐ Please check if Additional Sheets are attached.

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

PAGE \_\_ OF \_\_

<b>Prime Contractor:</b>	<b>Project Description:</b>	<b>PROJECT/CONTRACT NUMBER:</b>
<i>Offeror Company Name, Street Address, Phone</i>		<b>Solicitation #:</b>

This form must be completed if Part 1 indicates that an MBE quote was rejected because the 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 Proposal)	Self-performing or Using Non-MBE (Provide name)	Amount of Non-MBE Quote	Name of Other Firms who Provided Quotes & Whether MBE or Non-MBE	Amount Quoted	Indicate Reason Why MBE Quote Rejected & Briefly Explain
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other
	<input type="checkbox"/> Self-performing <input type="checkbox"/> Using Non-MBE _____	\$ _____	_____ <input type="checkbox"/> MBE <input type="checkbox"/> Non-MBE	\$ _____	<input type="checkbox"/> Price <input type="checkbox"/> Capabilities <input type="checkbox"/> Other

☐ Please check if Additional Sheets are attached.

**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. \_\_\_\_\_, 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 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):

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---

---

5. **Please Check One:**

\_\_\_\_\_ Offeror did attend the pre-Proposal conference.

\_\_\_\_\_ No pre -Proposal meeting/conference was held.

\_\_\_\_\_ Offeror did not attend the pre-Proposal conference.

PLEASE PRINT OR TYPE

Company:

---

Company Name (please print or type)

By:

---

Signature of Authorized Representative

Printed Name:

---

Printed Name

Title:

---

Title

Date:

---

Date

Address:

---

Company Address



**CERTIFIED MBE SUBCONTRACTOR PARTICIPATION CERTIFICATION****INSTRUCTIONS:**

**PRIME CONTRACTOR:** After completing SECTIONS A, B, and D, provide this form to *each* certified Minority Business Enterprise subcontractor (MBE) listed on the MBE Participation Schedule (Attachment D-1A) allowing sufficient time for the MBE to respond within the required timeframe.

**CERTIFIED MBE SUBCONTRACTOR:** Complete SECTION C to acknowledge and certify the information in SECTION A. Return the completed form directly to the Procurement Officer identified in SECTION D within 10 days after notice from the Prime Contractor of the State's intent to award the Contract. Provide a copy to the Prime Contractor.

***IF THIS FORM IS NOT RETURNED WITHIN THE REQUIRED TIME, THE PROCUREMENT OFFICER MAY DETERMINE THAT THE PRIME CONTRACTOR IS NOT RESPONSIBLE AND THEREFORE NOT ELIGIBLE FOR CONTRACT AWARD.***

**SECTION A**

Provided that (Prime Contractor) \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation Number \_\_\_\_\_, (Prime Contractor) \_\_\_\_\_ intends to enter into a subcontract with (Certified MBE Subcontractor) \_\_\_\_\_ with MDOT Certification Number \_\_\_\_\_ committing to participation by (Certified MBE Subcontractor) \_\_\_\_\_ of at least \$ \_\_\_\_\_ which equals \_\_\_\_\_% of the Total Contract Value for the following products/services:

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

The Contractor and certified MBE each acknowledge that, for purposes of determining the accuracy of the information provided herein, the Procurement Officer may request additional information, including, without limitation, copies of the subcontract agreements and quotes. The Contractor and certified MBE each solemnly affirms under the penalties of perjury that: (i) the information provided in this Certified MBE Subcontractor Participation Certification is true to the best of its knowledge, information and belief, and (ii) 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 MBE in a Bid/Proposal and:

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

**SECTION B – Prime Contractor**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title:

\_\_\_\_\_

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

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

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

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

**SECTION C – Certified MBE Subcontractor**

Signature of Representative:

\_\_\_\_\_

Printed Name and Title:

\_\_\_\_\_

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

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

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

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

**SECTION D**

*This completed form is due to the Procurement Officer on or before:* \_\_\_\_\_

Solicitation #: \_\_\_\_\_ Solicitation Title: \_\_\_\_\_

Agency/Dept.: \_\_\_\_\_ Procurement Officer: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Street Address, City, State, Zip Code:

\_\_\_\_\_

\_\_\_\_\_

**D-3B**  
**MBE PRIME PROJECT PARTICIPATION CERTIFICATION**

**Please complete and submit this form to attest to 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 Business Days of notification of apparent award. If the Offeror fails to return this affidavit within the required time, the Procurement Officer may determine that Proposal is not susceptible of being selected for Contract award.**

Provided that \_\_\_\_\_ (Prime Contractor's Name) with Certification Number \_\_\_\_\_ is awarded the State contract in conjunction with Solicitation No. \_\_\_\_\_, such MBE Prime Contractor intends to perform with its own forces at least \$ \_\_\_\_\_ which equals to \_\_\_\_ % of the Total Contract Amount for performing the following goods and services for the Contract:

NAICS CODE	WORK ITEM, SPECIFICATION NUMBER, LINE ITEMS OR WORK CATEGORIES (IF APPLICABLE) For Construction Projects, General Conditions must be listed separately	DESCRIPTION OF SPECIFIC PRODUCTS AND/OR SERVICES	VALUE OF THE WORK

**MBE Prime Contractor**

Company:

\_\_\_\_\_  
*Company Name (please print or type)*

FEIN:

\_\_\_\_\_  
*Federal Identification Number*

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

\_\_\_\_\_  
Phone:

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

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

\_\_\_\_\_  
By:

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

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

## Attachment E – Small Business Reserve Affidavit

\*\*\*\*\* PROVIDING FALSE INFORMATION \*\*\*\*\* Anyone providing false information to the State of Maryland in connection with obtaining or attempting to obtain a contract under Small Business Reserve or Preference procurement may be subject to the following:

A determination by a Procurement Officer that a bidder/offeror is not responsible;

A determination that a contract entered into is void or voidable under § 11-204 of the State Finance and Procurement Article of the Annotated Code of Maryland; Suspension and debarment under Title 16 of the State Finance and Procurement Article; Criminal prosecution for procurement fraud (§ 205.1 of the State Finance and Procurement Article), perjury, or other crimes; and Other actions permitted by law.\*\*\*\*\* FAILURE TO MEET MINIMUM QUALIFICATIONS \*\*\*\*\*

Any Bidder or potential bidder failing to meet the minimum qualifications of a "small business" specified in § 14-501(c) of the State Finance and Procurement Article will be ineligible to participate in a procurement designated for a Small Business Reserve under § 14-504 or Small Business Preference under § 14-206 - 207. Any person or company bidding on Small Business Reserve or Preference procurement and not qualifying as a small business under § 14-501(c) will have its bid or offer rejected on the ground that the bidder is not responsible.

I AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_

and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

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

Project Name and Number
SMALL BUSINESS QUALIFICATION NUMBER
Date of Most Recent Qualification by DGS
Expiration Date: _____ Date to recertify: _____
Today's Date
BY: Signature (Authorized Representative and Affidavit)

**(Sample Agreement)**

**AGREEMENT**

**FOR**

**MARYLAND STADIUM AUTHORITY**

**ON-CALL ARCHITECTURE AND ENGINEERING**

**INDEFINITE DELIVERY CONTRACT (IDC)**

**MSA PROJECT NO. 22-008**

**Between**

**The Maryland Stadium Authority**

**And**

**(ARCHITECT/ENGINEER)**

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**Maryland Stadium Authority**  
**Standard Form of Agreement with Architects and Engineers**

**Project Title:** On-Call Architecture and Engineering Indefinite Delivery Contract (IDC)

**MSA Project Number:** 22-008

**AGREEMENT**

This Agreement (“**Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021 between the Maryland Stadium Authority (“**MSA**” or “**Owner**”), a body politic and corporate, and a unit in the Executive Branch of Maryland State Government (the “**State**”), and Architectural Engineering ( the “**AE**”), whose principal place of business is \_\_\_\_\_.

**RECITALS**

A. WHEREAS, the AE has represented itself to be professionally qualified and having met the requirements of the Code of Maryland Regulations (**COMAR**) §21.12.04 or §21.12.05, as applicable; and having been fully informed as to the scope of the project and having read and examined the Request for Proposals (the “**RFP**”) issued by MSA on \_\_\_\_\_2021 and titled ‘Request for Proposals, Maryland Stadium Authority, Camden Yards Sports Complex, On-Call Architecture and Engineering Indefinite Delivery Contract (IDC) for On-Call Architecture and Engineering Indefinite Delivery Contract (the “**Project**”) and any addenda issued thereto; and

B. WHEREAS, MSA has selected AE for the Project based upon its qualifications and experience as set forth in its Proposal; and

C. WHEREAS, the parties mutually agree to enter into this agreement based upon the Scope Services set forth in the RFP attached hereto as **Exhibit 2**, and as described in this Agreement.

NOW, THEREFORE, under the terms and conditions set forth herein, the Parties agree as follows:



**ARTICLE 1**  
**DEFINITIONS**

1. Incorporation of Recitals. The foregoing Recitals are incorporated by reference and made a part of this Agreement.

2. Definitions

For purposes of this Agreement, each of the following terms shall have the meaning specified for such term:

“**Agreement**” means this Architect/Engineer Agreement, together with the exhibits attached hereto and made a part hereof, as the same may from time to time be amended or supplemented.

“**Basic Services**” has the meaning given in Section 2.1.

“**CM**” means the Construction Manager, if applicable, who shall be selected by MSA for the Project.

“**AE**” means the Architect/Engineer identified in the first paragraph of this Agreement.

“**Project**” has the meaning given in the Recitals.

“**MSA**” means the Maryland Stadium Authority.

“**Orioles**” means the Baltimore Orioles Limited Partnership or successor organization.

“**Ravens**” means the Baltimore Ravens Limited Partnership or successor organization.

“**State**” means the State of Maryland.

“**Change Order**” means any amendment or modification of the Contract Documents approved by MSA.

“**Completion Date**” means the Completion Date specified in the Construction Contract, subject to extension as provided in Section 4 of this Agreement.

“**Construction**” or “**construct**” or any variation thereof shall also mean “**rehabilitation**” or “**rehabilitate**” or any variation thereof.

“**Construction Contract**” means the agreement between MSA and a General Contractor or Construction Manager, as applicable, engaged by the Owner for construction of the Project.

“**Contract Documents**” means the Construction Contract, together with any general and special conditions attached thereto, the Drawings and any Change Order(s).

**ARTICLE 1**  
**GENERAL PROVISIONS**

**1.1 RELATIONSHIP.** The AE accepts the relationship of trust and confidence established between it and the Owner by this Agreement and shall furnish its professional skill and judgment consistent with the standards of the profession and cooperate with the Owner, the Owner's other AEs and contractors as applicable, in furthering the interests of the Owner throughout the duration of this Agreement. For clarity, AE's status is that of a design professional, not fiduciary. The AE shall furnish efficient business administration and management services as required herein and shall use its professional efforts to perform its services in an expeditious and economical manner consistent with the interests of the Owner. The AE shall be an agent of the Owner to the extent, and only to the extent, required to properly perform its obligations under this Agreement. The AE shall not represent or hold itself out to have any authority to act on behalf of or bind the Owner other than as specifically provided herein.

**1.2 STANDARD OF CARE.** All services to be performed by the AE with respect to this Agreement shall be provided in a manner consistent with the degree of care and skill usually exercised by architects/engineers experienced in projects of similar scope and in accordance with standards of care and skill expected of architects/engineers experienced in the design of projects similar to the Project and under the direction of architects and engineers licensed and duly qualified in the jurisdiction in which the Project is located.

Approval by the Owner of any material (including by way of example not limitation, drawings, plans and specifications) produced by the AE, shall not relieve the AE of its responsibility for the accuracy and completeness of such material. Nor does Owner's approval of any material relieve or exempt the AE from its compliance with required, codes, ordinances, applicable regulations and laws; or professional standards of care and this Agreement.

**1.3 ORDER OF DOCUMENT PRECEDENCE.** If there is any conflict among the Agreement documents, then the following order of precedence will govern:

- a. This Agreement, including all Exhibits and any amendments thereto,
- b. The Contract Affidavit;
- c. The RFP and subsequent addenda;
- d. The Architect's Technical and BAFO Price Proposals (collectively, "Proposal").

**1.4 PERIOD OF PERFORMANCE.** The term of this Agreement begins on the date the Agreement is signed by MSA following any required approvals of the Agreement, including approval of the MSA Board of Directors and the Board of Public Works, if such approval is required. The term shall be for a period of three (3) years with two (2) one (1) year renewal options at MSA's sole discretion.

**1.5 RESERVED.**

**1.6 CONSTRUCTION MANAGER.** The AE's services may be provided in conjunction with the services of a CM if one is engaged by MSA for any individual task order.

## **ARTICLE 2**

### **EMPLOYEES AND CONSULTANTS**

**2.1 OWNER'S CONSULTANTS.** The Owner reserves the right to retain additional architects, AEs, engineers, contractors, or others (together “**Additional Consultants**”), for similar or dissimilar services as those provided by the AE. In the Owner’s sole discretion, it may require the AE, who hereby agrees, to work in coordination and cooperation with such Additional AEs. Any Additional AE employed independently by the Owner shall be responsible only to the Owner for their work and the performance of their respective agreements with the Owner. The Owner shall inform the AE as soon as reasonably possible if it has engaged another AE(s) and their role with respect to the Project.

**2.2 SUBCONSULTANTS:** Subconsultant(s) engaged by the AE shall be subject to the approval of the Owner, which approval shall not be unreasonably withheld. The AE must bind every subconsultant and will see that every subconsultant agrees to be bound - by the terms of this Agreement.

**2.3 COMMUNICATIONS.** Communication by and with the AE's subconsultant shall be through the AE *unless* the Owner in its discretion deems it necessary to communicate directly with AE’s subconsultant AEs. Owner of contractor shall advise the AE of the nature of any such direct communication.

**2.4 AE EMPLOYEES.** The AE’s services shall consist of those services performed by the AE and the AE's employees, agents, representatives, subconsultant AEs, and others regardless of title or role, acting on the AE’s behalf (together, the “AE’s Agent(s)”). The AE shall be responsible for the provision of all services in accordance with this Agreement, whether provided by the AE or the AE’s Agents.

## **ARTICLE 3**

### **BUILDING CODES, SYSTEM REQUIREMENTS & DEFECTS**

**3.1 BUILDING CODES AND LAWS.** The AE's services shall comply with all applicable building codes, statutes, ordinances, laws, rules and regulations, including but not limited to the IBC/BOCA, Americans with Disabilities Act ("ADA"), Elevator/Escalator, Health, and NFPA/Life Safety codes, Mechanical, and Energy Conservation Codes, National Electrical Code, International Energy Conservation Code and ASHRAE standards (collectively the “Codes and Regulations”). The AE shall develop its specifications and drawings to strictly meet or exceed applicable Codes and Regulations. The AE shall coordinate approval of all plans with the Fire Marshal, Elevator and Health Code Officials.

**3.2 BUILDING SYSTEMS REQUIREMENTS:** The AE shall address in the construction specifications the requirements of the contractor to provide detailed and comprehensive operations and maintenance manuals for all equipment and systems in an organized format.

**3.3 DEFECTS:** The AE, at no cost to the Owner and upon notice or discovery, shall promptly correct any defective designs or specifications furnished by the AE. The AE shall promptly reimburse the Owner for damages, if any, to the extent caused by such defective designs or specifications. The Owner's approval,

acceptance, use of the Project, or payment for all or any part of the AE's services hereunder, shall in no way amend or modify the AE's obligation to correct defects, nor impair, amend or modify the Owner's rights under this Agreement.

## **ARTICLE 4**

### **APPROVALS, MEETINGS & COMMUNITY RELATIONS**

**4.1 SUBMISSIONS FOR OWNER'S APPROVAL:** Included with Basic Services, upon completion of each design phase, the AE shall submit drawings, specifications and other documents to the Owner (for its approval) and to the CM, if applicable, for its information.

**4.2 GOVERNMENTAL APPROVALS:** Included with Basic Services, the AE shall assist the Owner and the CM, if applicable, with submitting and/or filing documents required for the review and/or approval of governmental authorities having jurisdiction over the Project.

**4.3 COMMUNITY RELATIONS:** Included with Basic Services, upon the Owner's request at any time during the term of this Agreement the AE shall assist and support the Owner in preparing presentations and attending meetings with respect to the design and status of the Project. Meetings and presentations may involve various organizations, including but not limited to, governmental agencies, legislative bodies, community and civic associations, special interest groups and other groups identified by the Owner. The AE shall assist the Owner with ways to address and if possible, mitigate community concerns. As needed, the AE shall contribute articles regarding the Project to any newsletters Owner publishes and distributes to civic associations and key public officials.

**4.4 MEETINGS:** The Owner will schedule meetings to discuss, review comments and resolve problems relating to design and other matters as needed. The AE shall provide drawings, schedules and other documents depicting the current status of design at such meetings, which are included with Basic Services.

**4.4.1** The AE shall record minutes of the discussions and distribute within seven days to all participants.

**4.4.2** The AE is required to attend all relevant meetings.

## **ARTICLE 5**

### **SCOPE OF AE'S BASIC SERVICES**

#### **5.1 BASIC SERVICES GENERALLY**

**5.1.1 Scope:** The AE's Basic Services consist of those services described in this Article 5, Exhibits 2 and 3 (RFP and Technical Proposal) and any other services specifically identified in a specific task order or elsewhere in this Agreement.

5.1.1.1 Reserved

5.1.1.2 The AE will be provided with any available existing land surveys, building plans, utility plans, and site maps (together “**Records**”) which may be pertinent to the Project. However, no assurances are given that such Records are complete, up-to-date or accurate regardless of how titled or dated. The AE is responsible for verifying the accuracy and usefulness of any Records provided.

5.1.1.3 Existing Conditions. The AE is responsible for visual observation and investigation of existing site conditions (“**Site Conditions**”) and the impact of those Site Conditions on design.

The AE shall advise the Owner in writing: (a) if the AE believes that the existing conditions or facilities do not conform to any as-built documentation provided to the AE; or (b) if the AE believes that further testing or inspections should be conducted by the Owner.

5.1.1.4 The AE shall order electrical load tests and, as necessary, coordinate with MSA and the Ravens, to take all appropriate action with respect to the disruption of utilities and other such services to all buildings so as to minimize or avoid damage or interference with the normal use of the buildings and business invitees.

**5.1.2 Interior Design:** The AE shall provide interior design and other similar services required for or in connection with the selection of furnishings and related equipment.

**5.1.3 Constructability and Maintenance:** The AE shall take into consideration the Owner’s needs, resources, and known limitations (i.e. time, space, and financial) in terms of design construction and the maintenance requirements for the completed Project. The AE shall avoid specifying materials that would require replacement from unique or sole sources.

**5.1.4 Green Building Standards:** The AE’s design of the Project shall include the elements necessary for the Project to meet or, to the extent feasible, exceed the Green Building Standards in effect during the Design Phase. The “Green Building Standards” shall mean MSA’s required standards regarding energy savings, resource conservation, storm water management, environmental site design, renewable energy, and any other sustainability strategies to achieve budgetary and life-cycle cost savings and/or health benefits for building occupants.

**5.1.5 Copies:** The AE shall furnish the Owner with physical copies (in such quantities as are reasonably requested by the Owner) and electronic copies of the documents prepared pursuant to Article 2 at the end of each design phase. The AE shall also provide all additional copies required by any agency performing permit, code compliance or other reviews as necessary to facilitate the work of the reviewing agency pursuant to Section 3.1.

## **ARTICLE 6**

### **PRELIMINARY DESIGN PHASE**

**6.1.1 Site Use and Improvements:** The AE shall review with the Owner proposed site use and improvements; selection of building materials, systems and equipment; and methods of Project delivery for each task order.

**6.1.2 Alternative Approaches:** The AE shall review with the Owner alternative approaches to design and construction and shall provide the Owner, upon request, at least three (3) conceptual drawings of alternative approaches.

**6.1.3 Documents:** The AE shall prepare for approval by the Owner, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the scale and relationship of Project components.

**6.1.4 Existing Conditions:** The AE shall comply with section 5.1.1.3.

## **ARTICLE 7**

### **PERSONNEL**

**7.1 PROJECT STAFFING:** Except as hereinafter provided, once approved by Owner, changes to the design team are prohibited without Owner's written authorization. The AE's design team shall be that which is shown on the staffing plan (the "**Staffing Plan**") included in the Technical Proposal attached hereto as **Exhibit 3**. There shall be no deviation from the Staffing Plan including increases or decreases to staff without Owner's prior written consent. The foregoing consent requirement notwithstanding, minor changes in staff which do not involve Key People (as defined below), may occur without Owner's prior written consent conditioned upon there being no increase in cost to the Owner as a result thereof.

Each request for a staff change shall be accompanied by a resume and qualification package with respect to the proposed new staff member. Costs associated with additional staffing, unless required due to circumstances beyond AE's control and consented to by Owner in writing, shall be the sole responsibility of AE.

**7.2 KEY PEOPLE.** Key People are principals and employees of the AE who the Owner desires be assigned to the Project for the duration of the Agreement.

**7.2.1** The Staffing Plan shall include the names of Key People, the proposed role of each person and as applicable, the planned division of responsibilities, their direct personnel expense, and the amount of time each person will be dedicated to the Project.

**7.2.2** Key People may not be substituted without the prior written consent of the Owner.

**7.2.3** If the Owner in its sole discretion determines that any Key Person is not performing satisfactorily, the Owner shall have the right to direct AE to replace the individual(s). The AE shall provide the Owner with resumes of possible replacements and the Owner shall have the opportunity, but not the obligation to interview replacement candidates.

**7.2.4** The terms and conditions of this Article 7 shall apply to any subconsultant under contract with the AE. Its AEs shall be required to obtain the Owner's written consent prior to assigning Key People to the Project; and the AE shall include in its subconsultant contracts provisions in substantially the same form as those set forth in this Article 7.

## **ARTICLE 8**

### **OWNER'S RESPONSIBILITIES**

**8.1 CONSULTATION WITH THE AE.** The Owner shall consult with the AE regarding requirements for the Project, including the Owner's contemplated objectives, schedule, constraints and criteria, including square footage, usage, space relationships (i.e. adjacencies), flexibility, expandability, special equipment, systems, and site requirements.

**8.2 BUDGET UPDATE.** The Owner shall establish and update a task order budget based on consultation with the AE (and the CM if applicable), which shall include the Construction Cost, the Construction Cost Limit, the Owner's other costs, and reasonable contingencies related to all of these costs with respect to any assigned task order.

**8.3 OWNER'S REPRESENTATIVE.** The Owner shall designate representative(s) authorized to act on the Owner's behalf with respect to the Project. The Owner's Representative(s) are listed on **Exhibit 5** attached hereto.

**8.4 LEGAL DESCRIPTIONS.** Pursuant and subject to Section 5.1.1.2, the Owner shall furnish all available surveys describing physical characteristics, legal limitations and utility locations for the Project site and, if available, a written legal description. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, flood plains, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**8.5 INSURANCE VERIFICATION.** The AE and any subconsultant shall comply with all requests by the Owner to furnish insurance certificates, endorsements, policies and declaration pages relating to insurance required in connection with this Agreement. Failure to provide insurance of the type, coverage amount or with terms required herein, unless otherwise consented to in writing by the Owner, shall be an Event of Default.

**8.6 PAYMENT VERIFICATION.** The AE shall provide any and all documents required by the Owner, in Owner's sole discretion, to verify AE's application for payment. AE's failure to comply with document requirements shall be cause for delay in payment by the Owner (or the State).

**8.7 RESERVED**

**8.8 APPROVALS.** The Owner shall furnish information and services required of it, and shall render approvals and decisions as expeditiously as possible for the orderly progress of the AE's services and work of the AEs.

**8.9 COMMUNICATION.** The Owner will furnish the AE with copies of materials by and between the Owner and its CM or Additional AEs, if applicable, that are pertinent to the Project but which the AE may not have. The Owner may also elect to have the CM or its Additional AEs communicate directly with the AE.

## ARTICLE 9

### OWNERSHIP AND USE OF AE'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

**9.1 DOCUMENTS:** All documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork computations, reports, surveys, data, and Computer-Aided Design/Drafting (CADD) System disks/tapes (together “**Deliverables**”) which are prepared or furnished by the AE and form a part of its services for the purpose of this Agreement, shall, upon completion of the deliverables, become the sole property of Owner and may not be copyrighted by the AE or its AEs.

9.1.1 Owner shall have the right to use the same without restriction and without compensation to the AE other than as specifically provided for herein.

9.1.2 In the event Owner reuses any of the final working drawings and specifications for the construction of another project by Owner through another licensed professional, the AE's name shall be removed therefrom and another licensed professional shall assume full responsibility for the reuse of such drawings and specifications. The AE shall have no liability or responsibility arising from such reuse. Nothing contained herein shall prohibit the AE from retaining a copy of the above documents.

9.1.3 The AE agrees that at all times during the term of this Agreement and thereafter, work created as a Deliverable under this Agreement, and services performed under this Agreement 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 Agreement are not works made for hire for the Owner, the AE hereby relinquishes, transfers, and assigns to the Owner all of its rights, title, and interest, (including all intellectual property rights) to all such products created under the Agreement.

9.1.4 The AE shall report to the Project Manager, promptly and in written detail, each notice or claim of copyright infringement received by the AE with respect to all data delivered under this Agreement; and agrees to indemnify and hold harmless the State and Owner for any claim of copyright infringement in the use of any works made for hire which are either determined by a court of competent jurisdiction to be the property of another, or agreed to in any manner by the AE to be the property of another.

9.1.5 The AE shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the Owner shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

**9.2 OWNERSHIP:** The data used in compiling, and the results of, any tests, surveys or inspections at the Project site, as well as all photographs, drawings, specifications, schedules, data processing output,



computations, studies, audits, reports, models and other items of like kind prepared by or with the assistance of the AE, its employees and subconsultants, shall be the property of the Owner.

**9.3 RELEASE OF PROJECT INFORMATION; CONFIDENTIALITY:** Except as set forth in Article 4, the AE shall not issue press releases, engage in dialogues, participate in interviews with any type of media (including but not limited to, print, television, radio or internet), or address community members for the purpose of answering questions or communicating information regarding the Project without the prior written consent of the Owner. The contents and substance of all discussions and communications, oral or written, between the Owner and the AE shall be kept confidential by the AE and shall not be disclosed by the AE to any persons or entities unaffiliated with the Project, including, without limitation, governmental authorities and community groups, without the prior written consent of the Owner. The Owner reserves the right to release all information as well as to time its release, form, and content. This requirement shall survive the expiration of this Agreement.

**9.4 AE'S USE IN PROMOTIONAL MATERIALS:** The AE shall have the right, with the prior written consent of the Owner, to include representations of the design of the Project, including photographs of the exterior and interior, among the AE's promotional and professional materials. The AE's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the AE in writing of the specific information considered by the Owner to be confidential or proprietary.

## **ARTICLE 10**

### **COMPLIANCE WITH LAWS AND REGULATIONS**

**10.1 EMPLOYMENT LAWS; LICENSING REQUIREMENTS:** The AE shall comply, at its own expense, with the provisions of all laws and regulations applicable to the AE as an employer of labor or otherwise. The AE shall further comply, at its own expense, with all laws and regulations, including, but not limited to, licensing requirements, pertaining to its professional status and that of its employees, partners, associates, AEs under subcontracts and others employed to render the services under this Agreement.

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

### **10.3 MINORITY BUSINESS ENTERPRISES:**

10.3.1 AE submitted an MDOT-Certified MBE Utilization and Fair Solicitation Affidavit (the “**MBE Affidavit**”) with its Proposal. A copy of the MBE Affidavit is attached hereto as Exhibit 7. Unless otherwise permitted by MSA in accordance with SF Title 14, subtitle 3 and the regulations promulgated pursuant thereto, AE shall utilize the MBE’s as specified in the MBE Affidavit. AE may not terminate, cancel, or change the scope of work/value of a subcontract with a certified MBE listed on the MBE Affidavit without:

- (a) Showing good cause why the subcontract with the certified MBE should be terminated or cancelled;
- (b) Obtaining the prior written consent of MSA's MBE liaison and Executive Director; and
- (c) Subsequently amending this Agreement.

10.3.2 AE shall:

- (a) Permit MSA to inspect any relevant matter, including records and the jobsite and to interview subconsultants and workers;

(b) Using MSA's web-based system (B2G), submit monthly to MSA a report listing payments made to each MBE subconsultant in the preceding thirty (30) days and any unpaid invoices over thirty (30) days old received from a certified MBE subconsultant, and the reason payment has not been made;

(c) Include in its agreements with its certified MBE subconsultants a requirement that the certified MBE subconsultants (through MSA's web-based system (B2G)) submit monthly to MSA a report identifying the prime contract, and listing:

(i) Payments received from Commissioning Agent in the preceding thirty (30) days, and

(ii) Invoices for which the subconsultant has not been paid; and

(iii) Before final payment and release of any retainage, submit a final report, in affidavit form and under penalty of perjury, of all payments made to, or withheld from, MBE subconsultants.

### 10.3.3 MBE Liquidated Damage

(a) If MSA has determined that Commissioning Agent will not fulfill its MBE requirements as identified in the Contract Documents, MSA may withhold an amount equal to the liquidated damages set forth below until Commissioning Agent has satisfied the goal.

*Effective July 1, 2019* COMAR 21.07.01.14 requires liquidated damages for violations of MBE requirements for all contracts with certified MBE participation goals.

(b) Violations and Liquidated Damages Amounts

<u>MBE COMPLIANCE</u>	
<u>COMPLIANCE FAILURE</u>	<u>LIQUIDATED DAMAGES CALCULATION</u>
(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B(3)	\$60 per day until the monthly report is submitted as required.
(b) Failure to include in its agreements with an MBE subconsultant a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B(4)	\$60 per MBE subconsultant
(c) Failure to comply with COMAR 21.11.03.12 in terminating, cancelling or changing the scope of work/value of a contract with an MBE subconsultant and/or amendment of the MBE participation schedule.	The difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific firm and the dollar value of the work actually performed by that MBE firm under this Agreement.

## MBE COMPLIANCE

(d) Failure to meet the AE'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.

**10.4 AMERICANS WITH DISABILITIES ACT:** The Project shall be designed in accordance with the Americans with Disabilities Act ("ADA"). If applicable, the AE shall appoint an ADA task force during the design process. The task force shall meet on a regular basis and provide comments regarding project ADA compliance to the Owner and Ravens, if applicable.

**ARTICLE 11**  
**DISPUTE RESOLUTION**

**11.1 DISPUTES:** In the event of any dispute or controversy of any nature whatsoever, the AE shall strictly abide by the Owner's decision for the purpose of the prompt and uninterrupted continuation of the performance of its duties, obligations and services under this Agreement; but the AE may submit to Owner a written exception to any decision of the Owner within ten (10) days after receipt of such decision stating the basis of its exception and reserving the right to file a claim against the Owner after completion of the Project for additional compensation or damages. The continued performance by the AE of its duties, obligations and services under this Agreement shall not operate as a waiver of any such claim, nor shall it be prejudicial to the AE's rights, hereby reserved, to have such exception and claim later adjudicated by a court of competent jurisdiction after completion of the Project.

**11.2 CONTINUED PERFORMANCE AND PAYMENT:** Pending resolution of any dispute, the AE shall continue to perform its obligations under this Agreement and the Owner shall continue to make payments of all amounts due the AE that are not in dispute.

**11.3 NO ARBITRATION:** No dispute or controversy under this Agreement shall be subject to binding arbitration.

## **ARTICLE 12**

### **TERMINATION, POSTPONEMENT OR SUSPENSION**

**12.1 TERMINATION FOR CONVENIENCE:** Termination for Convenience: The performance of work under this Agreement may be terminated by the Owner with or without cause, upon ten (10) days written notice to the AE whenever the Owner shall determine that such termination is in the best interest of the State or the Owner. The Owner will pay all reasonable costs associated with this Agreement that the AE has incurred up to the date of termination and all reasonable costs associated with termination of the Agreement. However, the AE shall not be reimbursed for any anticipatory profits which 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).

**12.2. TERMINATION FOR DEFAULT:** If the AE fails to fulfill its obligations under this Agreement properly and on time, or otherwise violates any provision of the Agreement, the Owner may terminate this Agreement by written notice to the AE. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished supplies and services provided by the AE, shall at the Owner's option, become the Owner's property. The Owner shall pay the AE fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by AE's breach. If the damages are more than the compensation payable to the AE, the AE will remain liable after termination and the Owner can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11(B).

**12.3 SUSPENSION OF WORK:** The Owner may unilaterally order the AE in writing to suspend, delay, or interrupt all or any part of the work for any period of time as he may determine to be appropriate for the convenience of the Owner or the State. (*COMAR 21.07.01.16*)

**ARTICLE 11**  
**INSURANCE REQUIREMENTS AND INDEMNIFICATION**

**11.1 INSURANCE REQUIREMENTS:** Per the requirements of the RFP, AE shall maintain, at its own expense, the following insurance coverages, insuring the AE, its employees, agents and designees, and the Indemnitees (as hereinafter defined), which insurance shall be placed with insurance companies rated “A-VII” or better by A.M. Best & Company and lawfully authorized to do business in the State of Maryland:

- (a) AE's Professional Liability Insurance in the amount of \$2 million (including contractual liability coverage, if available, with all coverage retroactive to the earlier of the date of this Agreement or the commencement of AE's services in relation to the Project), said coverage to be maintained for a period of five (5) years after the date of final payment or the date of final completion of the Project, whichever is later.
- (b) Comprehensive General Liability Insurance in the amount of Two Million Dollars (\$2,000,000) including coverage for blanket contractual liability, broad form property damage and personal injury, and on-going operations and completed operations.
- (c) Umbrella Liability Insurance in the amount of Five Million Dollars (\$5,000,000) following the underlying Comprehensive General Liability Insurance, Commercial Automobile Liability Insurance and Employers' Liability Insurance.
- (d) Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, in the amount of One Million Dollars (\$1,000,000) covering bodily injury and property damage.
- (e) Workers Compensation Insurance in the amount required under and in accordance with the State of Maryland's statutory requirements and Employers' Liability Insurance with limits not less than One Million Dollars (\$1,000,000) per accident.

All insurance policies shall provide that they cannot be cancelled, materially changed or non-renewed unless the Owner, Indemnitees and Professional Liability Indemnitees (if available) are given at least thirty (30) days prior written notice. All deductibles on any policy of insurance to be purchased by AE hereunder shall be borne by the AE.

**11.2 ADDITIONAL INSUREDS:** AE shall insure specifically the indemnity set forth in Section 11.5 below and shall include the Indemnitees (as defined in Section 11.5.1) as additional insureds by causing amendatory riders or endorsements to be attached to the insurance policies described above in subsections 11.1(b), 11.1(c), and 11.1(d). Neither the Owner nor any of the other Indemnitees shall be an additional insured on the professional liability insurance described above in subsection 11.1(a). The insurance coverage afforded under these policies shall be primary to any insurance (or self-insurance) carried independently by the Indemnitees. Said amendatory riders or endorsements shall indicate that, as respects the Indemnitees, there shall be severability of interest under said insurance policies for all coverages provided under said insurance policies. The following language shall be specifically included as an endorsement under the AE's Comprehensive General Liability policy:

"The coverage afforded to the additional insured under this policy shall be primary insurance. The amount of the Company's liability under this policy shall not be reduced by the existence of any other insurance. It is further agreed that the coverage afforded to the additional insured shall not apply to the sole negligence of the additional insured."

**11.3 SUBCONSULTANT INSURANCE:** The AE shall require that its subconsultants maintain, at their own expense, the insurance coverages set forth in Section 11.1, or other amounts as agreed in writing by the Owner.

**11.4 CERTIFICATE:** AE shall submit valid certificates in form and substance satisfactory to Owner evidencing the effectiveness of the foregoing insurance policies along with copies of the amendatory riders to any such policies to Owner for Owner's approval before AE commences the rendition of any services hereunder.

## **11.5 INDEMNIFICATION:**

**11.5.1** The AE hereby agrees to indemnify, defend and hold harmless the Owner, the Ravens, the Orioles, MSA and their respective members, directors, officers, authorized agents, employees and designees (collectively, the "Indemnitees") from and against any and all losses, claims, demands, liabilities, actions, suits, injuries, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees as and when incurred) asserted by any persons (including, but not limited to, any one or more of the Indemnitees) that are caused by or arise from any negligent acts, errors, or omissions of the AE, its authorized agents, licensees, employees, and contractors occurring in connection with the performance or lack of performance by the AE of its duties and obligations under or pursuant to this Agreement. The foregoing indemnity shall be limited to the amount of the insurance policies required under subsections 11.1(b), 11.1(c), and 11.1(d), as applicable.



**11.5.2** With respect to professional liability for design services covered under AE's professional liability insurance policy, the AE hereby agrees to indemnify and hold harmless the Owner and its respective members, directors, officers, authorized agents, employees and designees (collectively the "Professional Liability Indemnitees") from and against all losses, claims, demands, liabilities, actions, suits, injuries, damages, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) caused by the negligent performance or lack of performance by the AE, or any of the AE's AEs, of their duties and obligations under or pursuant to this Agreement.

**11.6 TORT CLAIMS ACTS:** The AE agrees, for itself and for its insurers, that neither AE nor its insurers may raise or use any 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 the Owner or the Client, unless requested by the Owner.

**ARTICLE 12**  
**PAYMENTS AND BASIS OF COMPENSATION**

**12.1 PAYMENTS:** The Owner shall make payments directly to the AE within thirty (30) days after the Owner's receipt and approval of AE's Invoice, provided such invoice conforms to the requirements set forth in Section 3 of the RFP.

**12.2 RESERVED**

**12.3 TOTAL COMPENSATION:** The Owner shall compensate the AE for the services provided by the AE hereunder not to exceed the amounts set forth in AE's approved task order proposal(s), for services actually performed in accordance with the billing rates established for this contract under the Financial Proposal attached as **Exhibit 4**; for Additional Services, the AE shall be compensated as provided in Section 12.5. Total compensation to the AE under this contract shall not exceed the maximum approved contract limit in the amount of \$ \_\_\_\_\_ without required approvals.

**12.4 BASIC SERVICES:** Basic Services shall include all services described in Article 2, and any other services specifically identified in this Agreement or any task order proposal as part of Basic Services.

**12.4.1 RESERVED**

**12.4.2 CHANGE IN SCOPE:** In the event of a material change in the scope of the Project or any task order, the AE shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the AE's compensation hereunder.

**12.5 ADDITIONAL SERVICES:** For Additional Services, as described in Article 3, compensation shall be a negotiated sum agreed to in writing by the parties subject to any required approvals by MSA.

**12.5.1 Additional Services of Outside AEs:** For Additional Services of outside AEs, compensation shall be as agreed to in writing by the parties subject to any required approvals by MSA.

**12.5.2 RESERVED**

## **12.6 REIMBURSABLE EXPENSES**

12.6.1. All reimbursable expenses are to be included in a task order proposal subject to MSA's prior approval.

12.6.2. Reimbursable Expenses for any approved Additional Services shall be approved in advance by MSA's Project Manager. Any required travel expenses must be in accordance with State of Maryland travel reimbursement policies.

**ARTICLE 13**  
**AUDITS BY OWNER**

**13.1 ACCESS TO AE'S BOOKS AND RECORDS:** The AE agrees that the Owner or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this Agreement have access to and the right to examine any directly pertinent books, documents, papers, and records of the AE involving transactions related to this Agreement.

**13.2 ACCESS TO AE'S BOOKS AND RECORDS:** The AE further agrees to include in all its AE agreements hereunder a provision to the effect that the AEs agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after final payment under the AE agreements, have access to and the right to examine any directly pertinent books, documents, papers, and records of such AEs, involving transactions related to the Project.

**ARTICLE 14**  
**MISCELLANEOUS PROVISIONS**

**14.1 GOVERNING LAW:** This Agreement shall be governed by the laws of the State of Maryland.

**14.2 SUCCESSORS AND ASSIGNS:** The Owner and the AE, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

**14.3 ASSIGNMENTS:** The AE shall not assign, encumber, pledge, sublet or transfer any interest in this Agreement without the written consent of the Owner. The AE shall notify the Owner immediately in writing of any significant changes in its ownership or organization or in the ownership or organization of any of the joint venturers comprising the AE. Except for an assignment by Owner of any of its rights under this Agreement to the State of Maryland, or any agency or department thereof, or an entity supplying funds for the construction of the Project, the Owner shall not assign, encumber, pledge, sublet or transfer any interest in this Agreement without the written consent of the AE, which consent shall not be unreasonably withheld or delayed. When requested by an entity supplying funds for the construction of the Project, including any lender, the AE shall enter into a reasonable and customary "Agreement to Complete".

**14.4 REMEDIES CUMULATIVE:** The remedies provided in this Agreement shall be in addition to, and not in substitution for, the rights and remedies which would otherwise be vested in either party hereto, under law or at equity, all of which rights and remedies are specifically reserved by each party. The failure to exercise any remedy provided for in this Agreement shall not preclude the resort to any such remedy for future breaches by the other party, nor shall the use of any special remedy hereby provided prevent the subsequent or concurrent resort to any other remedy which by law or equity would be vested in either party for the recovery of damages or otherwise in the event of a breach of any of the provisions of this Agreement to be performed by the other party.

**14.5 JURISDICTION AND VENUE:** If the Owner is a party to any litigation with respect to the Project (whether as plaintiff, defendant or third party defendant) the AE consents to being joined in such action and to the jurisdiction of the Court in which the action is instituted (if the AE is named as a defendant or impleaded as a third party defendant) and to service of process by that court; and the AE waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue.

**14.6 CONTRACT AFFIDAVIT:** Simultaneously with the execution of this Agreement, the AE shall execute, seal and deliver to the Owner the signed Contract Affidavit attached hereto as **Exhibit 9**.

**14.7 EXHIBITS:** All exhibits attached hereto are hereby incorporated into this Agreement and are deemed a material part of this Agreement.

**14.8 NON-HIRING OF EMPLOYEES:** No employee of the State of Maryland or any unit thereof, whose duties as such employee include matters relating to or affecting the subject matter of this Agreement, shall, while so employed, become or be an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

**14.9 PERSONAL LIABILITY OF PUBLIC OFFICIALS:** In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of this Agreement, there shall be no personal liability upon the members of the Maryland Stadium Authority or any employees or representatives of the Owner, either personally or as officials of the State, it being understood that in all such matters they act solely as agents and representatives of the Owner.

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

**14.11 MULTI-YEAR CONTRACTS CONTINGENT UPON APPROPRIATION:** If the General Assembly fails to appropriate funds or if funds are not otherwise made available by the Client for continued performance for any fiscal period of this Agreement succeeding the first fiscal period, this Agreement 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 Owner's rights or the Architect's rights under any termination clause in this Agreement. The effect of termination of the Agreement hereunder will be to discharge both the AE and the Owner from future performance of the Agreement, but not from their rights and obligations existing at the time of termination. The AE shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Agreement. The Owner shall notify the AE as soon as it has knowledge that funds may not be available for the continuation of this Agreement for each succeeding fiscal period beyond the first.

#### **14.12 RESERVED**

**14.13 NOTICES:** All notices required or permitted to be given by one party to the other hereunder shall be in writing and shall be sent by certified U.S. Mail or commercial messenger receipt service, or shall be hand-delivered, as set forth in **Exhibit 10**. Either party may change its address for the purpose of receiving notices under this Agreement by written notice to the other party in the manner set forth above.

**14.14 GENERAL CONDITIONS:** Terms which are not defined in this Agreement shall have the same meaning as those in the Construction Contract provided to the AE by Owner.

**14.15 INTEGRATED AGREEMENT:** This Agreement and the RFP included in **Exhibit 2** (unless modified by this Agreement) represent the entire and integrated agreement between the Owner and the AE and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and AE.

**14.16 NO JOINT VENTURE:** AE acknowledges that Owner is not a partner or joint venturer of AE and that AE is not an employee or agent of Owner.

**14.17 HAZARDOUS MATERIALS:** Unless otherwise provided in this Agreement, the AE and AE's subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances; provided, however, the AE shall report to the Owner the presence and location of any hazardous material that an architect of similar skill and expertise should have noticed.

**14.18 OWNER APPROVAL:** Whenever provision is made herein or in the contract documents for the approval or consent of Owner, or that any matter be to Owner's satisfaction, such approval

or consent shall be made by Owner in its sole discretion and determination unless another standard is expressly stated in that specific provision.

**14.19 HEADINGS:** The headings and captions of the Sections in this Agreement are inserted for identification purposes only, and shall not govern the construction, nor alter, vary, or change any of the terms, conditions, or provisions of this Agreement or any Sections hereof.

**14.20 TIME OF THE ESSENCE:** Time is of the essence in the performance of the obligations of the AE under this Agreement.



**THIS AGREEMENT ENTERED INTO AS OF THE DAY AND YEAR FIRST WRITTEN  
ABOVE.**

**WITNESS:**

**OWNER:**

Maryland

Stadium

Authority

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**WITNESS:**

**AE:**

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## **ATTACHMENT I. - 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, Consultant, consultant, or subconsultant or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a Bid/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 that 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 Consultant 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)

**ATTACHMENT J – NEGOMETRIX INSTRUCTIONS**

SEE

[WWW.APP.NEGOMETRIX.COM-REGISTER](http://WWW.APP.NEGOMETRIX.COM-REGISTER)

TO REVIEW VIDEO

## ATTACHMENT L. – CONTRACT AFFIDAVIT

### A. AUTHORITY

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

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

I FURTHER AFFIRM THAT:

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

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

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

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

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

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

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

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

### C FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that

enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$200,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches

\$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION –

I FURTHER AFFIRM THAT:

I am aware of and the above business will comply with Election Law Article Title 14 Annotated Code of Maryland which requires that every person that enter 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 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.

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 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 Proposal Affidavit dated\_\_\_\_\_, 2021, 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:\_\_\_\_\_ (print name of Authorized Representative and Affiant)

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







## **APPENDICES**

### **ADDITIONAL FORMS TO BE COMPLETED AND SUBMITTED**

**A/E Architecture and Engineering Services Indefinite Delivery Contract (IDC)**

**MSA Project No. 22-008 PROPOSAL**

Professional Liability Insurance Form

Registration Documentation

Project Experience Matrix Form

Previous Working Relationship Matrix

## PROFESSIONAL LIABILITY INSURANCE FORM

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**A/E SOLICITATION # 22-008**

**PROJECT: Architecture and Engineering Services Indefinite Delivery Contract (IDC)**

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PROFESSIONAL LIABILITY INSURANCE FORM INITIAL TECHNICAL PROPOSAL

A/E FIRM: \_\_\_\_\_

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

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

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

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

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

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

## REGISTRATION DOCUMENTATION

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**A/E SOLICITATION NO. 22-008**

**PROJECT: ON-CALL ARCHITECT/ ENGINEERING SERVICES INDEFINITE DELIVERY  
CONTRACT (IDC)**

**A/E FIRM:** \_\_\_\_\_

Construction Documents produced under this RFP are required to be sealed and signed according to the laws of the State of Maryland. The individual providing each seal and signature shall be licensed to practice his/her profession by the Division of Occupation & Professional Licensing of the Maryland Department of Labor, Licensing, and Regulation.

For each discipline requiring registration in the State of Maryland, insert name of the individual, and where required, date of Maryland registration, and Maryland registration number. Every individual named on this attachment should be represented in the U.S. Standard Form 330 under the heading of "Resume of Key Personnel Proposed for this Contract." For each discipline listed, one person must be registered in the State of Maryland in order to place their signature and seal on the documents.

<b>Discipline Required</b>	<b>Name of Individual</b>	<b>Date of MD Registration</b>	<b>MD Registration Number</b>
Principal			
Project Architect / Project Manager			
Architect			
Electrical Engineer			
Mechanical Engineer			
Civil Engineer			
Structural Engineer			

## REGISTRATION DOCUMENTATION

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

The foregoing is a statement of facts.

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

Type Name & Title: \_\_\_\_\_

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

**Company Name:** \_\_\_\_\_

SBR No.

**Address:**

**Phone/Fax Nos.**

	Project Name and Location	Owner Name, Contact Person, Phone and Fax Number	Type of Project (New, Renovat., Addition, etc.)	Project Delivery Method	Construction Start	Construction Substantial Completion Date	Construction Cost (full project)	Gross Square Footage
Lead A/E Project No. 1								
Lead A/E Project No. 2								
Lead A/E Project No. 3								
Other Project (optional)								
Other Project (optional)								

SUBMIT THIS FORM WITH TECHNICAL SUBMITTAL

**Company Name:** \_\_\_\_\_

SBR No.

**Address:**

**Phone/Fax Nos.**

	Civil Engineer	Structural Engineer	Mechanical Engineer	Electrical Engineer	Plumbing Engineer	Other
Lead A/E Project #1						
Lead A/E Project #2						
Lead A/E Project #3						
Other Projects (optional)						
Other Projects (optional)						
SUBMIT THIS FORM WITH TECHNICAL SUBMITTAL						

**ATTACHMENT P**  
**MSA Contract Compliance System Information**

## **Maryland Stadium Authority's Contract Compliance System**

### **SYSTEM ACCESS**

Vendor Account Look Up:

Find your account and retrieve your password at

<https://mdstad.diversitycompliance.com/FrontEnd/UserSearchPublic.asp>



### **CONTRACT COMPLIANCE & REPORTING**

#### **For Prime Contractor**

Prime Contractor receives 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.